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This Case is Transferred to the Bankruptcy Court (Gerber, B.J.) as related to Motors Liquidation Co., 09-50026. The Conference scheduled for April 17, 2012 is cancelled. The Clerk is directed to transfer this Case to the Bankruptcy Court & close it on the docket of this Court. SO ORDERED.

J. G. Koeltl
U.S.D.J.
3/6/12

March 6, 2012

VIA HAND DELIVERY

The Honorable John G. Koeltl
United States District Judge
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: Trusky v. General Motors Company
Case No.: 12 civ 1097 (JGK)

Dear Judge Koeltl:

King & Spalding LLP is counsel to General Motors LLC ("**New GM**") f/k/a General Motors Company, the defendant in the above-referenced case. On February 15, 2012, this case was transferred to the United States District Court for the Southern District of New York from the United States District Court for the Eastern District of Michigan ("**Michigan District Court**") pursuant to a *Stipulated Order Granting Plaintiffs' Motion to Transfer Venue to the United States District Court for the Southern District of New York Pursuant to 28 U.S.C. § 1412* entered by the Michigan District Court on February 10, 2012 ("**Stipulated Order**"). A copy of the Stipulated Order is enclosed herewith.

As set forth in the Stipulated Order, the issues arising in this case are related to the bankruptcy case of Motors Liquidation Company f/k/a General Motors Corporation ("**Old GM**") that is currently pending in the United States Bankruptcy Court for the Southern District of New York (Case No. 09-50026) before the Honorable Robert E. Gerber ("**Bankruptcy Court**"). Specifically, New GM has asserted that the claims set forth in the Amended Complaint filed by the Plaintiffs violate an Order ("**Sale Order**") entered by the Bankruptcy Court that approved a sale of substantially all of the assets of Old GM to New GM, and that the Bankruptcy Court has exclusive jurisdiction to interpret and enforce the provisions of the Sale Order. As further set forth in the Stipulated Order, the parties in this case anticipated that the case would be transferred to this Court and that this Court would refer the case to the Bankruptcy Court so that the Bankruptcy Court would interpret its Sale Order. *See* Stipulated Order, ¶ 5 ("Plaintiffs later

concluded that, in order to seek such relief from the Bankruptcy Court, it is necessary to transfer this case to the United States District Court, Southern District of New York, for ultimate referral to the Bankruptcy Court").

On February 22, 2012, this Court entered a *Notice of Court Conference*, scheduling a pretrial conference in this case for April 17, 2012. Based on this Notice and the scheduling of the pretrial conference, it is unclear if this case is going to be transferred to the Bankruptcy Court. By this letter, New GM requests that this case be transferred to the Bankruptcy Court as contemplated by the parties in the Stipulated Order and that the pretrial conference be marked off the calendar as moot. New GM has discussed this matter with Plaintiffs' counsel and Plaintiffs' counsel agrees that the case should be transferred to the Bankruptcy Court as contemplated by the Stipulated Order.

If you have any questions regarding the foregoing or need additional information, please contact the undersigned.

Respectfully submitted,

Arthur Steinberg

cc: Jonathan M. Landers, Esq. (counsel for Plaintiffs - via e-mail transmission)
Lois F. Dix, Esq. (counsel for Plaintiffs - via e-mail transmission)
Darryl Bressack, Esq. (counsel for Plaintiffs - via e-mail transmission)
Marc Edelson, Esq. (counsel for Plaintiffs - via e-mail transmission)

AJS/sd
Encl.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

DONNA M. TRUSKY, ASHA JEFFRIES, GAYNELL COLE on behalf of themselves and all others similarly situated, Plaintiffs, vs GENERAL MOTORS COMPANY 300 Renaissance Center Detroit, MI48243 Defendant.	Case No. 2:11-cv-12815 HON. SEAN F. COX

STIPULATED ORDER GRANTING PLAINTIFFS' MOTION TO TRANSFER VENUE TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK PURSUANT TO 28 U.S.C. § 1412

1. This case is before the Court on the stipulation of the parties concerning Plaintiffs' Motion to Transfer Venue To The United States District Court For The Southern District Of New York Pursuant to 28 U.S.C. § 1412 ("Motion to Transfer"). *See* dkt #21.

2. Plaintiffs in this putative class action filed claims against General Motors LLC f/k/a General Motors Company ("New GM"), alleging that New GM breached express warranties with Plaintiffs and the putative class members. *See* Amended Class Action Complaint, dkt #15.

3. New GM filed a Motion to Dismiss arguing, in part, that the claims asserted and the relief sought by Plaintiffs are outside the scope of the warranty terms and impermissibly are premised on conduct of Motors Liquidation Company f/k/a General Motors Corporation ("Old GM"). New GM contends that the claims and relief constitute a violation of the Order of the

United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") pursuant to which New GM acquired its assets and assumed specific liabilities only. *See* Motion to Dismiss, dkt #18. Additionally, New GM contends that the adjudication of the issues noted in this paragraph are within the exclusive jurisdiction of the Bankruptcy Court. Plaintiffs dispute New GM's position and believe that they properly may pursue their claims and seek relief against New GM and in this Court. The parties' disagreement constitutes an actual and pending dispute (the "Dispute").

4. Plaintiffs asserted that it would serve judicial economy for them to petition the Bankruptcy Court, in Case No. 09-50026, and request, *inter alia*, that the Bankruptcy Court address and resolve the Dispute in paragraph 3, above. Consequently, Plaintiffs requested, and New GM agreed, to the entry of an Order staying this action until such time as the Bankruptcy Court resolves the Dispute as noted above or declines to do so ("Stay Order"). This Court entered the Stay Order on November 21, 2012. *See* dkt #20.

5. Plaintiffs later concluded that, in order to seek such relief from the Bankruptcy Court, it is necessary to transfer this case to the United States District Court, Southern District of New York, for ultimate referral to the Bankruptcy Court. On January 17, 2012, Plaintiffs filed their Motion to Transfer. See dkt #21.

6. Although New GM does not agree with all of the assertions of the Plaintiffs offered in support of their Motion to Transfer, New GM does not object to the transfer of this case.

7. New GM hereby withdraws the pending Motion to Dismiss (dkt #18) without prejudice, reserving all rights to answer or otherwise respond to the current Amended Complaint or any amended pleading.

IT IS HEREBY ORDERED:

1. Plaintiffs' Motion to Transfer is **GRANTED**;

2. This case is hereby transferred to the United Stated District Court, Southern District of New York;

3. New GM's current Motion to Dismiss (dkt #18) is withdrawn without prejudice; and

4. New GM shall have forty-five (45) days to answer or otherwise respond to Plaintiffs' Amended Complaint or any amended pleading after the date this case is transferred to, and docketed with, the District Court in New York.

Dated: February 10, 2012

s/ Sean F. Cox
Sean F. Cox
U. S. District Judge

SO STIPULATED

Fink + Associates Law

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ECF

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:12−cv−01097−JGK
Internal Use Only

Trusky v. General Motors Company
Assigned to: Judge John G. Koeltl
Case in other court: Michigan Eastern, 2:11−cv−12815
Cause: 28:1330 Breach of Contract

Date Filed: 02/14/2012
Jury Demand: Plaintiff
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

Donna M Trusky

represented by **Darryl Bressack**
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Plaintiff

Asha Jeffries represented by **David H. Fink**
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Plaintiff

Gaynell Cole represented by **David H. Fink**
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V.

Defendant

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Date Filed	#	Docket Text
06/29/2011	1	COMPLAINT filed by All Plaintiffs against All Defendants with Jury Demand. Plaintiff requests summons issued. Receipt No: 0645−3047448 − Fee: $350. County Where Action Arose: Wayne − [Previously dismissed case: No] [Possible companion case(s): None] (Attachments: # 1 Exhibit 1 − 08032A Bulletin) (Fink, David) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 06/29/2011)
06/30/2011	2	SUMMONS Issued for *General Motors Company* (DWor) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 06/30/2011)
06/30/2011		(Court only) ***Set/Clear Flags (DWor) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 06/30/2011)
07/06/2011	3	NOTICE of Appearance by Marc H. Edelson on behalf of All Plaintiffs. (Edelson, Marc) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 07/06/2011)
07/12/2011	4	CERTIFICATE of Service/Summons Returned Executed. All Defendants. (Fink, David) Modified on 7/12/2011 (NHol). [GENERAL MOTORS SERVED ON 7/7/2011] [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 07/12/2011)
07/13/2011	5	ORDER for Donna M Trusky to Show Cause why this Case should not be Dismissed for Lack of Subject Matter Jurisdiciton. **Show Cause Response due by 7/26/2011** Signed by District Judge Sean F. Cox. (JHer) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 07/13/2011)

07/15/2011	6	ATTORNEY APPEARANCE: Jeffrey L. Kodroff appearing on behalf of Donna M Trusky (Kodroff, Jeffrey) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 07/15/2011)
07/15/2011	7	ATTORNEY APPEARANCE: John A. Macoretta appearing on behalf of Donna M Trusky (Macoretta, John) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 07/15/2011)
07/25/2011	8	NOTICE of Appearance by Benjamin W. Jeffers on behalf of General Motors Company. (Jeffers, Benjamin) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 07/25/2011)
07/26/2011	9	MEMORANDUM re 5 Order to Show Cause by Donna M Trusky (Attachments: # 1 Exhibit 1 − Affidavit of Donna M. Trusky) (Bressack, Darryl) [DOCUMENT ENTITLED RESPONSE] Modified on 7/26/2011 (CGre). [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 07/26/2011)
07/26/2011	10	NOTICE of Appearance by Darryl Bressack on behalf of Donna M Trusky. (Bressack, Darryl) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 07/26/2011)
07/27/2011	11	NOTICE by General Motors Company re 5 Order to Show Cause *Concurrence That Plaintiff Has Alleged Jurisdiction in Response to The Court's Order to Show Cause* (Attachments: # 1 Index of Exhibits, # 2 Exhibit A. Sale Approval Order, # 3 Exhibit B. In Re: OnStar Contract Litig., Case No. 2:07−MDL−01867, Opinion &Order Granting in Part and Denying in Part Plaintiffs' Motion For Leave to File a Third Amended Complaint) (Jeffers, Benjamin) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 07/27/2011)
08/01/2011		TEXT−ONLY ORDER Vacating re 5 Order to Show Cause. Signed by District Judge Sean F. Cox. (JHer) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 08/01/2011)
08/01/2011	12	STIPULATION AND ORDER Extending Time for Defendant to Respond re 1 Complaint. Responsive pleading due 8/11/2011. Signed by District Judge Sean F. Cox. (JHer) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 08/01/2011)
08/11/2011	13	MOTION to Dismiss by General Motors Company. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A. New York Bankruptcy Court Sale Approval Order, # 3 Exhibit B. In Re: OnStar Contract Litig., Case No. 2:07−MDL−01867, Opinion &Order Granting in Part and Denying in Part Plaintiffs' Motion For Leave to File a Third Amended Complaint, # 4 Exhibit C. 2008 Chevrolet Warranty) (Jeffers, Benjamin) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 08/11/2011)
08/16/2011	14	NOTICE of Appearance by Ronald J. Smolow on behalf of All Plaintiffs. (Smolow, Ronald) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 08/16/2011)
09/06/2011	15	AMENDED COMPLAINT with Jury Demand filed by All Plaintiffs against All Defendants. NEW PARTIES ADDED. (Attachments: # 1 Exhibit Exhibit 1) (Fink, David) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 09/06/2011)
09/09/2011	16	NOTICE of Appearance by Michael P. Cooney on behalf of General Motors Company. (Cooney, Michael) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 09/09/2011)
09/13/2011	17	STIPULATION AND ORDER Regarding Responses to 13 MOTION to Dismiss. Signed by District Judge Sean F. Cox. (JHer) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 09/13/2011)
09/27/2011	18	MOTION to Dismiss *Amended Complaint Based On Lack Of Jurisdiction And Failure To State A Claim* by General Motors Company. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A. In Re: OnStar Contract Litig., Case No. 2:07−MDL−01867, Opinion &Order Granting In Part and Denying In Part Plaintiffs' Motion For Leave To File A Third Amended Complaint, # 3 Exhibit B. New York Bankruptcy Court Sale Approval Order, # 4 Exhibit C. Declaration of

		Steven D. Oakley, # 5 Exhibit D. 2008 Chevrolet Warranty) (Jeffers, Benjamin) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 09/27/2011)
10/24/2011	19	STIPULATION AND ORDER Extending Briefing Deadline as to 18 MOTION to Dismiss (**Responses due by 11/21/2011**) Signed by District Judge Sean F. Cox. (JHer) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 10/24/2011)
11/21/2011	20	STIPULATION AND ORDER STAYING CASE Pending Ruling from Bankruptcy Court Signed by District Judge Sean F. Cox. (JHer) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 11/21/2011)
01/17/2012	21	MOTION to Transfer Case *to Southern District of New York* by All Plaintiffs. (Attachments: # 1 Exhibit 1 − Appendix of Unpublished Opinions) (Fink, David) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 01/17/2012)
01/31/2012	22	RESPONSE to 21 MOTION to Transfer Case *to Southern District of New York* filed by General Motors Company. (Jeffers, Benjamin) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 01/31/2012)
02/10/2012	23	STIPULATED ORDER TRANSFERRING CASE to Southern District of New York. Signed by District Judge Sean F. Cox. (DWor) [Transferred from Michigan Eastern on 2/15/2012.] (Entered: 02/10/2012)
02/15/2012	24	CASE TRANSFERRED IN from the United States District Court − District of Michigan Eastern; Case Number: 2:11−cv−12815. Original file certified copy of transfer order and docket entries received. (sjo) (Entered: 02/15/2012)
02/15/2012		Magistrate Judge Henry B. Pitman is so designated. (sjo) (Entered: 02/15/2012)
02/15/2012		Case Designated ECF. (sjo) (Entered: 02/15/2012)
02/15/2012		NOTE TO OUT OF STATE ATTORNEYS: Please visit the Court's website at http://www.nysd.uscourts.gov for information regarding admission to the S.D.N.Y. Bar and the CM/ECF Rules &Filing Instructions. (sjo) (Entered: 02/15/2012)
02/22/2012	25	NOTICE OF COURT CONFERENCE: You are directed to appear for a pretrial conference, to be held on Tuesday, April 17, 2012 in Courtroom 12B, at 4:30pm in front of the Honorable John Q. Koelt. All requests for adjournments must be made in writing to the Court.For any further information, please contact the Court at (212) 805−0107. (ama) (Entered: 02/22/2012)
02/22/2012		Set/Reset Hearings: Pretrial Conference set for 4/17/2012 at 04:30 PM in Courtroom 12B, 500 Pearl Street, New York, NY 10007 before Judge John G. Koeltl. (ama) (Entered: 02/22/2012)
03/06/2012	26	ENDORSED LETTER addressed to Judge John G. Koeltl from Arthur Steinberg dated 3/6/2012 re: On February 22, 2012, this Court entered a Notice of Court Conference, scheduling a pretrial conference in this case for April 17, 2012. Based on this Notice and the scheduling of the pretrial conference, it is unclear if this case is going to be transferred to the Bankruptcy Court. By this letter, New GM requests that this case be transferred to the Bankruptcy Court as contemplated by the parties in the Stipulated Order and that the pretrial conference be marked off the calendar as moot. New GM has discussed this matter with Plaintiffs' counsel and Plaintiffs' counsel agrees that the case should be transferred to the Bankruptcy Court as contemplated by the Stipulated Order. ENDORSEMENT: This case is transferred to the Bankruptcy Court (Gerber, B.J.) as related to Motors Liquidation Co., 09−50026. The conference scheduled for April 17, 2012 is canceled. The Clerk is directed to transfer this Case and to close it on the docket of this Court. So Ordered. (Signed by Judge John G. Koeltl on 3/6/2012) (js) (Entered: 03/06/2012)
03/06/2012		Transmission to the Case Openings Clerk. Transmitted re: 26 Endorsed Letter,,,,, to the Case Openings Clerk for case processing. (js) (Entered: 03/06/2012)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

DONNA M. TRUSKY on behalf of herself and all others similarly situated, Plaintiff, vs GENERAL MOTORS COMPANY 300 Renaissance Center Detroit, MI 48243 Defendant.	CLASS ACTION JURY TRIAL DEMANDED Case No. _____

CLASS ACTION COMPLAINT

You are hereby notified to preserve all records and documents in all forms and formats (digital, electronic, film, magnetic, optical, print, etc.) during the pendency of this action that are relevant or may lead to relevant information and to notify your employees, agents and contractors that they are required to take appropriate action to do so.

Plaintiff, Donna M. Trusky, brings this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, individually and on behalf all others similarly situated, and alleges the following:

INTRODUCTION

1. Model year 2007 and 2008 Impalas were primarily manufactured by General Motors Corporation, although some may have been manufactured by General Motors Company. General Motors Company acquired substantially all of the assets and assumed some of the liabilities of General Motors Corporation, when

the former filed for bankruptcy relief in 2009. General Motors Company assumed the express warranty liabilities of General Motors Corporation, including those which Plaintiffs and the class now seek to enforce. General Motors Company is the Defendant in this action and is referred to hereinafter as "GM" or "General Motors."

2. The model year 2007 and 2008 Impalas were sold with common defective rear spindle rods that caused and continue to cause wheel misalignment and premature tire wear. Even though it has issued a recall bulletin for model year 2007 and 2008 Impalas operated as police vehicles, GM has failed to honor its warranties with Plaintiff and the putative class, by failing to correct the manufacturing defect in their vehicles. There are no relevant material differences between police vehicles and class members' vehicles relating the defective spindle rods.

3. The fact that GM moved to fix certain Impalas shows that it knew of the defect. Despite this, GM continued to sell and has refused to honor the warranties on hundreds of thousands of defective and potentially unsafe vehicles.

4. This class action seeks damages, injunctive and declaratory relief on behalf of a class of all persons who purchased model years 2007 and 2008 Chevrolet Impalas.

5. Through a common uniform course of conduct, GM and General Motors Corporation manufactured, supplied, promoted, and sold model year 2007 and 2008 Chevrolet Impalas with the defective rear spindle rods.

6. Through a common and uniform course of conduct, GM and General Motors Corporation, acting individually and collectively through their agents and dealers:

i. manufactured and sold Impala's with common defective rear spindle rods that caused and continue to cause wheel misalignment and premature tire wear;

ii. failed to repair or replace the defective rear spindle rods under their express warranties;

iii. caused the 2007 and 2008 Chevrolet Impalas to incur premature and/or abnormal tire wear from the time of sale;

iv. failed to adequately disclose to the consuming public the fact that 2007 and 2008 model year Chevrolet Impalas would incur premature and/or abnormal tread wear, often requiring replacement of tires within 10,000 miles of first use;

v. issued a recall bulletin for model year 2007 and 2008 Impalas operated as police vehicles; and

vi. failed to honor its warranties with Plaintiff and the putative class, by failing to correct the manufacturing defect in their vehicles

JURSIDICTION

7. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, as the claims alleged herein are asserted on behalf of a class of all persons in the United States who purchased model year 2007 and 2008 Chevrolet Impalas.

8. Venue is proper in this district because Defendant is headquartered in the District and many of GM's actions or decisions relating to the defective Impalas took place in this District.

THE PARTIES

9. Plaintiff Donna M. Trusky is a retail consumer residing at 101 7th Street, Blakely, Pennsylvania, 18447.

10. In February 2008, Plaintiff purchased a new Chevrolet Impala, VIN 2G1WT58N881214824, from Allan Hornbeck Chevrolet, an authorized dealer, located at 400 Main Street, Forest City, Pennsylvania, 18421.

11. The Goodyear tires were separately warranted by Goodyear to be free of defects in materials, workmanship and design.

12. Defendant GM is a Delaware corporation headquartered in this District and with its principal executive offices located at 300 Renaissance Center, Detroit, Michigan, 48243. GM designs, tests, manufactures, distributes, sells or leases Chevrolets throughout the United States.

13. GM conducts business throughout Michigan and the United States.

CLASS ALLEGATIONS

14. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23 on behalf of herself and all others similarly situated, comprising a class consisting of "all persons in the United States who purchased or leased a model year 2007 and 2008 Chevrolet Impala (the "Class")."

15. Plaintiff is a member of the Class.

16. Excluded from the Class are judicial personnel involved in considering the claims herein, all persons and entities with claims for personal injury, the defendant, any entities in which the defendant has a controlling interest, and all of their legal representatives, heirs and successors.

17. It is estimated that the Class consists of thousands of persons throughout the continental United States. The members of the Class are so numerous that joinder of all members, whether otherwise required or permitted, is impracticable. The exact number of Class members is presently unknown to Plaintiff, but can easily be ascertained from the sales and warranty claim records of Defendant. Approximately 197,000 model year 2007 Impalas and approximately 226,000 model year 2008 Impalas were sold.

18. These are numerous questions of law or fact common to the members of the Class, which predominate over any questions affecting only individual members and which make class certification appropriate in this case, including:

a. Whether all Class members' 2007 and 2008 Impalas had rear spindle rods that are defective;

b. Whether GM failed to repair or replace the defective rear spindle rods during the warranty period for all Class members;

c. Whether all Class members' 2007 and 2007 Impalas suffered from a defective spindle rod thus violation GM's breach of its express warranty;

d. Whether Defendant improperly concealed the defect from class members;

e. Whether Defendant has breached its warranties with Plaintiff and members of the putative class, by selling cars with defective suspension systems and failing to correct the defect, which manifest during the warranties' durational terms.

19. The claims asserted by the named Plaintiff are typical of the claims of the members of the Class.

20. This class action satisfies the criteria set forth in Fed. R. Civ. P. 23(a) and 23(b)(3) in that Plaintiff is a member of the Class; Plaintiff will fairly and adequately protect the interests of the members of the Class; Plaintiff's interests are coincident with and not antagonistic to those of the Class; Plaintiff has retained attorneys experienced in class and complex litigation; and Plaintiff has, through her counsel, access to adequate financial recourses to assure that the interests of the Class are adequately protected.

21. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because, among other reasons, it is economically impractical for most members of the Class to prosecute separate, individual actions.

22. Litigation of separate actions by individual Class members would create the risk of inconsistent or varying adjudications with respect to the individual Class members which would substantially impair or impede the ability of other Class members to protect their interests.

23. Class certification is also appropriate because Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate declaratory and/or injunctive relief with respect to the claims of Plaintiff and the Class members.

FACTUAL BACKROUND

24. Plaintiffs incorporate by reference all preceding paragraphs.

25. Defendant, or its predecessor in interest, sold model year 2007 and 2008 Chevrolet Impalas throughout the United States which were delivered with

defective rear spindle rods. The defective rear spindle rods have caused rear wheel misalignment and subsequent premature and abnormal tire wear including lower tread depth on the inboard side of the rear tires.

26. In June and July 2008, Defendant issued Program Bulletins to its dealers numbered 08032 and 08032A pursuant to its customer satisfaction program. A copy of the latter Bulletin is attached as "Exhibit 1" hereto and is hereinafter referred to as "Bulletin 08032A."

27. The subject line of bulletin 08032A reads "Uneven Police Car Rear Tire Wear – Replace Rear Spindle Rods" which covers model year 2007 and 2008 Chevrolet Impalas equipped with the Police Package. Under the heading "Condition" the bulletin reads, "On certain 2007-2008 model year Chevrolet Impala vehicles equipped with a police package (RPG9C1/9C3), the rear wheel spindle rods cause rear wheel misalignment, resulting in lower tread depth on the inboard side of the rear tire".

28. To remedy the defect in the cars subject to Bulletin 08032A, "Dealers are to replace the rear wheel spindle rods, align the rear wheels, and if necessary, replace the rear tires (only) that exhibit lower tread depth on the inboard side. If the tires have already been replaced due to this condition, the customer may request reimbursement for the replacement tires until July 31, 2009".

29. Bulletin 08032A only applied to police vehicles. However, the issues affecting the cars subject to Bulletin 08032A are the same as those affecting members of the Class. The defective rear spindle rods on the cars subject to Bulletin 08032A are the same as those in cars purchased by members of the Class.

30. In February, 2008, Plaintiff purchased a new Chevrolet Impala equipped with Goodyear tires as part of the original equipment on the car. Within the first year of ownership and within 6000 miles of travel, the Goodyear tires were unserviceable, as the tread had worn so quickly on the tires that they had become questionable to use any further.

31. Plaintiff raised the issue of premature tread wear on the tires with Allen Hornbeck Chevrolet, the dealer from whom Plaintiff had purchased the new car. Allen Hornbeck Chevrolet referred Plaintiff to Kost Tire, which replaced the rear tires and provided a front-end realignment. Allen Hornbeck paid for the replacement tires and realignment, but made no mention of any defect in the rear spindle rods, which caused the premature tire wear, nor was any work done to remedy the car free from future defects.

32. On November 30, 2010 Plaintiff brought her car in for its annual inspection and was informed that the replacement rear tires were worn and would not pass inspection. Plaintiff paid $289.77 for a set of rear replacement tires. At the time of inspection, the car had 24,240 miles on it.

33. In connection with the delivery of the car Plaintiff purchased in February, 2008, Defendant, or General Motors Corporation, delivered to Plaintiff – as it also did for every member of the Class - a written warranty containing affirmations of fact as to the absence of defects in materials and workmanship, including design, and the durability and longevity of the rear spindle rods. Further, Defendant, or General Motors Corporation, delivered to Plaintiff – as it also did for every

member of the Class - a written warranty in which it promised to repair or replace warranted parts, including the rear spindle rods, during the warranty period.

34. In particular, the written affirmations and warranties stated as follows:

Bumper-to-Bumper (Includes Tires)

- Coverage is for the first 3 years or 36,000 miles, whichever comes first.

Powertrain

- Coverage is for 5 years or 100,000 miles, whichever comes first.

Powertrain Coverage

The powertrain is covered for 5 years or 100,000 miles, whichever comes first, except for other coverages listed here under "What is Covered" and those items listed under "What is Not Covered" later in this section.

Engine: Cylinder head, block, timing gears, timing chain, timing cover, oil pump/oil pump housing, OHC carriers, valve covers, oil pan, seals, gaskets, turbocharger, supercharger and all internal lubricated parts as well as manifolds, flywheel, water pump, harmonic balancer and engine mount. Timing belts are covered until the first scheduled maintenance interval.

Transmission/Transaxle/Transfer Case: Case, all internal lubricated parts, torque converter, transfer case, transmission/transaxle mounts, seals, and gaskets.

Drive Systems: Final drive housing, all internal lubricated parts, axle shafts and bearings, constant velocity joints, axle housing, propeller shafts, universal joints, wheel bearings, locking hubs, front differential actuator, supports, front and rear hub bearings, seals and gaskets.

Tire Coverage

The tires supplied with your vehicle are covered against defects in material or workmanship under the Bumper-to-Bumper coverage. Any tire replaced will continue to be warranted for the remaining portion of the Bumper-to-Bumper coverage period.

Following expiration of the Bumper-to-Bumper coverage, tires may continue to be covered under the tire manufacturer's warranty. Review the tire manufacturer's warranty booklet or consult the tire manufacturer distributor for specific details.

35. Defendant, or General Motors Corporation, extended these warranties to all Class members.

36. At the time of sale, Defendant or General Motors Corporation sold to plaintiff, as with all Class members, an Impala with defective rear spindle rods which failed during the warranty period.

37. Plaintiff reasonably believes and avers that Defendant, based on the aforesaid recalls, had actual knowledge during their warranty periods that all Class members' vehicles had defective and failed rear spindle rods and that such defective and failed parts would cause failure and/or abnormal and/or premature wear of other parts and systems including wheel alignment and tires.

38. Defendant failed to comply with the foregoing warranties with respect to the Plaintiff and all Class members. Among other things, Defendant failed to repair or replace the rear spindle rods during the warranty period; and failed to make such other repairs during the warranty period so that premature tire wear and misalignment will not occur.

39. From the time of purchase of these vehicles by Class members to the present, the defective spindle rods have and will continue to cause real wheel misalignment and premature and abnormal tire wear.

40. Defendant's refusal to comply with its warranty caused a failure of the essential purpose of the warranty, as that term is used in the Uniform Commercial Code, because Defendant has failed to replace the defective spindle rods with non-defective spindle rods.

41. Defendant, or General Motors Corporation, failed to disclose at the time they marketed, warranted, sold or delivered the 2007 and 2008 model year Chevrolet Impalas to consumers that the defective spindle rods would cause the tires to be in misalignment resulting in premature tire wear, often requiring replacement tires within the first 10,000 miles of use. Despite having knowledge of this premature wear problem, Defendant has not recalled the subject cars which has required affected Class members to pay the cost of fixing the defective spindle rods as well as for replacement tires and realignment. In fact, many Class members have replaced their tires numerous times.

42. Defendant concealed the existence of the defect from class members, even those who presented their vehicles for repair of the defect.

43. As evidence by numerous postings on various internet sites, Class members have experienced similar problems with their vehicles.

a. *January 25, 2010, 2007 Chevrolet Impala*: I am new to this forum but after reading ALOT of the posts here I feel that I am not alone here. The wife and I got a settelment and bought a 2007 Impala, from Keystone Chevrolet here in Tulsa, so that we wouldnt have to worry about having problems with the car. But after having the car for about 1 1/2 years we have replaced the rear tires at least 2 or 3 times, all because of the same

problem. The inside 2 or 3 treads keep wearing out down to the cords. Keystone Chevrolet called us on the phone and told us it was time to bring the car in for regular service work, so I thought it would be a good time to have the problem resolved. I asked for the Supervisor of the Service Department to make sure there wouldnt be a problem with having the rear end aligned, since I found out there was a Technical Service Bulletin on the alignment needing to be done on this car when it comes right from the factory. But I was told that you can buy a brand new 2010 Chevy right now and after 12,000 miles there is nothing they can do with out having us pay for the work and/parts. Even if you get the car brand new and there is still the bumper to bumper warrenty on the car. I told the Supervisor there was a Technical Service Bulletin out on this car and I even gave him the TSB on this car and I was told that they cant do anything unless there was a REACLL on these cars. I really liked what I read on another forum that said it seems like Chevrolet isn't going to do anything for the common people like most of us here, but they would fix the cars with the Police Package on them for free. The person also went on to state that it was more of the common people like most of us on here that make up the sales of the Impalas and that a defect is a defect.
http://townhall-talk.edmunds.com/direct/view/.f17777c/71

b. *March 10, 2010, 2008 Chevrolet Impala, 25,000 miles*: Had to replace 4 tires at 25,000 miles due to excessive inside wear. The dealer said not a GM problem. Had to replace, balance, and align. Never had that occur before on any new vehicle I purchased - at least not with the Ford's I owned.
http://www.carcomplaints.com/Chevrolet/Impala/2008/wheels_hubs/premature_tire_wear.shtml

c. *August 27, 2010, 2008 Chevrolet Impala LTZ V6, 41,000 miles*: ok well at 18,000 miles had to replace my tires. i was told it was because the dealers put on cheap tires to sell the cars and the next set i bought would last way longer than i had to worry about since i leased. well at 41,000 miles again new tires with only 6 months to go on my lease. the wear was so extensive the tires were unsafe..the inside was worn to bare metal showing yet the rest of the tire was fine.... i was told that it is a supension problem and chevy is aware of it.... just to expensive to have a recall...sssoooo that makes th 3rd set of tires in 41,000 miles.. this is the first chevy impala i have owned ..... was completely satisfied with my pontiacs... well i never liked this car from the begining and i will not but another one...just waiting for my lease to run out and i will try a ford this time.. so beware of unsafe wear on your inside (hard to see} of your tires.. take a good look before you trust your family lives ...
http://www.carcomplaints.com/Chevrolet/Impala/2008/wheels_hubs/premature_tire_wear.shtml

d. *November 1, 2010, 2008 Chevrolet Impala SS*: I believe that there is a greater issue with the 2008 Impala's. I have had to replace my rear tires because they wore completely out in the inside. I have been searching online and it looks like there is a camber issue with these cars. GM needs to look at a possible recall. I was quoted $45 a tire to adjust the camber on my 08 Impala SS by Firestone, but then they stated it would be $500 because they needed some kit. I cannot do this so I had to buy the 2 back tires ($415 for the cheapest ones) and wait. I do have an appointment with the dealership tomorrow. We will see what happens...
http://townhall-talk.edmunds.com/direct/view/.f17777c/81

e. *February 22, 2011, 2008 Chevrolet Impala*: Purchased new 2008 impala, had to replace tires at 35000. Always rotated and balanced and kept proper pressures. Now at 56000 and am being told by chevy 1800.00 to repair rear alignment. Car is driven 99% on the interstate. Again need new tires whats up??? chevy denies any problems but the web is full of issues surrounding this. Is there no other recourse????
http://www.aboutautomobile.com/Complaint/2008/Chevrolet/Impala/Rear+Suspension

f. *July 4, 2010, Chevrolet Impala*: Severe inner surface tire wear on rear wheels of 2007-2008 chevrolet impala vehicles. Technical service bulletin 08032 is on file with general motors, acknowledging the problem, but willing only to pay for necessary repairs to police vehicles, when in fact the flaw exists with all 2007-2008 impala vehicles. We purchased the car as a demo model in 2009 and were not made aware of the problem. We believe the dealer was honest, and also not aware of the problem at the time. We believe this to be a safety issue as well, since handling on wet roads is effected due to the fact the rear tires are contacting the road surface only on 1-2" of the inside surface of the tires.
http://www.aboutautomobile.com/Complaint/2008/Chevrolet/Impala/Rear+Suspension

g. *June 16, 2010, Chevrolet Impala*: Had to replace rear driver's tire at 17,000 miles due to wear down to the metal. Took the vehicle into the dealer to check wheel alignment and found the rear so misaligned that the adjustment struts had to be elongated. Spoke with GM customer service rep and was told this was not a Warranty issue.
http://www.aboutautomobile.com/Complaint/2008/Chevrolet/Impala/Rear+Suspension

h. *May 28, 1010, 2008 Chevrolet Impala*: I own a 2008 chevy impala which I had new tires installed. I also had an alignment done. At my first tire rotation (6000 miles) I was told of excessive wear on the inside of the rear tires. The wear is very obvious. The tires are a 60,000 mile tire(uniroyal)

after contacting the place that aligned my wheels.(ase certified) they did some investigating during which they found GM recalled "police package) vehicles with vin#s falling in a specified range. Which my car also falls in this range. They had defective spindle rods in them, however as a consumer and not a "police" vehicle GM tells me I am responsible for having the proper work done to have my car fixed. Upon searching myself I have found numerous "consumer" complaints regarding premature tire wear on these vehicles. I see this as a considerable safety concern that the manufacturer should be held accountable for regardless of whether it is a civilian or police vehicle.
http://www.aboutautomobile.com/Complaint/2008/Chevrolet/Impala/Rear+Suspension

i. *March 8, 2010, 2008 Chevrolet Impala*: On 2008 chevy impala, the insides of all four tires were worn to the cord. The tires had been rotated regularly. The car was returned to the dealer who claimed the tires had not been rotated and that he had never heard of any defect.. We printed information from this website showing that this problem had been reported several times. The dealer still denied any defect even though one of the workers said he had replaced tires with the same problem. *http://www.aboutautomobile.com/Complaint/2008/Chevrolet/Impala/Rear+Suspension*

j. *March 22, 2011, 2007 Chevrolet Impala*: CAR PURCHASED USED WITH NEW TIRES IN MARCH OF 2009. IN APRIL OF 2010 REAR TIRES HAD SEVERE WEAR ON INSIDE TREAD THAT CAUSED BELTS TO SHOW. FOUR NEW TIRES WERE INSTALLED AND A FOUR WHEEL ALIGNMENT WAS DONE. 11 MONTHS LATER REAR TIRES SHOWED THE SAME WEAR, INSIDE OF TIRE. WAS TOLD THERE WAS A SAFETY BULLETIN FROM GM BUT DIDN'T COVER MY CAR SINCE IT WAS NOT A POLICE VERSION. WAS TOLD BY DEALERSHIP THAT GM KNOWS ABOUT THIS PROBLEM AND HAS COME OUT WITH A CAMBER KIT TO FIX PROBLEM BUT I HAD TO PURCHASE IT AND HAVE IT INSTALLED. WHEN ASKED WHY IF IT WAS A MANUFACTURE DEFECT WITH THE VEHICLE CAUSING PREMATURE TIRE WEAR I WAS HAVING TO PAY FOR IT WAS BRUSHED OFF. CALLED CHEVROLET AND FILED A FORMAL COMPLAINT REGARDING THE MATTER AND WAS TOLD THAT IT WAS A MAINTENANCE ISSUE AND I WOULD HAVE TO PAY FOR THE REPAIR. CHEVY KNOWS THAT THERE IS A PROBLEM WITH THIS VEHICLE AND REFUSES TO TAKE RESPONSIBILITY TO REPAIR/FIX PROBLEM AND IS INSTEAD PUSHING THIS OFF ON THE CONSUMER. EXCESSIVE TIRE WEAR IS A SAFETY PROBLEM AND I GUESS PEOPLE HAVE TO DIE FOR ACTION TO BE TAKEN. *http://www-odi.nhtsa.dot.gov/complaints/results.cfm*

k. *November 1, 2010, 2007 Chevrolet Impala, 32,000 miles*: TL*THE CONTACT OWNS A 2007 CHEVROLET IMPALA LT. THE CONTACT STATED THAT WHEN SHE INSPECTED HER VEHICLE SHE NOTICED THAT ALL FOUR TIRES WERE WORN EXCESSIVELY ON THE INSIDE TO THE POINT WHERE THE TREAD WAS VISIBLE. THE VEHICLE WAS NOT INSPECTED NOR HAD IT BEEN REPAIRED. THE DEALER INFORMED HER THAT SHE SHOULD CONSIDER AN ALIGNMENT AND FOUR NEW TIRES. THE FAILURE MILEAGE WAS APPROXIMATELY 32,000.
http://www-odi.nhtsa.dot.gov/complaints/results.cfm

l. *December 1, 2010, 2007 Chevrolet Impala*: GM 2007 CHEVROLET IMPALA LT2 - GOODYEAR INTEGRITY TIRES VEHICLE MANUFACTURING DETECT CAUSES TIRE CUPPING, UNEVEN TIRE WEAR AND PREMATURE TIRE WEAR OUT. POSSIBLE TIRE FAILURE WHILE DRIVING IF NOT DETECTED. TIRES RATED FOR 50,000 MILES FAILED AT 28,000. 30 JUNE 2007 - 205 MILES: PURCHASED NEW GM 2007 CHEVROLET IMPALA LT2 - GOODYEAR INTEGRITY TIRES 05 FEB 2008 - 7,094 MILES: DEALER ROTATED TIRES - ALL TIRES TREAD GREATER THAN 8/32. 26 DEC 2008 - 14,449 MILES: DEALER ROTATED TIRES - ALL TIRES TREAD GREATER THAN 8/32. 15 JUN 2009- 18,106 MILES: DEALER ROTATED TIRES - ALL TIRES TREAD GREATER THAN 8/32. 25 MAY 2010 - 23,812 MILES: DEALER ROTATED TIRES - ALL TIRES TREAD GREATER THAN 6/32. 01 DEC 2010 - 28,517 MILES: LUBE SHOP ROTATED TIRES - ALL TIRES BADLY CUPPED ON INSIDE TREAD. TIRES WORN OUT AND UNSAFE, MUST BE REPLACED ASAP.STEEL BELTS WILL START TO SHOW. ALL TIRES TREAD LESS THAN 2/32. 23 DEC 2010 - 28,788 MILES: DEALER - AFTER ESCALATION TO SERVICE MANAGER. REAR STRUT BOLT HOLE REQUIRES ELONGATION TO ALLOW PROPER WHEEL ALIGNMENT. UNDER WARRANTY, ELONGATED REAR STRUT BOLT HOLE, REPLACED WITH 4 NEW TIRES, COMPLETE 4 WHEEL ALIGNMENT. *TR
http://www-odi.nhtsa.dot.gov/complaints/results.cfm

m. *March 7, 2011, 2008 Chevrolet Impala*: VEHICLE WON'T HOLD ALLIGNMENT AND WHEN IT DOES IT'S STILL WEARING OUT THE REAR TIRES AT A RATE 1/32 PER 1000 MILES, IT WORE OUT THE REAR TIRES IN 6000 MILES JUST LUCKY THAT I LOOKED AT THEM WHEN I DID. THE VEHICLE HAS 45000 MILES ON IT AND THIS IS THE SECOND SET OF TIRES IN 6000 MILES
http://www-odi.nhtsa.dot.gov/complaints/results.cfm

n. *October 15, 2010, 2008 Chevrolet Impala*: SEVERE TIRE WEAR. 2008 CHEVY IMPALA WITH GOODYEAR INTEGRITY TIRES. HAD TO HAVE ALL FOUR TIRES REPLACED AT 33,000 MILES, MIND YOU THESE ARE 50,000 MILES TIRES THAT HAVE BEEN ROTATED AND KEPT AT THE RECOMMENDED PSI. THEY ARE SEVERELY WORN ON THE INNER AND OUTER EDGES AND CAN SEE THE WEAR BARS. WAS TOLD BY THE DEALERSHIP THAT THE TIRES TO BEGIN WITH ARE JUNK! I HAD NO CHOICE BUT TO REPLACE THEM BEING THAT THIS CAR IS A LEASE AND ONLY HAVE 4 MONTHS LEFT WITH IT TILL THE TURN IN DATE. THE UNNAMED TIRE STORE TOLD ME THAT I NEED AN ALIGNMENT BUT THE DEALERSHIP THAT MY CAR GOES TO NEVER SAID ANYTHING ABOUT NEEDING THE ALIGNMENT. *TR
http://www-odi.nhtsa.dot.gov/complaints/results.cfm

o. *June 28, 2010, 2008 Chevrolet Impala:* NOTICED ABNORMAL AND EXCESSIVE TIRE FEATHERING. HAD RESEARCHED AND FOUND PREVIOUS TO MY OWN EXPERIENCE THAT OTHERS HAD THE SAME PROBLEM, SO I HAD BEEN MONITORING MY OWN TIRES TO SEE IF IT WAS A DESIGN FLAW. ONE MECHANIC TOLD ME AFTER I PURCHASE 4 NEW TIRES, WHICH ONLY HAVE 34,000 MILES ON A 50,000 MILE RATING, HE WOULD TRY AN ALIGNMENT TO SEE IF IT NEED FOUR NEW STRUTS AS HE WAS ASSUMING WAS THE MAIN PROBLEM BEHIND THE TIRE WEAR. I CALLED A LOCAL GM SERVICE CENTER TO SEE IF THEY HAD SUGGESTIONS FOR ME. THE GUY TOLD ME 4 NEW TIRES AND THE FEW OTHERS WE HAVE SERVICED WITH THE SAME PROBLEM, AN ADJUSTMENT HAD TO BE MADE BY ELONGATING THE HOLES TO PULL THE TIRES INTO A GOOD ALIGNMENT, ELIMINATING THE OUTWARD CAMBER. HE FOUND THIS INFO IN A TECHNICAL SERVICE BULLETIN. GM HAS RECALLED PUBLIC SERVICE VEHICLES, IE POLICE CARS, OF THE SAME MAKE AND MODEL, BUT HAS YET TO SEE THE PUBLIC SAFETY HAZARD BEHIND THIS EASILY REMEDIED ISSUE. I WAS TOLD IT WOULD COST ME AT-LEAST $700 FOR PREMATURELY WORN TIRES AND REPAIRS AND ADJUSTMENTS. IMAGINE IF I HAD BEEN AWARE OF THIS PREVIOUS TO MY OWN INCIDENT. I WOULD ASSUME I STILL HAD 15-20000 MILES OF TREAD-LIFE LEFT AND WOULD BE DRIVING MY CAR AS IF THERE WERE NO PROBLEM AT-ALL UNTIL MY TIRES BLEW WHILE DRIVING MY SON BACK TO HIS MOTHERS HOUSE, CAUSING AN ACCIDENT, KILLING MY SON AND I AS WELL AS TWO OTHERS IN ANOTHER VEHICLE. THERE-IN LAYS THE SAFETY ISSUE. A PROMPT AND THOROUGH INVESTIGATION WILL SHOW IT'S A DESIGN FLAW THAT IS PUTTING LIVES AT RISK. THE SOONER THE DEFECT IS

CORRECTED, THE SOONER PEOPLES LIVES AND WALLETS CAN REST AT EASE. I WOULD CERTAINLY BE WILLING TO ANSWER ANY OTHER QUESTIONS REGARDING THIS ISSUE. *TR
http://www-odi.nhtsa.dot.gov/complaints/results.cfm

p. *February 6, 2010, 2008 Chevrolet Impala LTZ:* 2008 IMPALA LTZ THAT I PURCHASED FROM BILL CRAMER MOTORS IN DONALSONVILLE, GEORGIA ON 10/29/2009. ON 2/6/2010 I HAD A TIRE BLOW OUT IN BAINBRIDGE, GEORGIA NEARLY CAUSING A CRASH. AFTER CHANGING MY TIRE, AND RETURNING HOME I DISCOVERED THAT BOTH REAR TIRES WERE WORN DOWN TO THE BELT ON THE INSIDE. AFTER DOING SOME RESEARCH ON THIS ISSUE, I DISCOVERED THAT THIS IS A VERY COMMON ISSUE IN THE LATE MODEL IMPALA¿S. I CALLED THE SHOP TODAY (2/8/2010), AND THEY ADVISED ME THAT THEY ARE UNAWARE OF THIS ISSUE. I ALSO CALLED SOLOMON CHEVROLET IN DOTHAN, ALABAMA (1-866-646-6175). THEY ADVISED ME THAT THEY ARE VERY FAMILIAR WITH THIS ISSUE, AND THAT IT NEEDED A REAR CAMBER BOLT KIT AND A REALIGNMENT TO FIX THIS ISSUE. THE PARTS AND LABOR FOR THE KIT WERE ESTIMATED @ $200.00 AND THE ALIGNMENT @ $70.00. I WOULD ALSO LIKE TO NOTE THAT MY CAR IS STILL UNDER THE 12,000 MILE CERTIFIED WARRANTY. MY CAR HAD 34,861 MILE ON IT WHEN I PURCHASED IT, AND NOW IT ONLY HAS 45,690 MILES ON IT. SO I HAVE PUT A TOTAL OF 10,829 MILES ON IT. THE TIRES THAT ARE ON MY CAR WERE BRAND NEW WHEN I PURCHASED IT. THERE IS NO WAY POSSIBLE THAT I SHOULD HAVE TO BE REPLACING 2 WORN OUT TIRES WITHIN 10,829 MILES¿. THIS IS UNHEARD OF¿ *TR
http://www-odi.nhtsa.dot.gov/complaints/results.cfm

44. At all relevant times, Defendant, or General Motors Corporation, controlled the design, manufacture, marketing, lease and sale of model year 2007 & 2008 Chevrolet Impalas.

45. The Owner's Manual provided to consumers failed to disclose the defect in the 2007 & 2008 model year Chevrolet Impalas.

46. Defendant has not adequately informed the Class about the defective spindle rods which increased cost, servicing requirements and duration and longevity

limitations of the 2007 & 2008 model year Chevrolet Impalas, including the premature and abnormal wear characteristics of the tires.

47. Defendant knew, or should have known, that the design, materials and workmanship utilized for the rear wheel spindle rods were defective, would fail during the warranty period, and were prone to cause rear wheel misalignment resulting in lower tread depth on the inboard side of the rear tire.

48. Under the Michigan Uniform Commercial Code, MCL 440.2725, an "action for breach of any contract for sale must be commenced within 4 years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than 1 year but may not extend it." "A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warrant explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered."

49. Class members exercising due diligence were unable to discover the nonconformity of the rear wheel spindle rods resulting in premature tire wear and the injury because Defendant did not disclose the premature and abnormal wear characteristics and injury when the vehicles were delivered or brought in for service.

50. Defendant also breached its express warranties, as the model year 2007 and 2008 Chevrolet Impalas do not have the characteristics, uses and benefits portrayed by

Defendant, and Defendant has failed to repair the rear wheel spindle rods in accordance with the express promises of their written warranties.

COUNT I – BREACH OF EXPRESS WARRANTY

51. Plaintiff incorporates by reference all preceding paragraphs.

52. GM has breached its express warranties to Plaintiff and all other Class members to repair and/or replace the rear wheel spindle rods.

53. GM's breach of warranties proximately caused damages to Plaintiff and members of the Class.

WHEREFORE, Plaintiffs, individually and on behalf of all Class members, request judgment in their favor and against Defendant, and request the following relief:

a. certification of the Plaintiff class, the appointment of Plaintiff as class representative, and the appointment of Plaintiff's counsel as class counsel;

b. compensatory damages for the Class to be determined at trial, together with interest, costs attorneys' fees;

c. exemplary damages;

d. injunctive relief enjoining the Defendant from engaging in the unlawful conduct described herein; and

e. such other relief as may be just, necessary or appropriate.

COUNT II– INJUNCTIVE AND DECLARATORY RELIEF

54. Plaintiff incorporates by reference all preceding paragraphs.

55. GM has jeopardized the safety and security of Plaintiff and the Class and will put them at an increased risk of personal injury and harm.

56. Plaintiff and the Class will suffer irreparable harm, which may soon be immediate in nature, if GM does not provide them with repairs or replacements of the rear wheel spindle rods.

57. Plaintiff and the Class lack an adequate remedy at law to compel GM to continue to provide them with functional rear wheel spindle rods. Plaintiff and the Class cannot obtain such relief from other sources.

58. Plaintiff and the Class are entitled to injunctive and declaratory relief to compel GM to provide them with or repair and/or replacement of the defective rear wheel spindle rods.

WHEREFORE, Plaintiffs, individually and on behalf of all Class members, request judgment in their favor and against Defendant, and request the following relief:

a. certification of the Plaintiff class, the appointment of Plaintiff as class representative, and the appointment of Plaintiff's counsel as class counsel;

b. compensatory damages for the Class to be determined at trial, together with interest, costs attorneys' fees;

c. exemplary damages;

d. injunctive relief enjoining the Defendant from engaging in the unlawful conduct described herein; and

e. such other relief as may be just, necessary or appropriate.

JURY DEMAND

Plaintiffs demand a trial by jury.

Respectfully submitted,

Dated: June 29, 2011

By: _/s/ David H. Fink_____

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Attorneys for the Plaintiff and the Class

EXHIBIT 1

Bulletin No.: 08032A
Date: July 2008

Program Bulletin

CUSTOMER SATISFACTION PROGRAM

SUBJECT: **Uneven Police Car Rear Tire Wear – Replace Rear Wheel Spindle Rods**

MODELS: **2007-2008 Chevrolet Impala**
Equipped with Police Package (RPO 9C1/9C3)

The Parts Information section in this bulletin has been revised for U.S. dealers. A new kit containing all the necessary parts has been released. U.S. dealers are to now order this new kit. Because this new kit is not available in Canada or export countries, Canadian and Export dealers are to continue to order the individual parts. Please discard all copies of bulletin 08032, issued June 2008.

CONDITION

On **certain** 2007-2008 model year Chevrolet Impala vehicles equipped with a police package (RPO 9C1/9C3), the rear wheel spindle rods may cause rear wheel misalignment, resulting in lower tread depth on the inboard side of the rear tire.

CORRECTION

Dealers are to replace the rear wheel spindle rods, align the rear wheels, and if necessary, replace the rear tires (only) that exhibit lower tread depth on the inboard side. If the tires have already been replaced due to this condition, the customer may request reimbursement for the replacement tires until July 31, 2009.

VEHICLES INVOLVED

Involved are **certain** 2007-2008 model year Chevrolet Impala vehicles equipped with a police package (RPO 9C1/9C3) and built within these VIN breakpoints:

Year	Division	Model	From	Through
2007	Chevrolet	Impala	79129274	79419427
2008	Chevrolet	Impala	81174923	81237574
			89100019	89283506

Important: Dealers are to confirm vehicle eligibility prior to beginning repairs by using the General Motors Inquiry System (GMVIS). Not all vehicles within the above breakpoints may be involved.

For dealers with involved vehicles, a listing with involved vehicles containing the complete vehicle identification number, customer name, and address information has been prepared and will be provided through the applicable system listed below. Dealers will not have a report available if they have no involved vehicles currently assigned.

- US dealers - GM DealerWorld Recall Information
- Canadian dealers - GMinfoNet Recall Reports
- Export dealers - sent directly to dealers

The listing may contain customer names and addresses obtained from Motor Vehicle Registration Records. The use of such motor vehicle registration data for any purpose other than follow-up necessary to complete this program is a violation of law in several states/provinces/countries. Accordingly, you are urged to limit the use of this report to the follow-up necessary to complete this program.

PARTS INFORMATION

For U.S. Dealers: Parts required to complete this program are to be obtained from General Motors Service and Parts Operations (GMSPO). Please refer to your "involved vehicles listing" before ordering parts. Normal orders should be placed on a DRO = Daily Replenishment Order. In an emergency situation, parts should be ordered on a CSO = Customer Special Order.

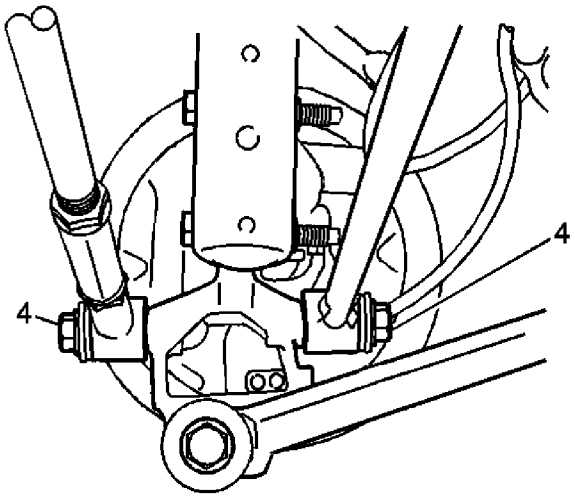
Part Number	Description	Quantity/Vehicle
19208347	Rod Kit, RR Susp Knu RR	1

For Canadian and Export Dealers: Parts required to complete this program are to be obtained from General Motors Service and Parts Operations (GMSPO). Please refer to your "involved vehicles listing" before ordering parts. Normal orders should be placed on a DRO = Daily Replenishment Order. In an emergency situation, parts should be ordered on a CSO = Customer Special Order.

Part Number	Description	Quantity/Vehicle
10329689	Rod,RR Whl Spdl (RR)	2
10329691	Rod,RR Whl Spdl (FRT)	2

SERVICE PROCEDURE

1. Raise and support the vehicle.
2. Remove the rear tires and wheels.
3. Remove the exhaust pipe/muffler assembly.
4. Remove the wiring harness clips from the spindle arms and from the connector at the body.



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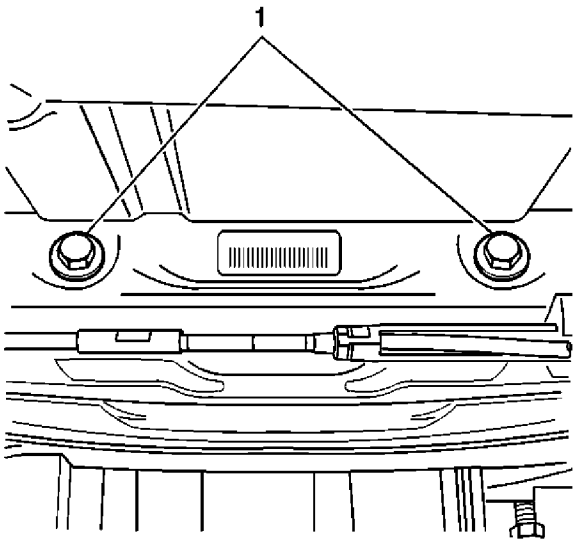
5. Remove the rear wheel spindle rod bolts (4) and nuts from the knuckles (both sides).
6. Remove the stabilizer shaft from the rear suspension support.
7. Support the rear suspension support with jack stands and remove the mounting bolts.
8. Lower the rear suspension support in order to gain access to the rear wheel spindle rod to support bolts.



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9. Remove the four rear wheels spindle rod bolts (1) and nuts from the rear suspension support.
10. Remove the rear wheel spindle rods from the vehicle.
11. Install the new rear wheel spindle rods to the vehicle.

12. Install the four rear wheel spindle rod bolts and nuts to the rear suspension support.

    Tighten
    Tighten the bolts to 135 N·m (100 lb ft).

13. Raise the rear suspension support into place.
14. Install the rear suspension support mounting bolts and remove the jack stands.

    Tighten
    Tighten the bolts to 110 N·m (85 lb ft).

15. Install the stabilizer shaft to the rear suspension support.
16. Install the rear wheel spindle rod bolts and nuts to the knuckles (both sides).

    Tighten
    Tighten the nuts to 150 N·m (110 lb ft).

17. Install the wiring harness clips to the spindle arms and to the connector at the body.
18. Install the exhaust pipe/muffler assembly.
19. Inspect the rear tires for uneven wear. Inspect the tread depth at the inboard and outboard tread blocks, and if there is more than 2.4 mm (3/32 in) difference in wear, install two new tires. If the customer has replaced the original Pirelli tires with four lower speed rated tires, install the same brand or comparable tire that was removed.
20. Install the rear tires and wheels.
21. Lower the vehicle.
22. Adjust the wheel toe angle.

CUSTOMER REIMBURSEMENT - For GM US

All customer requests for reimbursement for previous repairs for the condition will be handled by the Customer Assistance Center, not by dealers.

A General Motors Customer Reimbursement Procedure and Claim Form is included with the customer letter.

IMPORTANT: (For GM Only) Refer to the GM Service Policies and Procedures Manual, section 6.1.12, for specific procedures regarding customer reimbursement and the form.

CUSTOMER REIMBURSEMENT - For Canada and Export

Customer requests for reimbursement for previous repairs for the condition are to be submitted to the dealer by July 31, 2009.

All reasonable customer paid receipts should be considered for reimbursement. The amount to be reimbursed will be limited to the amount the repair would have cost if completed by an authorized General Motors dealer.

When a customer requests reimbursement, they must provide the following:

- Proof of ownership at time of repair.
- Original paid receipt confirming the amount of repair expense(s) that were not reimbursed, a description of the repair, and the person or entity performing the repair.

Claims for customer reimbursement on previously paid repairs are to be submitted as required by WINS.

IMPORTANT: Refer to the GM Service Policies and Procedures Manual, section 6.1.12, for specific procedures regarding customer reimbursement verification.

CLAIM INFORMATION

Submit a Product Claim with the information indicated below:

Repair Performed	Part Count	Part No.	Parts Allow	CC-FC	Labor Op	Labor Hours	Net Item
Replace Four Rear Wheel Spindle Rods (inc. alignment)	*	---	**	MA-96	V1828	1.9	N/A
Add: Mount and Balance Two Rear Tires	2					0.4	
Customer Reimbursement (Canadian & Export Dealers/US CAC)				MA-96	V1829	0.2	***

* Part count: U.S. dealers – 1; Canadian and Export dealers – 4.

** The "Parts Allowance" should be the sum total of the current GMSPO Dealer net price plus applicable Mark-Up or Landed Cost Mark-Up (for Export) for the rod kit (U.S.) or the four rear wheel spindle rods (Canada and Export) needed to complete the repair, and if required, two rear tires.

*** The amount identified in the "Net Item" column should represent the dollar amount reimbursed to the customer and will expire July 31, 2009

Refer to the General Motors WINS Claims Processing Manual for details on Product Recall Claim Submission.

CUSTOMER NOTIFICATION – For US and Canada

General Motors will notify customers of this program on their vehicle (see copy of customer letter included with this bulletin).

CUSTOMER NOTIFICATION – For Export

Letters will be sent to known owners of record located within areas covered by the US National Traffic and Motor Vehicle Safety Act. For owners outside these areas, dealers should notify customers using the attached sample letter.

DEALER PROGRAM RESPONSIBILITY

All unsold new vehicles in dealers' possession and subject to this program must be held and inspected/repaired per the service procedure of this program bulletin before customers take possession of these vehicles.

Dealers are to service all vehicles subject to this program at no charge to customers, regardless of mileage, age of vehicle, or ownership, from this time forward.

Customers who have recently purchased vehicles sold from your vehicle inventory, and for which there is no customer information indicated on the dealer listing, are to be contacted by the dealer. Arrangements are to be made to make the required correction according to the instructions contained in this bulletin. A copy of the customer letter is provided in this bulletin for

your use in contacting customers. Program follow-up cards should not be used for this purpose, since the customer may not as yet have received the notification letter.

In summary, whenever a vehicle subject to this program enters your vehicle inventory, or is in your dealership for service in the future, you must take the steps necessary to be sure the program correction has been made before selling or releasing the vehicle.

June 2008

Dear General Motors Customer:

We have learned that a condition exists on your 2007 or 2008 model year Chevrolet Impala police vehicle that may cause rear wheel misalignment, resulting in lower tread depth on the inboard side of the rear tires.

Your satisfaction with your 2007 or 2008 model year Chevrolet Impala police vehicle is very important to us, so we are announcing a program to prevent this condition or, if it has occurred, to fix it.

What We Will Do: Your Chevrolet dealer will replace the rear wheel spindle rods, align the rear wheels, and if necessary, replace the rear tires. If you have replaced the original Pirelli tires with four lower speed rated tires, your dealer will install the same brand or comparable tire that you installed. This service will be performed for you at **no charge**.

What You Should Do: If you have not inspected the rear tires for adequate depth across all of the tread in the last month, you should do so **now** or contact your Chevrolet dealer for an immediate inspection. See *When It Is Time for New Tires* in your owner manual. Driving with worn tires is dangerous.

To limit any possible inconvenience, we recommend that you contact your dealer as soon as possible to schedule an appointment for this repair. By scheduling an appointment, your dealer can ensure that the necessary parts will be available on your scheduled appointment date.

Customer Reply Form: The enclosed customer reply form identifies your vehicle. Presentation of this form to your dealer will assist in making the necessary correction in the shortest possible time. If you no longer own this vehicle, please let us know by completing the form and mailing it back to us.

Reimbursement: The enclosed form explains what reimbursement is available and how to request reimbursement if you have paid to have the rear tires replaced because of this condition. Your request for reimbursement, including the information and documents mentioned on the enclosed form, must be received by GM by July 31, 2009.

If you have any questions or need any assistance to better understand related repairs, please contact your dealer. If you have questions related to a potential reimbursement, please contact the appropriate Customer Assistance Center at the number listed below.

Division	Number	Text Telephones (TTY)
Chevrolet	1-800-630-2438	1-800-833-2438
Guam	1-671-648-8450	
Puerto Rico – English	1-800-496-9992	
Puerto Rico – Español	1-800-496-9993	
Virgin Islands	1-800-496-9994	

We sincerely regret any inconvenience or concern that this situation may cause you. We want you to know that we will do our best, throughout your ownership experience, to ensure that your Chevrolet Impala provides you many miles of enjoyable driving.

Scott Lawson
General Director,
Customer and Relationship Services

Enclosure
08032

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Michigan

Donna M Trusky,

Plaintiff,

v.

Case No. 2:11−cv−12815−SFC −LJM
Hon. Sean F. Cox

General Motors Company,

Defendant.

SUMMONS IN A CIVIL ACTION

To: General Motors Company

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) - or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

David H. Fink
100 West Long Lake Road
Suite 111
Bloomfield Hills, MI
48304

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DAVID J. WEAVER, CLERK OF COURT

By: s/ D. Worth
Signature of Clerk or Deputy Clerk

Date of Issuance: June 30, 2011

AO 440 (Rev. 12/09) Summons in a Civil Action

Summons and Complaint Return of Service

Case No. 2:11−cv−12815−SFC −LJM
Hon. Sean F. Cox

A copy of the Summons and Complaint has been served in the manner indicated below:

Name of Defendant Served: General Motors Company

Date of Service: _____

Method of Service

_____ Personally served at this address:
_____
_____
_____

_____ Left copies at defendant's usual place of abode with (name of person):
_____
_____
_____

_____ Other (specify):
_____
_____
_____

_____ Returned unexecuted (reason):
_____
_____
_____

Service Fees: Travel $_____ Service $_____ Total $_____

Declaration of Server

I declare under the penalty of perjury that the information contained in this Return of Service is true and correct.

Name of Server: _____

Signature of Server: _____

Date: _____

Server's Address: _____
_____
_____

UNITED STATES DISTRICT COURT
EASTERNDISTRICT OF MICHIGAN

----------X

DONNA M. TRUSKY on behalf of :
Herself and all others similarly situated, Case No. 2:11-cv-12815-SFC-LJM

Plaintiff,

Vs.

GENERAL MOTORS COMPANY :
300 Renaissance Center
Detroit, MI 48243

Defendant, :

----------X

NOTICE OF APPEARANCE OF MARC H. EDELSON ON BEHALF OF PLAINTIFF DONNA M. TRUSKY

The parties are hereby notified that Marc H. Edelson, of the law firm of Edelson & Associates, LLC., hereby enters his appearance as counsel for Donna M. Trusky in the above captioned matter.

Dated this 6th day of July, 2011

Respectfully submitted,

EDELSON & ASSOCIATES, LLC
By: _____

Marc H. Edelson
45 West Court Street
Doylestown, Pennsylvania 18901
215-230-8043
medelson@edelson-law.com

AO 440 (Rev. 12/09) Summons in a Civil Action

Summons and Complaint Return of Service

Case No. 2:11–cv–12815–SFC –LJM
Hon. Sean F. Cox

A copy of the Summons and Complaint has been served in the manner indicated below:

Name of Defendant Served: General Motors Company

Date of Service: 7-7-11

Method of Service

____ Personally served at this address:

____ Left copies at defendant's usual place of abode with (name of person):

__X__ Other (specify): Certified mail, return receipt requested to: General Motors Company c/o The Corporation Company, 30600 Telegraph Rd Suite 2345, Bingham Farms, MI 48025

____ Returned unexecuted (reason):

Service Fees: Travel $_____ Service $_____ Total $_____

Declaration of Server

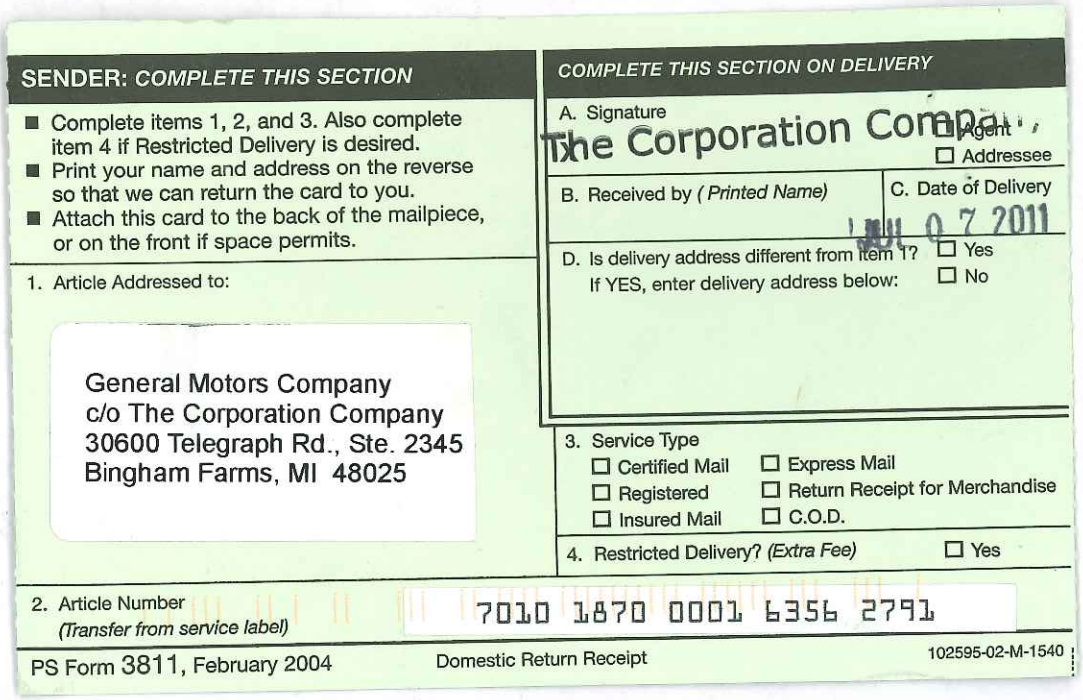
I declare under the penalty of perjury that the information contained in this Return of Service is true and correct.

Name of Server: Cheryl Pinter

Signature of Server: Cheryl Pinter

Date: 7-11-11

Server's Address: 100 W. Long Lake Rd, Ste 111
Bloomfield Hills, MI 48304



SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

General Motors Company
c/o The Corporation Company
30600 Telegraph Rd., Ste. 2345
Bingham Farms, MI 48025

COMPLETE THIS SECTION ON DELIVERY

A. Signature
The Corporation Compa...
☐ Agent
☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery
JUL 07 2011

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7010 1870 0001 6356 2791

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Michigan

Donna M Trusky,

Plaintiff,

v.

Case No. 2:11-cv-12815-SFC -LJM
Hon. Sean F. Cox

General Motors Company,

Defendant.

SUMMONS IN A CIVIL ACTION

To: General Motors Company

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) - or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

David H. Fink
100 West Long Lake Road
Suite 111
Bloomfield Hills, MI
48304

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DAVID J. WEAVER, CLERK OF COURT

By: s/ D. Worth
Signature of Clerk or Deputy Clerk

Date of Issuance: June 30, 2011

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Donna M. Trusky on behalf of herself
and all others similarly situated,

Plaintiff,

v. Case No.: 11-12815

General Motors Company, Honorable Sean F. Cox

Defendant.
_____/

ORDER TO SHOW CAUSE

Plaintiff filed this action on June 29, 2011, asserting that "[t]his Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, as the claims alleged herein are asserted on behalf of a class of all persons in the United States who purchased model year 2007 and 2008 Chevrolet Impalas." (Compl. at ¶ 7).

"[F]ederal courts have an independent obligation to investigate and police the boundaries of their own jurisdiction." *Douglas v. E.F. Baldwin & Assocs., Inc.*, 150 F.3d 604, 607 (6th Cir. 1998). Having reviewed Plaintiff's complaint, the Court is not persuaded that Plaintiff has adequately alleged the necessary facts to establish jurisdiction. Accordingly, the Court will order Plaintiff to show cause why this case should not be dismissed for lack of subject matter jurisdiction.

The Class Action Fairness Act "amended the federal diversity statute to provide federal jurisdiction in class actions where the amount in controversy exceeds $5,000,000 and there is some diversity of parties." *In re UPS Supply Chain Solutions, Inc.*, 2008 WL 4767818 (6th Cir. 2008) (citing 28 U.S.C. § 1332(d)).

Here, the complaint alleges that Plaintiff Donna M. Trusky is a consumer "residing" in Pennsylvania, but does not include allegations as to her *citizenship*. *See, e.g., Leys v. Lowe's Home Centers, Inc.*, 601 F.Supp.2d 908, 911-12 (W.D. Mich. 2009) (For purposes of diversity jurisdiction, residency does not equal citizenship.).

In addition, the complaint does not appear to include specific allegations that the amount in controversy exceeds $5,000,000.

Accordingly, Plaintiff is ORDERED TO SHOW CAUSE, in writing, on or before **July 26, 2011,** why this case should not be dismissed for lack of subject matter jurisdiction.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: July 13, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on July 13, 2011, by electronic and/or ordinary mail.

S/Jennifer Hernandez
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

DONNA M. TRUSKY on behalf of Herself and all others similarly situated,	:	
Plaintiff,	:	Case No. 2:11-cv-12815-SFC-LJM
vs.	:	
GENERAL MOTORS COMPANY	:	
Defendant.	:	

NOTICE OF APPEARANCE OF JEFFREY L. KODROFF ON BEHALF OF PLAINTIFF DONNA M. TRUSKY

The parties are hereby notified that Jeffrey L. Kodroff, of the law firm of Spector Roseman Kodroff & Willis, P.C., hereby enters his appearance as counsel for Donna M. Trusky in the above-captioned matter.

Dated this 15th day of July, 2011

Respectfully submitted,

SPECTOR ROSEMAN KODROFF
& WILLIS, P.C.

Jeffrey L. Kodroff
1818 Market Street
Suite 2500
Philadelphia, PA 19103
(215) 496-0300
jkodroff@srkw-law.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

DONNA M. TRUSKY on behalf of Herself and all others similarly situated,	:	
Plaintiff,	:	Case No. 2:11-cv-12815-SFC-LJM
vs.	:	
GENERAL MOTORS COMPANY	:	
Defendant.	:	

NOTICE OF APPEARANCE OF JOHN A. MACORETTA ON BEHALF OF PLAINTIFF DONNA M. TRUSKY

The parties are hereby notified that John A. Macoretta, of the law firm of Spector Roseman Kodroff & Willis, P.C., hereby enters his appearance as counsel for Donna M. Trusky in the above-captioned matter.

Dated this 15th day of July, 2011

Respectfully submitted,

SPECTOR ROSEMAN KODROFF & WILLIS, P.C.

John A. Macoretta
1818 Market Street
Suite 2500
Philadelphia, PA 19103
(215) 496-0300
jmacoretta@srkw-law.com

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. TRUSKY on behalf of Herself and all others similarly situated,

Plaintiff,

vs.

GENERAL MOTORS COMPANY

Defendant.

Case No. 2:11-cv-12815-SFC-LJM

Honorable Sean F. Cox

David H. Fink (P28235)
Darryl Bressack (P67820)
Fink + Associates Law
100 West Long Lake Rd., Suite 111
Bloomfield Hills, MI 48304
(248) 971-2500
dfink@finkandassociateslaw.com

Marc H. Edelson
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medelson@edelson-law.com

Jeffrey L. Kodroff
John A. Macoretta
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1818 Market Street
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jmacoretta@srkw-law.com

Attorneys for Plaintiff

Benjamin W. Jeffers (P57161)
Michael P. Cooney (P39405)
Attorneys for Defendant
Dykema Gossett PLLC
400 Renaissance Center
Detroit, MI 48243
(313) 568-5340
bjeffers@dykema.com
mcooney@dykema.com

NOTICE OF APPEARANCE

TO: Clerk of the Court
Attorneys of Record

PLEASE ENTER the Appearance of Benjamin W. Jeffers of Dykema Gossett PLLC as one of the counsel of record on behalf of the Defendant General Motors Company in this action.

DYKEMA GOSSETT PLLC

By: /s/ Benjamin W. Jeffers
Benjamin W. Jeffers (P57161)
Michael P. Cooney (P39405)
Attorneys for Defendant
Dykema Gossett PLLC
400 Renaissance Center
Detroit, MI 48243
(313) 568-5340
bjeffers@dykema.com
mcooney@dykema.com

Dated: July 25, 2011

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2011, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to the attorneys of record in this matter.

DYKEMA GOSSETT PLLC

By: /s/ Benjamin W. Jeffers

Benjamin W. Jeffers (P57161)
Michael P. Cooney (P39405)
Attorneys for Defendant
Dykema Gossett PLLC
400 Renaissance Center
Detroit, MI 48243
(313) 568-5340
bjeffers@dykema.com
mcooney@dykema.com

Dated: July 25, 2011

DET01\942562.1
ID\BWJ - 019956/0999

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. TRUSKY on behalf of herself
and all others similarly situated,

Plaintiff,

vs

GENERAL MOTORS COMPANY
300 Renaissance Center
Detroit, MI 48243

Defendant.
_____/

Case No. 11-12815

Hon. Sean F. Cox

RESPONSE TO JULY 13, 2011 ORDER TO SHOW CAUSE

On July 13, 2011, this Court issued an Order directing Plaintiff to show cause why this case should not be dismissed for lack of subject matter jurisdiction.

Plaintiff avers that this Court has jurisdiction under the Class Action Fairness Act ("CAFA"). CAFA confers federal jurisdiction for certain class actions in which the amount in controversy exceeds $5 million, and in which there is some diversity of the parties. 28 U.S.C § 1332(d). In the Order to show cause, the Court correctly notes that the Complaint did not allege the citizenship of Ms. Trusky and did not allege that the amount in controversy exceeds $5,000,000.

Plaintiff hereby submits an affidavit addressing both issues. Ms. Trusky is a citizen of the Commonwealth of Pennsylvania. (Trusky Aff., Exhibit 1). In her affidavit, Ms. Trusky further alleges that the amount in controversy in this action exceeds $5,000,000. (Id.)

Plaintiff respectfully submits that Ms. Trusky's affidavit demonstrates that this Court has subject matter jurisdiction pursuant to CAFA.

Respectfully submitted,

FINK + ASSOCIATES LAW

By: /s/ Darryl Bressack
David H. Fink (P28235)
Darryl Bressack (P67820)
100 West Long Lake Rd.; Suite 111
Bloomfield Hills, Michigan 48304
(248) 971-2500
dfink@finkandassociateslaw.com

Dated: July 26, 2011

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2011, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to all attorneys of record registered for electronic filing.

Respectfully submitted,

FINK + ASSOCIATES LAW

By: /s/ Darryl Bressack
David H. Fink (P28235)
Darryl Bressack (P67820)
100 West Long Lake Rd.; Suite 111
Bloomfield Hills, Michigan 48304
(248) 971-2500
dfink@finkandassociateslaw.com

Dated: July 26, 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. TRUSKY on behalf of herself and all others similarly situated,

Plaintiff,

vs

GENERAL MOTORS COMPANY
300 Renaissance Center
Detroit, MI 48243

Defendant.
_____/

Case No. 11-12815

Hon. Sean F. Cox

AFFIDAVIT OF DONNA M. TRUSKY

Being duly sworn and competent to testify to all subject matters set forth herein, I, Donna M. Trusky state the following:

1) I am the named-Plaintiff in the above-entitled action.

2) I am a citizen of the Commonwealth of Pennsylvania.

3) The amount in controversy in the above-entitled action exceeds $5,000,000.

Donna M. Trusky

Commonwealth of Pennsylvania

County of Lackawanna

On this, the 25th day of July, 2011, before me a notary public, the undersigned officer, personally appeared Donna M. Trusky, satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

Stephanie Mullally
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Stephanie Mullally, Notary Public
City of Carbondale, Lackawanna County
My Commission Expires May 30, 2015

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. TRUSKY on behalf of herself
and all others similarly situated,

Plaintiff,

Case No. 11-12815

vs

Hon. Sean F. Cox

GENERAL MOTORS COMPANY
300 Renaissance Center
Detroit, MI 48243

Defendant.
_____/

NOTICE OF APPEARANCE

TO: All Attorneys of Record:

PLEASE TAKE NOTICE THAT Darryl Bressack of the law firm of Fink + Associates Law hereby enters his appearance as counsel for Plaintiff in the above-entitled matter.

Respectfully submitted,

FINK + ASSOCIATES LAW

By: /s/ Darryl Bressack
David H. Fink (P28235)
Darryl Bressack (P67820)
100 West Long Lake Rd.; Suite 111
Bloomfield Hills, Michigan 48304
(248) 971-2500
dfink@finkandassociateslaw.com

Dated: July 26, 2011

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2011, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to all attorneys of record registered for electronic filing.

Respectfully submitted,

FINK + ASSOCIATES LAW

By: /s/ Darryl Bressack
David H. Fink (P28235)
Darryl Bressack (P67820)
100 West Long Lake Rd.; Suite 111
Bloomfield Hills, Michigan 48304
(248) 971-2500
dfink@finkandassociateslaw.com

Dated: July 26, 2011

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. TRUSKY on behalf of Herself and all others similarly situated,

Plaintiff,

vs.

GENERAL MOTORS COMPANY

Defendant.

Case No. 2:11-cv-12815-SFC-LJM

Honorable Sean F. Cox

David H. Fink (P28235)
Darryl Bressack (P67820)
Fink + Associates Law
100 West Long Lake Rd., Suite 111
Bloomfield Hills, MI 48304
(248) 971-2500
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Jeffrey L. Kodroff
John A. Macoretta
Spector, Roseman Kodroff & Willis, PC
1818 Market Street
Philadelphia, PA 19103
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jkodroff@srkw-law.com
jmacoretta@srkw-law.com

Attorneys for Plaintiff

Michael P. Cooney (P39405)
Benjamin W. Jeffers (P57161)
Attorneys for Defendant
Dykema Gossett PLLC
400 Renaissance Center
Detroit, MI 48243
(313) 568-5340
bjeffers@dykema.com
mcooney@dykema.com

GENERAL MOTORS COMPANY'S CONCURRENCE THAT PLAINTIFF HAS ALLEGED JURISDICTION IN RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE

1. This is a non-injury warranty case regarding an alleged design defect in the rear wheel spindle rods in plaintiff's Chevrolet Impala. She seeks relief on behalf of herself and "all persons in the United States who purchased or leased a model year 2007 and 2008 Chevrolet Impala." Complaint, ¶14.

2. General Motors Company ("GM") denies any liability for the claims and responsibility for the relief sought in the case and reserves all rights, but acknowledges that plaintiff has alleged diversity and federal question jurisdiction.

DIVERSITY JURISDICTION UNDER CAFA

3. Plaintiff has alleged diversity jurisdiction under the Class Action Fairness Act of 2005, Pub. L. No. 109-2, § 4, codified at 28 U.S.C. § 1332(d) ("CAFA"). The Complaint sets forth predicate allegations to support diversity jurisdiction and plaintiff's Memorandum regarding the Show Cause Order (dkt #9) further confirms the point.

4. Under CAFA, federal district courts have "original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2).

5. Jurisdiction under CAFA is proper for the following reasons.

a. ***First***, plaintiff seeks to certify a putative class action.

b. ***Second***, she has alleged complete diversity of citizenship. Plaintiff states in her Affidavit that she is a citizen of the Commonwealth of Pennsylvania within the meaning of 28 U.S.C. 1332(a). *See* Affidavit (dkt # 9, Ex. 1). Even without the Affidavit, she alleged in the Complaint that she is a resident of Pennsylvania, (Complaint, ¶9) and this is prima facie proof that she is domiciled in that state and thus a citizen of Pennsylvania for purposes of diversity jurisdiction. S*ee State Farm Mut. Auto. Ins. v. Dyer*, 14 F.3d 514, 520 (10th Cir. 1994). She

alleges that GM is a Delaware company and is headquartered in this District. Complaint, ¶12. Thus, there is complete diversity of citizenship.

c. ***Third***, the amount in controversy exceeds the Court's jurisdictional threshold, in that it exceeds the sum or value of $5,000,000. 28 U.S.C. § 1332(d)(2). In addition to plaintiff's clarified allegation in her Affidavit, the Complaint likewise makes this plain. She requests damages for herself and on behalf of every class member for harm allegedly caused in connection with the alleged design defect in her vehicle.[1] She claims that there are approximately 197,000 model year 2007 Impalas and approximately 226,000 model year 2008 Impalas (Complaint, ¶17) for a total of 423,000 Class Vehicles. She asserts that she has paid $289.77 in expenses associated with the alleged defect. *Id*. at ¶32. Merely multiplying the number of Class Vehicles by the amount plaintiff allegedly has incurred in expenses alone establishes that the amount in controversy exceeds $5,000,000 ($289.77 x 423,000 vehicles = $122,572,710) if she were to pursue her costs on behalf of each class member. *Frederico v. Home Depot*, 507 F.3d 188, 195-96 (3d Cir. 2007) (approving the multiplication method for establishing the amount in controversy under CAFA).[2] In fact, she only would need to seek approximately $12 per Class Vehicle to exceed $5,000,000 (5,000,000/423,000 = $11.82). She also alleges that she seeks "compensatory" and "exemplary" damages for herself and each class member, along with "injunctive" relief including an order requiring GM to provide each Class

[1] Calculating damages for any given putative class member necessarily would require individualized proofs and an analysis of individual issues of causation and ascertainability. But, for jurisdictional limits, aggregate damages in this case could exceed $5,000,000 even if Plaintiff somehow was entitled to damages at all and was able to pursue class wide consideration of this case.

[2] And insofar as Plaintiff would seek rescission of her purchase agreement, which GM does not concede is permissible, courts consider the value of the contract in assessing the amount at issue for jurisdictional purposes. *See, e.g., Rosen v. Chrysler Corporation*, 205 F.3d 918, 921 (6th Cir. 2000) (stating that "in cases where a plaintiff seeks to rescind a contract, the contract's entire value, without offset, is the amount in controversy").

Vehicle with "functional rear wheel spindle rods." *Id*., at p. 20 (prayer for relief) and ¶57. The total value of the relief requested indisputably is an aggregate amount in excess of $5,000,000.

d. ***Fourth***, the exceptions to CAFA do not apply. Although CAFA contains certain jurisdictional "carve-outs," none applies here. 28 U.S.C. §§ 1332(d)(5)(A) and (B) specify, respectively, that CAFA does not extend federal diversity jurisdiction to class actions in which (a) the primary defendants are states, state officials, or other governmental entities against whom the district court may be foreclosed from ordering relief ("state action" cases) or (b) the number of members of all proposed plaintiff class members in the aggregate is fewer than 100 ("limited scope" cases). Here, no states, state officials, or other governmental entities are defendants in this action. Further, the putative class consists of well over 100 citizens and entities. Accordingly, the provisions of 28 U.S.C. § 1332(d)(5) do not preclude the exercise of federal jurisdiction. This action similarly does not involve any of the categories of claims described in 28 U.S.C. § 1332(d)(9), which exempts cases that involve solely (i) securities covered under the federal securities laws; (ii) a corporation's internal affairs or governance; or (iii) the "rights, duties (including fiduciary duties), and obligations relating to or created pursuant to any security." 28 U.S.C. § 1332(d)(9)(A), (B), and (C).

FEDERAL QUESTION JURISDICTION

6. Although not mentioned by plaintiff, federal question jurisdiction likewise exists because plaintiff's claim and request for relief, as pled, arise under or relate to a case under Chapter 11 of the Bankruptcy Code. The United States District Court has original jurisdiction in matters under 28 U.S.C. § 1334(b) that arise under Title 11 or are related to a case under Title 11, 28 U.S.C. § 1334(b); *see Continental National Bank of Miami v. Sanchez*, 170 F.3d 1340 (11th Cir. 1999) ("A Claim is 'related to' a bankruptcy case within the meaning of § 1334(b) if it 'could conceivably have any effect' on the bankruptcy estate.") In matters in which the

bankruptcy case is still open, the court need only "determine whether a matter is at least related to the bankruptcy" to decide whether it has jurisdiction over the matter. *Cano v. CMAC Mortgage Corp*., Case No. 02-70359, Adversary No. 08-07019. 2009 Bankr. LEXIS 2223 (Bankr. S.D. Tx. August 10, 2009). Put simply, if a matter arises under or relates to a bankruptcy case, then by definition there is federal question jurisdiction because a bankruptcy court is within the United States District Court. 28 U.S.C. § 1334(b).

7. On June 1, 2009, General Motors Corporation (n/k/a Motors Liquidation Company) ("Old GM") commenced a voluntary case under chapter 11 of title 11 of the United States Code in the Bankruptcy Court for the Southern District of New York ("Bankruptcy Case"). In connection with the filing of the Bankruptcy Case, General Motors Company ("GM") acquired substantially all of the assets of General Motors Corporation on July 10, 2009 in a transaction executed under the jurisdiction and pursuant to approval of the Bankruptcy Court. *See generally In re General Motors Corp*., 407 B.R. 463 (Bankr., SDNY 2009)("Sale Opinion") (approving sale transaction).

8. In acquiring these assets, GM did not assume the liabilities of Old GM. Rather, the scope and limitations of GM's responsibilities are defined in the Bankruptcy Court's "Order (i) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (ii) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases In Connection with the Sale; and (iii) Granting Related Relief," entered on July 5, 2009 (the "Sale Approval Order"), which is a final binding order. *See* Sale Approval Order, attached as Exhibit A; *see also, In Re: OnStar Contract Litig*., Case No. 2:07-MDL-01867, Opinion & Order Granting in Part and Denying In Part Plaintiffs' Motion For Leave To File A Third Amended

Complaint, p. 3, Ex. B. The Sale Approval Order provides that, with the exceptions of certain liabilities expressly assumed under the relevant agreements, the assets acquired by GM were transferred "free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever. . . including rights or claims based on any successor or transferee liability. . ." Id., ¶7.

9. Plaintiff asserts that Old GM designed and manufactured 2007 and 2008 Chevrolet Impalas with a design defect in the rear wheel spindles. Seeking to expand the limits of new GM's responsibilities, plaintiff seeks to hold new GM responsible for Old GM's design choices and alleged conduct. Indeed, she largely refers to Old GM and new GM interchangeably, and often without making any distinction as to which entity actually did what. Complaint, ¶6 ("through a common and uniform course of conduct, GM and General Motors Corporation, acting individually and collectively . . ."; ¶33 ("Defendant, or General Motors Corporation, delivered to Plaintiff . . . a written warranty"); ¶41 ("Defendant, or General Motors Corporation, failed to disclose . . .").

10. Contrary to plaintiff's sweeping allegations, GM agreed only to continue providing warranty repairs on pre-transaction vehicles "subject to the terms and conditions" contained in the express warranties as written. *See* Sale Approval Order, ¶56. But new GM did not assume any of Old GM's liabilities for Old GM's alleged conduct or breaches of those warranties. Thus, plaintiffs must show that New GM breached the warranty pursuant to its terms, not merely that the "warranty was breached" by Old GM and that new GM assumed "warranty liability." *See In Re: OnStar Contract Litigation*, Opinion & Order January 25, 2011, pp. 6-7 (holding that plaintiff may not assert express warranty claim against new GM premised on Old GM's alleged breach of the same warranty). Nor may plaintiff pursue any claim against

new GM with respect to vehicles outside the age and mileage limitation of the express limited warranty or any relief not provided for by those warranties, including the "damages" and injunctive relief she seeks. (Complaint, ¶¶ 51-58).

11. Consequently, GM believes that the allegations against it fail to state a claim and may be dismissed pursuant to Fed.R.Civ.P. 12(b)(6) when the claim is analyzed within the proper framework of GM's actual responsibilities under the express warranty.[3] Plaintiff may not succeed in her effort to bolster a claim against new GM with imputed conduct or alleged breaches by Old GM, nor seek relief outside the scope of the express written warranty because doing so constitutes a direct challenge to the Bankruptcy Court's Sale Order and related opinions under § 363 of the Bankruptcy Code and a violation of the injunction contained within that order. *See In Re: OnStar Contract Litig*., Case No. 2:07-MDL-01867, Opinion & Order Granting in Part and Denying In Part Plaintiffs' Motion For Leave To File A Third Amended Complaint, p. 3, Ex. B (denying leave to add express warranty claim against new GM because plaintiff sought to hold new GM liable for Old GM's alleged breaches of the warranty)

12. Moreover, at least to any extent that plaintiff's claims are not disposed of by virtue of the express language of the limited warranties for which GM assumed responsibility going forward, the matter falls squarely within the jurisdiction expressly retained by the Bankruptcy Court in the Sale Approval Order to resolve all matters relating to the implementation, enforcement and interpretation of the order. The Sale Approval Order explicitly states, "exclusive jurisdiction to enforce and implement the terms and provision of [the] Order" including to "protect [General Motors LLC] against any of the [liabilities that it not expressly assume under the MSPA]." *See* Sale Approval Order at ¶71; *see also*, *In Re: OnStar Contract*

[3] GM's response to plaintiff's Complaint is due on August 11, 2011, and GM intends to file a Motion to Dismiss on these grounds.

Litig., Case No. 2:07-MDL-01867, Opinion & Order Granting in Part and Denying In Part Plaintiffs' Motion For Leave To File A Third Amended Complaint, p. 3, Ex. B ("the Bankruptcy Court has jurisdiction to resolve any disputes as to the liabilities that were assumed by NewGM"). It is well-settled that a bankruptcy court retains continuing jurisdiction to interpret and enforce its own orders. *Travelers Indemnity Co. v. Bailey*, 129 S.Ct. 2195, 2205 (March 20, 2009).

13. Finally, for similar reasons, to the extent that plaintiff asserts claims outside the parameters of the express limited warranties which New GM did assume, this matter presents issues as to which the Bankruptcy Court possesses exclusive jurisdiction because they are within its core jurisdiction under 28 U.S.C. § 157(b). Such claims violate the injunction contained with the Bankruptcy Court's order of June 1, 2009, which authorized the sale, pursuant to 11 U.S.C. § 363, of substantially all of the assets of Old GM free and clear of all liens, claims, interests and encumbrances. An order approving the sale of an estate's property is a core proceeding under 28 U.S.C. § 157(b)(2)(N), and the interpretation of its Sale Approval Order is a core proceeding in the Bankruptcy Court. *Morris v. Puleo*, 309 B.R. 819 (Bankr. M.D. Fl. 2004).

14. In short, the appropriate handling of this case presents complex issues of jurisdiction and venue, which New GM intends to raise in detail within its initial substantive response to the Complaint. However, GM concurs with plaintiff that this matter unambiguously is within the jurisdiction of the Federal courts, for multiple independent reasons.

CONCLUSION

For all the reasons noted above, jurisdiction is proper and the matter should proceed.

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Dated: July 27, 2011

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2011, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to the attorneys of record in this matter.

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UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. TRUSKY on behalf of Herself and all others similarly situated,

Plaintiff,

vs.

GENERAL MOTORS COMPANY

Defendant.

Case No. 2:11-cv-12815-SFC-LJM

Honorable Sean F. Cox

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A. Sale Approval Order

B. *In Re: OnStar Contract Litig.*, Case No. 2:07-MDL-01867, Opinion & Order Granting in Part and Denying in Part Plaintiffs' Motion For Leave to File a Third Amended Complaint

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11 Case No.
GENERAL MOTORS CORP., *et al.*,	:	09-50026 (REG)
Debtors.	:	(Jointly Administered)

ORDER (I) AUTHORIZING SALE OF ASSETS PURSUANT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT WITH NGMCO, INC., A U.S. TREASURY-SPONSORED PURCHASER; (II) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE; AND (III) GRANTING RELATED RELIEF

Upon the motion, dated June 1, 2009 (the "**Motion**"), of General Motors Corporation ("**GM**") and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**"), pursuant to sections 105, 363, and 365 of title 11, United States Code (the "**Bankruptcy Code**") and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") for, among other things, entry of an order authorizing and approving (A) that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009, by and among GM and its Debtor subsidiaries (collectively, the "**Sellers**") and NGMCO, Inc., as successor in interest to Vehicle Acquisition Holdings LLC (the "**Purchaser**"), a purchaser sponsored by the United States Department of the Treasury (the "**U.S. Treasury**"), together with all related documents and agreements as well as all exhibits, schedules, and addenda thereto (as amended, the "**MPA**"), a copy of which is annexed hereto as Exhibit "A" (excluding the exhibits and schedules thereto); (B) the sale of the Purchased Assets[1] to the

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

Purchaser free and clear of liens, claims, encumbrances, and interests (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability; (C) the assumption and assignment of the Assumable Executory Contracts; (D) the establishment of certain Cure Amounts; and (E) the UAW Retiree Settlement Agreement (as defined below); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York of Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with this Court's Order, dated June 2, 2009 (the "**Sale Procedures Order**"), and it appearing that no other or further notice need be provided; and a hearing having been held on June 30 through July 2, 2009, to consider the relief requested in the Motion (the "**Sale Hearing**"); and upon the record of the Sale Hearing, including all affidavits and declarations submitted in connection therewith, and all of the proceedings had before the Court; and the Court having reviewed the Motion and all objections thereto (the "**Objections**") and found and determined that the relief sought in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003 and is in the best interests of the Debtors, their estates and creditors, and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein and in the Court's Decision dated July 5, 2009 (the "Decision") constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014.

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B. To the extent any of the following findings of fact or Findings of Fact in the Decision constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law or Conclusions of Law in the Decision constitute findings of fact, they are adopted as such.

C. This Court has jurisdiction over the Motion, the MPA, and the 363 Transaction pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief sought in the Motion are sections 105(a), 363, and 365 of the Bankruptcy Code as supplemented by Bankruptcy Rules 2002, 6004, and 6006.

E. As evidenced by the affidavits and certificates of service and Publication Notice previously filed with the Court, in light of the exigent circumstances of these chapter 11 cases and the wasting nature of the Purchased Assets and based on the representations of counsel at the Sale Procedures Hearing and the Sale Hearing, (i) proper, timely, adequate, and sufficient notice of the Motion, the Sale Procedures, the 363 Transaction, the procedures for assuming and assigning the Assumable Executory Contracts as described in the Sale Procedures Order and as modified herein (the "**Modified Assumption and Assignment Procedures**"), the UAW Retiree

Settlement Agreement, and the Sale Hearing have been provided in accordance with Bankruptcy Rules 2002(a), 6004(a), and 6006(c) and in compliance with the Sale Procedures Order; (ii) such notice was good and sufficient, reasonable, and appropriate under the particular circumstances of these chapter 11 cases, and reasonably calculated to reach and apprise all holders of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, about the Sale Procedures, the sale of the Purchased Assets, the 363 Transaction, and the assumption and assignment of the Assumable Executory Contracts, and to reach all UAW-Represented Retirees about the UAW Retiree Settlement Agreement and the terms of that certain Letter Agreement, dated May 29, 2009, between GM, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "**UAW**"), and Stember, Feinstein, Doyle & Payne, LLC (the "**UAW Claims Agreement**") relating thereto; and (iii) no other or further notice of the Motion, the 363 Transaction, the Sale Procedures, the Modified Assumption and Assignment Procedures, the UAW Retiree Settlement Agreement, the UAW Claims Agreement, and the Sale Hearing or any matters in connection therewith is or shall be required. With respect to parties who may have claims against the Debtors, but whose identities are not reasonably ascertainable by the Debtors (including, but not limited to, potential contingent warranty claims against the Debtors), the Publication Notice was sufficient and reasonably calculated under the circumstances to reach such parties.

F. On June 1, 2009, this Court entered the Sale Procedures Order approving the Sale Procedures for the Purchased Assets. The Sale Procedures provided a full, fair, and reasonable opportunity for any entity to make an offer to purchase the Purchased Assets. The Debtors received no bids under the Sale Procedures for the Purchased Assets. Therefore, the Purchaser's bid was designated as the Successful Bid pursuant to the Sale Procedures Order.

G. As demonstrated by (i) the Motion, (ii) the testimony and other evidence proffered or adduced at the Sale Hearing, and (iii) the representations of counsel made on the record at the Sale Hearing, in light of the exigent circumstances presented, (a) the Debtors have adequately marketed the Purchased Assets and conducted the sale process in compliance with the Sale Procedures Order; (b) a reasonable opportunity has been given to any interested party to make a higher or better offer for the Purchased Assets; (c) the consideration provided for in the MPA constitutes the highest or otherwise best offer for the Purchased Assets and provides fair and reasonable consideration for the Purchased Assets; (d) the 363 Transaction is a sale of deteriorating assets and the only alternative to liquidation available for the Debtors; (e) if the 363 Transaction is not approved, the Debtors will be forced to cease operations altogether; (f) the failure to approve the 363 Transaction promptly will lead to systemic failure and dire consequences, including the loss of hundreds of thousands of auto-related jobs; (g) prompt approval of the 363 Transaction is the only means to preserve and maximize the value of the Debtors' assets; (h) the 363 Transaction maximizes fair value for the Debtors' parties in interest; (i) the Debtors are receiving fair value for the assets being sold; (j) the 363 Transaction will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, including liquidation under chapters 7 or 11 of the Bankruptcy Code; (k) no other entity has offered to purchase the Purchased Assets for greater economic value to the Debtors or their estates; (l) the consideration to be paid by the Purchaser under the MPA exceeds the liquidation value of the Purchased Assets; and (m) the Debtors' determination that the MPA constitutes the highest or best offer for the Purchased Assets and that the 363 Transaction represents a better alternative for the Debtors' parties in interest than an immediate liquidation constitute valid and sound exercises of the Debtors' business judgment.

H. The actions represented to be taken by the Sellers and the Purchaser are appropriate under the circumstances of these chapter 11 cases and are in the best interests of the Debtors, their estates and creditors, and other parties in interest.

I. Approval of the MPA and consummation of the 363 Transaction at this time is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest.

J. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the sale of the Purchased Assets pursuant to the 363 Transaction prior to, and outside of, a plan of reorganization and for the immediate approval of the MPA and the 363 Transaction because, among other things, the Debtors' estates will suffer immediate and irreparable harm if the relief requested in the Motion is not granted on an expedited basis. In light of the exigent circumstances of these chapter 11 cases and the risk of deterioration in the going concern value of the Purchased Assets pending the 363 Transaction, time is of the essence in (i) consummating the 363 Transaction, (ii) preserving the viability of the Debtors' businesses as going concerns, and (iii) minimizing the widespread and adverse economic consequences for the Debtors, their estates, their creditors, employees, the automotive industry, and the national economy that would be threatened by protracted proceedings in these chapter 11 cases.

K. The consideration provided by the Purchaser pursuant to the MPA (i) is fair and reasonable, (ii) is the highest and best offer for the Purchased Assets, (iii) will provide a greater recovery to the Debtors' estates than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

L. The 363 Transaction must be approved and consummated as promptly as practicable in order to preserve the viability of the business to which the Purchased Assets relate as a going concern.

M. The MPA was not entered into and none of the Debtors, the Purchaser, or the Purchasers' present or contemplated owners have entered into the MPA or propose to consummate the 363 Transaction for the purpose of hindering, delaying, or defrauding the Debtors' present or future creditors. None of the Debtors, the Purchaser, nor the Purchaser's present or contemplated owners is entering into the MPA or proposing to consummate the 363 Transaction fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, or any other applicable jurisdiction with laws substantially similar to any of the foregoing.

N. In light of the extensive prepetition negotiations culminating in the MPA, the Purchaser's commitment to consummate the 363 Transaction is clear without the need to provide a good faith deposit.

O. Each Debtor (i) has full corporate power and authority to execute the MPA and all other documents contemplated thereby, and the sale of the Purchased Assets has been duly and validly authorized by all necessary corporate action of each of the Debtors, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the MPA, (iii) has taken all corporate action necessary to authorize and approve the MPA and the consummation by the Debtors of the transactions contemplated thereby, and (iv) subject to entry of this Order, needs no consents or approvals, other than those expressly provided for in the MPA which may be waived by the Purchaser, to consummate such transactions.

P. The consummation of the 363 Transaction outside of a plan of reorganization pursuant to the MPA neither impermissibly restructures the rights of the Debtors' creditors, allocates or distributes any of the sale proceeds, nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The 363 Transaction does not constitute a *sub rosa* plan of reorganization. The 363 Transaction in no way dictates distribution of the Debtors' property to creditors and does not impinge upon any chapter 11 plan that may be confirmed.

Q. The MPA and the 363 Transaction were negotiated, proposed, and entered into by the Sellers and the Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Sellers, the Purchaser, the U.S. Treasury, nor their respective agents, officials, personnel, representatives, and advisors, has engaged in any conduct that would cause or permit the MPA to be avoided under 11 U.S.C. § 363(n).

R. The Purchaser is a newly-formed Delaware corporation that, as of the date of the Sale Hearing, is wholly-owned by the U.S. Treasury. The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby.

S. Neither the Purchaser, the U.S. Treasury, nor their respective agents, officials, personnel, representatives, or advisors is an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

T. Upon the Closing of the 363 Transaction, the Debtors will transfer to the Purchaser substantially all of its assets. In exchange, the Purchaser will provide the Debtors with (i) cancellation of billions of dollars in secured debt; (ii) assumption by the Purchaser of a portion of the Debtors' business obligations and liabilities that the Purchaser will satisfy; and (iii) no less than 10% of the Common Stock of the Purchaser as of the Closing (100% of which the

Debtors' retained financial advisor values at between $38 billion and $48 billion) and warrants to purchase an additional 15% of the Common Stock of the Purchaser as of the Closing, the combination of which the Debtors' retained financial advisor values at between $7.4 billion and $9.8 billion (which amount, for the avoidance of doubt, does not include any amount for the Adjustment Shares).

U. The Purchaser, not the Debtors, has determined its ownership composition and capital structure. The Purchaser will assign ownership interests to certain parties based on the Purchaser's belief that the transfer is necessary to conduct its business going forward, that the transfer is to attain goodwill and consumer confidence for the Purchaser and to increase the Purchaser's sales after completion of the 363 Transaction. The assignment by the Purchaser of ownership interests is neither a distribution of estate assets, discrimination by the Debtors on account of prepetition claims, nor the assignment of proceeds from the sale of the Debtors' assets. The assignment of equity to the New VEBA (as defined in the UAW Retiree Settlement Agreement) and 7176384 Canada Inc. is the product of separately negotiated arm's-length agreements between the Purchaser and its equity holders and their respective representatives and advisors. Likewise, the value that the Debtors will receive on consummation of the 363 Transaction is the product of arm's-length negotiations between the Debtors, the Purchaser, the U.S. Treasury, and their respective representatives and advisors.

V. The U.S. Treasury and Export Development Canada ("**EDC**"), on behalf of the Governments of Canada and Ontario, have extended credit to, and acquired a security interest in, the assets of the Debtors as set forth in the DIP Facility and as authorized by the interim and final orders approving the DIP Facility (Docket Nos. 292 and 2529, respectively). Before entering into the DIP Facility and the Loan and Security Agreement, dated as of December 31, 2008 (the "**Existing UST Loan Agreement**"), the Secretary of the Treasury, in

consultation with the Chairman of the Board of Governors of the Federal Reserve System and as communicated to the appropriate committees of Congress, found that the extension of credit to the Debtors is "necessary to promote financial market stability," and is a valid use of funds pursuant to the statutory authority granted to the Secretary of the Treasury under the Emergency Economic Stabilization Act of 2008, 12 U.S.C. §§ 5201 et seq. ("**EESA**"). The U.S. Treasury's extension of credit to, and resulting security interest in, the Debtors, as set forth in the DIP Facility and the Existing UST Loan Agreement and as authorized in the interim and final orders approving the DIP Facility, is a valid use of funds pursuant to EESA.

W. The DIP Facility and the Existing UST Loan Agreement are loans and shall not be recharacterized. The Court has already approved the DIP Facility. The Existing UST Loan Agreement bears the undisputed hallmarks of a loan, not an equity investment. Among other things:

(i) The U.S. Treasury structured its prepetition transactions with GM as (a) a loan, made pursuant to and governed by the Existing UST Loan Agreement, in addition to (b) a separate, and separately documented, equity component in the form of warrants;

(ii) The Existing UST Loan Agreement has customary terms and covenants of a loan rather than an equity investment. For example, the Existing UST Loan Agreement contains provisions for repayment and pre-payment, and provides for remedies in the event of a default;

(iii) The Existing UST Loan Agreement is secured by first liens (subject to certain permitted encumbrances) on GM's and the guarantors' equity interests in most of their domestic subsidiaries and certain of their foreign subsidiaries (limited in most cases to 65% of the equity interests of the pledged foreign subsidiaries), intellectual property, domestic real estate (other than manufacturing plants or facilities) inventory that was not pledged to other lenders, and cash and cash equivalents in the United States;

(iv) The U.S. Treasury also received junior liens on certain additional collateral, and thus, its claim for recovery on such collateral under the Existing UST Loan Agreement is, in part, junior to the claims of other creditors;

(v) the Existing UST Loan Agreement requires the grant of security by its terms, as well as by separate collateral documents, including: (a) a guaranty and

security agreement, (b) an equity pledge agreement, (c) mortgages and deeds of trust, and (d) an intellectual property pledge agreement;

(vi) Loans under the Existing UST Loan Agreement are interest-bearing with a rate of 3.00% over the 3-month LIBOR with a LIBOR floor of 2.00%. The Default Rate on this loan is 5.00% above the non-default rate.

(vii) The U.S. Treasury always treated the loans under the Existing UST Loan Agreement as debt, and advances to GM under the Existing Loan Agreement were conditioned upon GM's demonstration to the United States Government of a viable plan to regain competitiveness and repay the loans.

(viii) The U.S. Treasury has acted as a prudent lender seeking to protect its investment and thus expressly conditioned its financial commitment upon GM's meaningful progress toward long-term viability.

Other secured creditors of the Debtors also clearly recognized the loans under the Existing UST Loan Agreement as debt by entering into intercreditor agreements with the U.S. Treasury in order to set forth the secured lenders' respective prepetition priority.

X. This Court has previously authorized the Purchaser to credit bid the amounts owed under both the DIP Facility and the Existing UST Loan Agreement and held the Purchaser's credit bid to be, for all purposes, a "Qualified Bid" under the Sale Procedures Order.

Y. The Debtors, the Purchaser, and the UAW, as the exclusive collective bargaining representative of the Debtors' UAW-represented employees and the authorized representative of the persons in the Class and the Covered Group (as described in the UAW Retiree Settlement Agreement) (the "**UAW-Represented Retirees**") under section 1114(c) of the Bankruptcy Code, engaged in good faith negotiations in conjunction with the 363 Transaction regarding the funding of "retiree benefits" within the meaning of section 1114(a) of the Bankruptcy Code and related matters. Conditioned upon the consummation of the 363 Transaction and the approval of the Bankruptcy Court granted in this Order, the Purchaser and the UAW will enter into that certain Retiree Settlement Agreement, dated as of the Closing Date (the "**UAW Retiree Settlement Agreement**"), which is Exhibit D to the MPA, which resolves

issues with respect to the provision of certain retiree benefits to UAW-Represented Retirees as described in the UAW Retiree Settlement Agreement. As set forth in the UAW Retiree Settlement Agreement, the Purchaser has agreed to make contributions of cash, stock, and warrants of the Purchaser to the New VEBA (as defined in the UAW Retiree Settlement Agreement), which will have the obligation to fund certain health and welfare benefits for the UAW-Represented Retirees. The New VEBA will also be funded by the transfer of assets from the Existing External VEBA and the assets in the UAW Related Account of the Existing Internal VEBA (each as defined in the UAW Retiree Settlement Agreement). GM and the UAW, as the authorized representative of the UAW-Represented Retirees, as well as the representatives for the class of plaintiffs in a certain class action against GM (the "**Class Representatives**"), through class counsel, Stemper, Feinstein, Doyle and Payne LLC ("**Class Counsel**"), negotiated in good faith the UAW Claims Agreement, which requires the UAW and the Class Representatives to take actions to effectuate the withdrawal of certain claims against the Debtors, among others, relating to retiree benefits in the event the 363 Transaction is consummated and the Bankruptcy Court approves, and the Purchaser becomes fully bound by, the UAW Retiree Settlement Agreement, subject to reinstatement of such claims to the extent of any adverse impact to the rights or benefits of UAW-Represented Retirees under the UAW Retiree Settlement Agreement resulting from any reversal or modification of the 363 Transaction, the UAW Retiree Settlement Agreement, or the approval of the Bankruptcy Court thereof, the foregoing as subject to the terms of, and as set forth in, the UAW Claims Agreement.

Z. Effective as of the Closing of the 363 Transaction, the Debtors will assume and assign to the Purchaser the UAW Collective Bargaining Agreement and all liabilities thereunder. The Debtors, the Purchaser, the UAW and Class Representatives intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings

incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2).

AA. The transfer of the Purchased Assets to the Purchaser will be a legal, valid, and effective transfer of the Purchased Assets and, except for the Assumed Liabilities, will vest the Purchaser with all right, title, and interest of the Sellers to the Purchased Assets free and clear of liens, claims, encumbrances, and other interests (other than Permitted Encumbrances), including rights or claims (for purposes of this Order, the term "claim" shall have the meaning ascribed to such term in section 101(5) of the Bankruptcy Code) based on any successor or transferee liability, including, but not limited to (i) those that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Sellers' or the Purchaser's interest in the Purchased Assets, or any similar rights and (ii) (a) those arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income, or other exercise of any attributes of ownership and (b) all claims arising in any way in connection with any agreements, acts, or failures to act, of any of the Sellers or any of the Sellers' predecessors or affiliates, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including, but not limited to, claims otherwise arising under doctrines of successor or transferee liability.

BB. The Sellers may sell the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the

Bankruptcy Code has been satisfied. Those (i) holders of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, and (ii) non-Debtor parties to the Assumable Executory Contracts who did not object, or who withdrew their Objections, to the 363 Transaction or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those (i) holders of liens, claims, and encumbrances, and (ii) non-Debtor parties to the Assumable Executory Contracts who did object, fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and, to the extent they have valid and enforceable liens or encumbrances, are adequately protected by having such liens or encumbrances, if any, attach to the proceeds of the 363 Transaction ultimately attributable to the property against or in which they assert a lien or encumbrance. To the extent liens or encumbrances secure liabilities that are Assumed Liabilities under this Order and the MPA, no such liens or encumbrances shall attach to the proceeds of the 363 Transaction.

CC. Under the MPA, GM is transferring all of its right, title, and interest in the Memphis, TN SPO Warehouse and the White Marsh, MD Allison Transmission Plant (the "**TPC Property**") to the Purchaser pursuant to section 363(f) of the Bankruptcy Code free and clear of all liens (including, without limitation, the TPC Liens (as hereinafter defined)), claims, interests, and encumbrances (other than Permitted Encumbrances). For purposes of this Order, "**TPC Liens**" shall mean and refer to any liens on the TPC Property granted or extended pursuant to the TPC Participation Agreement and any claims relating to that certain Second Amended and Restated Participation Agreement and Amendment of Other Operative Documents (the "**TPC Participation Agreement**"), dated as of June 30, 2004, among GM, as Lessee, Wilmington Trust Company, a Delaware corporation, not in its individual capacity except as expressly stated herein but solely as Owner Trustee (the "**TPC Trustee**") under GM Facilities Trust No. 1999-1 (the "**TPC Trust**"), as Lessor, GM, as Certificate Holder, Hannover Funding Company LLC, as

CP Lender, Wells Fargo Bank Northwest, N.A., as Agent, Norddeutsche Landesbank Girozentrale (New York Branch), as Administrator, and Deutsche Bank, AG, New York Branch, HSBC Bank USA, ABN AMRO Bank N.V., Royal Bank of Canada, Bank of America, N.A., Citicorp USA, Inc., Merrill Lynch Bank USA, Morgan Stanley Bank, collectively, as Purchasers (collectively, with CP Lender, Agent and Administrator, the "**TPC Lenders**"), together with the Operative Documents (as defined in the TPC Participation Agreements (the "**TPC Operative Documents**").

DD. The Purchaser would not have entered into the MPA and would not consummate the 363 Transaction (i) if the sale of the Purchased Assets was not free and clear of all liens, claims, encumbrances, and other interests (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability or (ii) if the Purchaser would, or in the future could, be liable for any such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability (collectively, the "**Retained Liabilities**"), other than, in each case, the Assumed Liabilities. The Purchaser will not consummate the 363 Transaction unless this Court expressly orders that none of the Purchaser, its affiliates, their present or contemplated members or shareholders (other than the Debtors as the holder of equity in the Purchaser), or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability or Retained Liabilities, other than as expressly provided herein or in agreements made by the Debtors and/or the Purchaser on the record at the Sale Hearing or in the MPA.

EE. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Purchased Contracts to the Purchaser in connection

with the consummation of the 363 Transaction, and the assumption and assignment of the Purchased Contracts is in the best interests of the Debtors, their estates and creditors, and other parties in interest. The Purchased Contracts being assigned to, and the liabilities being assumed by, the Purchaser are an integral part of the Purchased Assets being purchased by the Purchaser, and, accordingly, such assumption and assignment of the Purchased Contracts and liabilities are reasonable, enhance the value of the Debtors' estates, and do not constitute unfair discrimination.

FF. For the avoidance of doubt, and notwithstanding anything else in this Order to the contrary:

- The Debtors are neither assuming nor assigning to the Purchaser the agreement to provide certain retiree medical benefits specified in (i) the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between the Company and the UAW, and (ii) the Settlement Agreement, dated February 21, 2008, between the Company and the UAW (together, the "**VEBA Settlement Agreement**");

- at the Closing, and in accordance with the MPA, the UAW Collective Bargaining Agreement, and all liabilities thereunder, shall be assumed by the Debtors and assigned to the Purchaser pursuant to section 365 of the Bankruptcy Code. Assumption and assignment of the UAW Collective Bargaining Agreement is integral to the 363 Transaction and the MPA, are in the best interests of the Debtors and their estates, creditors, employees, and retirees, and represent the exercise of the Debtors' sound business judgment, enhances the value of the Debtors' estates, and does not constitute unfair discrimination;

- the UAW, as the exclusive collective bargaining representative of employees of the Purchaser and the "authorized representative" of the UAW-Represented Retirees under section 1114(c) of the Bankruptcy Code, GM, and the Purchaser engaged in good faith negotiations in conjunction with the 363 Transaction regarding the funding of retiree health benefits within the meaning of section 1114(a) of the Bankruptcy Code. Conditioned upon the consummation of the 363 Transaction, the UAW and the Purchaser have entered into the UAW Retiree Settlement Agreement, which, among other things, provides for the financing by the Purchaser of modified retiree health care obligations for the Class and Covered Group (as defined in the UAW Retiree Settlement Agreement) through contributions by the Purchaser (as referenced in paragraph Y herein). The New VEBA will also be funded by the transfer of the UAW Related Account from the Existing Internal VEBA and the assets of the Existing External VEBA to the New VEBA (each as defined in the UAW Retiree Settlement Agreement). The Debtors, the

Purchaser, and the UAW specifically intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2);

- the Debtors' sponsorship of the Existing Internal VEBA (as defined in the UAW Retiree Settlement Agreement) shall be transferred to the Purchaser under the MPA.

GG. The Debtors have (i) cured and/or provided adequate assurance of cure (through the Purchaser) of any default existing prior to the date hereof under any of the Purchased Contracts that have been designated by the Purchaser for assumption and assignment under the MPA, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided compensation or adequate assurance of compensation through the Purchaser to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Purchased Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and the Purchaser has provided adequate assurance of future performance under the Purchased Contracts, within the meaning of section 365(b)(1)(C) of the Bankruptcy Code. The Modified Assumption and Assignment Procedures are fair, appropriate, and effective and, upon the payment by the Purchaser of all Cure Amounts (as hereinafter defined) and approval of the assumption and assignment for a particular Purchased Contract thereunder, the Debtors shall be forever released from any and all liability under the Purchased Contracts.

HH. The Debtors are the sole and lawful owners of the Purchased Assets, and no other person has any ownership right, title, or interest therein. The Debtors' non-Debtor Affiliates have acknowledged and agreed to the 363 Transaction and, as required by, and in accordance with, the MPA and the Transition Services Agreement, transferred any legal, equitable, or beneficial right, title, or interest they may have in or to the Purchased Assets to the Purchaser.

II. The Debtors currently maintain certain privacy policies that govern the use of "personally identifiable information" (as defined in section 101(41A) of the Bankruptcy Code) in conducting their business operations. The 363 Transaction may contemplate the transfer of certain personally identifiable information to the Purchaser in a manner that may not be consistent with certain aspects of their existing privacy policies. Accordingly, on June 2, 2009, the Court directed the U.S. Trustee to promptly appoint a consumer privacy ombudsman in accordance with section 332 of the Bankruptcy Code, and such ombudsman was appointed on June 10, 2009. The Privacy Ombudsman is a disinterested person as required by section 332(a) of the Bankruptcy Code. The Privacy Ombudsman filed his report with the Court on July 1, 2009 (Docket No. 2873) (the "**Ombudsman Report**") and presented his report at the Sale Hearing, and the Ombudsman Report has been reviewed and considered by the Court. The Court has given due consideration to the facts, including the exigent circumstances surrounding the conditions of the sale of personally identifiable information in connection with the 363 Transaction. No showing has been made that the sale of personally identifiable information in connection with the 363 Transaction in accordance with the provisions of this Order violates applicable nonbankruptcy law, and the Court concludes that such sale is appropriate in conjunction with the 363 Transaction.

JJ. Pursuant to Section 6.7(a) of the MPA, GM offered Wind-Down Agreements and Deferred Termination Agreements (collectively, the "**Deferred Termination Agreements**") in forms prescribed by the MPA to franchised motor vehicle dealers, including dealers authorized to sell and service vehicles marketed under the Pontiac brand (which is being discontinued), dealers authorized to sell and service vehicles marketed under the Hummer, Saturn and Saab brands (which may or may not be discontinued depending on whether the brands are sold to third parties) and dealers authorized to sell and service vehicles marketed

under brands which will be continued by the Purchaser. The Deferred Termination Agreements were offered as an alternative to rejection of the existing Dealer Sales and Service Agreements of these dealers pursuant to section 365 of the Bankruptcy Code and provide substantial additional benefits to dealers which enter into such agreements. Approximately 99% of the dealers offered Deferred Termination Agreements accepted and executed those agreements and did so for good and sufficient consideration.

KK. Pursuant to Section 6.7(b) of the MPA, GM offered Participation Agreements in the form prescribed by the MPA to dealers identified as candidates for a long term relationship with the Purchaser. The Participation Agreements provide substantial benefits to accepting dealers, as they grant the opportunity for such dealers to enter into a potentially valuable relationship with the Purchaser as a component of a reduced and more efficient dealer network. Approximately 99% of the dealers offered Participation Agreements accepted and executed those agreements.

LL. This Order constitutes approval of the UAW Retiree Settlement Agreement and the compromise and settlement embodied therein.

MM. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Consistent with Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Order to the full extent to which those rules provide, but that its Order should not become effective instantaneously. Thus the Court will shorten, but not wholly eliminate, the periods set forth in Fed.R.Bankr.P. 6004(h) and 6006, and expressly directs entry of judgment as set forth in accordance with the provisions of Paragraph 70 below.

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NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

General Provisions

1. The Motion is granted as provided herein, and entry into and performance under, and in respect of, the MPA and the 363 Transaction is approved.

2. All Objections to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or resolved, and all reservation of rights included in such Objections, are overruled on the merits other than a continuing Objection (each a "**Limited Contract Objection**") that does not contest or challenge the merits of the 363 Transaction and that is limited to (a) contesting a particular Cure Amount(s) (a "**Cure Objection**"), (b) determining whether a particular Assumable Executory Contract is an executory contract that may be assumed and/or assigned under section 365 of the Bankruptcy Code, and/or (c) challenging, as to a particular Assumable Executory Contract, whether the Debtors have assumed, or are attempting to assume, such contract in its entirety or whether the Debtors are seeking to assume only part of such contract. A Limited Contract Objection shall include, until resolved, a dispute regarding any Cure Amount that is subject to resolution by the Bankruptcy Court , or pursuant to the dispute resolution procedures established by the Sale Procedures Order or pursuant to agreement of the parties, including agreements under which an objection to the Cure Amount was withdrawn in connection with a reservation of rights under such dispute resolution procedures. Limited Contract Objections shall not constitute objections to the 363 Transaction, and to the extent such Limited Contract Objections remain continuing objections to be resolved before the Court, the hearing to consider each such Limited Contract Objection shall be adjourned to August 3, 2009 at 9:00 a.m. (the "**Limited Contract Objection Hearing**"). Within two (2) business days of the entry of this Order, the Debtors shall serve upon each of the counterparties to the remaining Limited Contract Objections a notice of the Limited Contract Objection Hearing. The Debtors or any party that withdraws, or has withdrawn, a Limited

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Contract Objection without prejudice shall have the right, unless it has agreed otherwise, to schedule the hearing to consider a Limited Contract Objection on not less than fifteen (15) days notice to the Debtors, the counterparties to the subject Assumable Executory Contracts, the Purchaser, and the Creditors' Committee, or within such other time as otherwise may be agreed by the parties.

Approval of the MPA

3. The MPA, all transactions contemplated thereby, and all the terms and conditions thereof (subject to any modifications contained herein) are approved. If there is any conflict between the MPA, the Sale Procedures Order, and this Order, this Order shall govern.

4. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors are authorized to perform their obligations under, and comply with the terms of, the MPA and consummate the 363 Transaction pursuant to, and in accordance with, the terms and provisions of the MPA and this Order.

5. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement, the MPA, together with all additional instruments and documents that the Sellers or the Purchaser deem necessary or appropriate to implement the MPA and effectuate the 363 Transaction, and to take all further actions as may reasonably be required by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser or reducing to possession the Purchased Assets or as may be necessary or appropriate to the performance of the obligations as contemplated by the MPA.

6. This Order and the MPA shall be binding in all respects upon the Debtors, their affiliates, all known and unknown creditors of, and holders of equity security interests in, any Debtor, including any holders of liens, claims, encumbrances, or other interests, including

rights or claims based on any successor or transferee liability, all non-Debtor parties to the Assumable Executory Contracts, all successors and assigns of the Purchaser, each Seller and their Affiliates and subsidiaries, the Purchased Assets, all interested parties, their successors and assigns, and any trustees appointed in the Debtors' chapter 11 cases or upon a conversion of any of such cases to cases under chapter 7 of the Bankruptcy Code and shall not be subject to rejection. Nothing contained in any chapter 11 plan confirmed in any of the Debtors' chapter 11 cases or the order confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the MPA or this Order.

Transfer of Purchased Assets Free and Clear

7. Except for the Assumed Liabilities, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Purchaser in accordance with the MPA, and, upon the Closing, shall be free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, and all such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, shall attach to the net proceeds of the 363 Transaction in the order of their priority, with the same validity, force, and effect that they now have as against the Purchased Assets, subject to any claims and defenses a Seller or any other party in interest may possess with respect thereto.

8. Except as expressly permitted or otherwise specifically provided by the MPA or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, dealers, employees, litigation claimants, and other creditors, holding liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including rights or claims

based on any successor or transferee liability, against or in a Seller or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Sellers, the Purchased Assets, the operation of the Purchased Assets prior to the Closing, or the 363 Transaction, are forever barred, estopped, and permanently enjoined (with respect to future claims or demands based on exposure to asbestos, to the fullest extent constitutionally permissible) from asserting against the Purchaser, its successors or assigns, its property, or the Purchased Assets, such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability.

9. This Order (a) shall be effective as a determination that, as of the Closing, (i) no claims other than Assumed Liabilities, will be assertable against the Purchaser, its affiliates, their present or contemplated members or shareholders, successors, or assigns, or any of their respective assets (including the Purchased Assets); (ii) the Purchased Assets shall have been transferred to the Purchaser free and clear of all claims (other than Permitted Encumbrances); and (iii) the conveyances described herein have been effected; and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks, or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is directed to accept for filing any and all of the documents

and instruments necessary and appropriate to consummate the transactions contemplated by the MPA.

10. The transfer of the Purchased Assets to the Purchaser pursuant to the MPA constitutes a legal, valid, and effective transfer of the Purchased Assets and shall vest the Purchaser with all right, title, and interest of the Sellers in and to the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities.

11. On the Closing of the 363 Transaction, each of the Sellers' creditors and any other holder of a lien, claim, encumbrance, or other interest, is authorized and directed to execute such documents and take all other actions as may be necessary to release its lien, claim, encumbrance (other than Permitted Encumbrances), or other interest in the Purchased Assets, if any, as such lien, claim, encumbrance, or other interest may have been recorded or may otherwise exist.

12. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing a lien, claim, encumbrance, or other interest in the Sellers or the Purchased Assets (other than Permitted Encumbrances) shall not have delivered to the Sellers prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens, claims, encumbrances, or other interests, which the person or entity has with respect to the Sellers or the Purchased Assets or otherwise, then (a) the Sellers are authorized and directed to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Sellers or the Purchased Assets, and (b) the Purchaser is authorized to file, register, or otherwise record a certified copy of this Order, which

shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever in the Sellers or the Purchased Assets.

13. All persons or entities in possession of any of the Purchased Assets are directed to surrender possession of such Purchased Assets to the Purchaser or its respective designees at the time of Closing of the 363 Transaction.

14. Following the Closing of the 363 Transaction, no holder of any lien, claim, encumbrance, or other interest (other than Permitted Encumbrances) shall interfere with the Purchaser's title to, or use and enjoyment of, the Purchased Assets based on, or related to, any such lien, claim, encumbrance, or other interest, or based on any actions the Debtors may take in their chapter 11 cases.

15. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Purchaser in accordance with the MPA and this Order; *provided, however*, that the foregoing restriction shall not prevent any person or entity from appealing this Order or opposing any appeal of this Order.

16. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these chapter 11 cases or the consummation of the 363 Transaction contemplated by the MPA.

17. From and after the Closing, the Purchaser shall comply with the certification, reporting, and recall requirements of the National Traffic and Motor Vehicle Safety Act, as amended and recodified, including by the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety

Code, and similar Laws, in each case, to the extent applicable in respect of motor vehicles, vehicles, motor vehicle equipment, and vehicle parts manufactured or distributed by the Sellers prior to the Closing.

18. Notwithstanding anything to the contrary in this Order or the MPA, (a) any Purchased Asset that is subject to any mechanic's, materialman's, laborer's, workmen's, repairman's, carrier's liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings, or any lien for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable, or delinquent (or which may be paid without interest or penalties) shall continue to be subject to such lien after the Closing Date if and to the extent that such lien (i) is valid, perfected and enforceable as of the Commencement Date (or becomes valid, perfected and enforceable after the Commencement Date as permitted by section 546(b) or 362(b)(18) of the Bankruptcy Code), (ii) could not be avoided by any Debtor under sections 544 to 549, inclusive, of the Bankruptcy Code or otherwise, were the Closing not to occur; and (iii) the Purchased Asset subject to such lien could not be sold free and clear of such lien under applicable non-bankruptcy law, and (b) any Liability as of the Closing Date that is secured by a lien described in clause (a) above (such lien, a "**Continuing Lien**") that is not otherwise an Assumed Liability shall constitute an Assumed Liability with respect to which there shall be no recourse to the Purchaser or any property of the Purchaser other than recourse to the property subject to such Continuing Lien. The Purchased Assets are sold free and clear of any reclamation rights, *provided, however,* that nothing, in this Order or the MPA shall in any way impair the right of any claimant against the Debtors with respect to any alleged reclamation right to the extent such reclamation right is not subject to the prior rights of a holder of a security interest in

the goods or proceeds with respect to which such reclamation right is alleged, or impair the ability of a claimant to seek adequate protection against the Debtors with respect to any such alleged reclamation right. Further, nothing in this Order or the MPA shall prejudice any rights, defenses, objections or counterclaims that the Debtors, the Purchaser, the U.S. Treasury, EDC, the Creditors' Committee or any other party in interest may have with respect to the validity or priority of such asserted liens or rights, or with respect to any claim for adequate protection.

Approval of the UAW Retiree Settlement Agreement

19. The UAW Retiree Settlement Agreement, the transactions contemplated therein, and the terms and conditions thereof, are fair, reasonable, and in the best interests of the retirees, and are approved. The Debtors, the Purchaser, and the UAW are authorized and directed to perform their obligations under, or in connection with, the implementation of the UAW Retiree Settlement Agreement and to comply with the terms of the UAW Retiree Settlement Agreement, including the obligation of the Purchaser to reimburse the UAW for certain expenses relating to the 363 Transaction and the transition to the New VEBA arrangements. The amendments to the Trust Agreement (as defined in the UAW Retiree Settlement Agreement) set forth on Exhibit E to the UAW Retiree Settlement Agreement, are approved, and the Trust Agreement is reformed accordingly.

20. In accordance with the terms of the UAW Retiree Settlement Agreement, (I) as of the Closing, there shall be no requirement to amend the Pension Plan as set forth in section 15 of the Henry II Settlement (as such terms are defined in the UAW Retiree Settlement Agreement); (II) on the later of December 31, 2009, or the Closing of the 363 Transaction (the "**Implementation Date**"), (i) the committee and the trustees of the Existing External VEBA (as defined in the UAW Retiree Settlement Agreement) are directed to transfer to the New VEBA all assets and liabilities of the Existing External VEBA and to terminate the Existing External

VEBA within fifteen (15) days thereafter, as provided under Section 12.C of the UAW Retiree Settlement Agreement, (ii) the trustee of the Existing Internal VEBA is directed to transfer to the New VEBA the UAW Related Account's share of assets in the Existing Internal VEBA within ten (10) business days thereafter as provided in Section 12.B of the UAW Retiree Settlement Agreement, and, upon the completion of such transfer, the Existing Internal VEBA shall be deemed to be amended to terminate participation and coverage regarding Retiree Medical Benefits for the Class and the Covered Group, effective as of the Implementation Date (each as defined in the UAW Retiree Settlement Agreement); and (III) all obligations of the Purchaser and the Sellers to provide Retiree Medical Benefits to members of the Class and Covered Group shall be governed by the UAW Retiree Settlement Agreement, and, in accordance with section 5.D of the UAW Retiree Settlement Agreement, all provisions of the Purchaser's Plan relating to Retiree Medical Benefits for the Class and/or the Covered Group shall terminate as of the Implementation Date or otherwise be amended so as to be consistent with the UAW Retiree Settlement Agreement (as each term is defined in the UAW Retiree Settlement Agreement), and the Purchaser shall not thereafter have any such obligations as set forth in Section 5.D of the UAW Retiree Settlement Agreement.

Approval of GM's Assumption of the UAW Claims Agreement

21. Pursuant to section 365 of the Bankruptcy Code, GM's assumption of the UAW Claims Agreement is approved, and GM, the UAW, and the Class Representatives are authorized and directed to perform their obligations under, or in connection with, the implementation of the UAW Claims Agreement and comply with the terms of the UAW Claims Agreement.

Assumption and Assignment to the Purchaser of Assumable Executory Contracts

22. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code and subject to and conditioned upon (a) the Closing of the 363 Transaction, (b) the occurrence of the Assumption Effective Date, and (c) the resolution of any relevant Limited Contract Objections, other than a Cure Objection, by order of this Court overruling such objection or upon agreement of the parties, the Debtors' assumption and assignment to the Purchaser of each Assumable Executory Contract (including, without limitation, for purposes of this paragraph 22) the UAW Collective Bargaining Agreement) is approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are deemed satisfied.

23. The Debtors are authorized and directed in accordance with sections 105(a) and 365 of the Bankruptcy Code to (i) assume and assign to the Purchaser, effective as of the Assumption Effective Date, as provided by, and in accordance with, the Sale Procedures Order, the Modified Assumption and Assignment Procedures, and the MPA, those Assumable Executory Contracts that have been designated by the Purchaser for assumption pursuant to sections 6.6 and 6.31 of the MPA and that are not subject to a Limited Contract Objection other than a Cure Objection, free and clear of all liens, claims, encumbrances, or other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities, and (ii) execute and deliver to the Purchaser such documents or other instruments as the Purchaser reasonably deems may be necessary to assign and transfer such Assumable Executory Contracts and Assumed Liabilities to the Purchaser. The Purchaser shall Promptly Pay (as defined below) the following (the "**Cure Amount**"): (a) all amounts due under such Assumable Executory Contract as of the Commencement Date as reflected on the website established by the Debtors (the "**Contract Website**"), which is referenced and is accessible as set forth in the Assumption and Assignment

Notice or as otherwise agreed to in writing by an authorized officer of the parties (for this purpose only, Susanna Webber shall be deemed an authorized officer of the Debtors) (the "**Prepetition Cure Amount**"), less amounts, if any, paid after the Commencement Date on account of the Prepetition Cure Amount (such net amount, the "**Net Prepetition Cure Amount**"), plus (b) any such amount past due and owing as of the Assumption Effective Date, as required under the Modified Assumption and Assignment Procedures, exclusive of the Net Prepetition Cure Amount. For the avoidance of doubt, all of the Debtors' rights to assert credits, chargebacks, setoffs, rebates, and other claims under the Purchased Contracts are purchased by and assigned to the Purchaser as of the Assumption Effective Date. As used herein, "**Promptly Pay**" means (i) with respect to any Cure Amount (or portion thereof, if any) which is undisputed, payment as soon as reasonably practicable, but not later than five (5) business days after the Assumption Effective Date, and (ii) with respect to any Cure Amount (or portion thereof, if any) which is disputed, payment as soon as reasonably practicable, but not later than five (5) business days after such dispute is resolved or such later date upon agreement of the parties and, in the event Bankruptcy Court approval is required, upon entry of a final order of the Bankruptcy Court. On and after the Assumption Effective Date, the Purchaser shall (i) perform any nonmonetary defaults that are required under section 365(b) of the Bankruptcy Code; *provided* that such defaults are undisputed or directed by this Court and are timely asserted under the Modified Assumption and Assignment Procedures, and (ii) pay all undisputed obligations and perform all obligations that arise or come due under each Assumable Executory Contract in the ordinary course. Notwithstanding any provision in this Order to the contrary, the Purchaser shall not be obligated to pay any Cure Amount or any other amount due with respect to any Assumable Executory Contract before such amount becomes due and payable under the applicable payment terms of such Contract.

24. The Debtors shall make available a writing, acknowledged by the Purchaser, of the assumption and assignment of an Assumable Executory Contract and the effective date of such assignment (which may be a printable acknowledgment of assignment on the Contract Website). The Assumable Executory Contracts shall be transferred and assigned to, pursuant to the Sale Procedures Order and the MPA, and thereafter remain in full force and effect for the benefit of, the Purchaser, notwithstanding any provision in any such Assumable Executory Contract (including those of the type described in sections 365(b)(2), (e)(1), and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Sellers shall be relieved from any further liability with respect to the Assumable Executory Contracts after such assumption and assignment to the Purchaser. Except as may be contested in a Limited Contract Objection, each Assumable Executory Contract is an executory contract or unexpired lease under section 365 of the Bankruptcy Code and the Debtors may assume each of their respective Assumable Executory Contracts in accordance with section 365 of the Bankruptcy Code. Except as may be contested in a Limited Contract Objection other than a Cure Objection, the Debtors may assign each Assumable Executory Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Assumable Executory Contract that prohibit or condition the assignment of such Assumable Executory Contract or terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Assumable Executory Contract, constitute unenforceable antiassignment provisions which are void and of no force and effect in connection with the transactions contemplated hereunder. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser of each Assumable Executory Contract have been satisfied, and, pursuant to section 365(k) of the Bankruptcy Code, the

Debtors are hereby relieved from any further liability with respect to the Assumable Executory Contracts, including, without limitation, in connection with the payment of any Cure Amounts related thereto which shall be paid by the Purchaser. At such time as provided in the Sale Procedures Order and the MPA, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title, and interest of each Purchased Contract. With respect to leases of personal property that are true leases and not subject to recharacterization, nothing in this Order or the MPA shall transfer to the Purchaser an ownership interest in any leased property not owned by a Debtor. Any portion of any of the Debtors' unexpired leases of nonresidential real property that purport to permit the respective landlords thereunder to cancel the remaining term of any such leases if the Sellers discontinue their use or operation of the Leased Real Property are void and of no force and effect and shall not be enforceable against the Purchaser, its assignees and sublessees, and the landlords under such leases shall not have the right to cancel or otherwise modify such leases or increase the rent, assert any Claim, or impose any penalty by reason of such discontinuation, the Sellers' cessation of operations, the assignment of such leases to the Purchaser, or the interruption of business activities at any of the leased premises.

25. Except in connection with any ongoing Limited Contract Objection, each non-Debtor party to an Assumable Executory Contract is forever barred, estopped, and permanently enjoined from (a) asserting against the Debtors or the Purchaser, their successors or assigns, or their respective property, any default arising prior to, or existing as of, the Commencement Date, or, against the Purchaser, any counterclaim, defense, or setoff (other than defenses interposed in connection with, or related to, credits, chargebacks, setoffs, rebates, and other claims asserted by the Sellers or the Purchaser in its capacity as assignee), or other claim asserted or assertable against the Sellers and (b) imposing or charging against the Debtors, the

Purchaser, or its Affiliates any rent accelerations, assignment fees, increases, or any other fees as a result of the Sellers' assumption and assignment to the Purchaser of the Assumable Executory Contracts. The validity of such assumption and assignment of the Assumable Executory Contracts shall not be affected by any dispute between the Sellers and any non-Debtor party to an Assumable Executory Contract.

26. Except as expressly provided in the MPA or this Order, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Liabilities other than certain Cure Amounts as provided in the MPA, and all holders of such claims are forever barred and estopped from asserting such claims against the Debtors, their successors or assigns, and their estates.

27. The failure of the Sellers or the Purchaser to enforce at any time one or more terms or conditions of any Assumable Executory Contract shall not be a waiver of such terms or conditions, or of the Sellers' and the Purchaser's rights to enforce every term and condition of the Assumable Executory Contracts.

28. The authority hereunder for the Debtors to assume and assign an Assumable Executory Contract to the Purchaser includes the authority to assume and assign an Assumable Executory Contract, as amended.

29. Upon the assumption by a Debtor and the assignment to the Purchaser of any Assumable Executory Contract and the payment of the Cure Amount in full, all defaults under the Assumable Executory Contract shall be deemed to have been cured, and any counterparty to such Assumable Executory Contract shall be prohibited from exercising any rights or remedies against any Debtor or non-Debtor party to such Assumable Executory Contract based on an asserted default that occurred on, prior to, or as a result of, the Closing, including the type of default specified in section 365(b)(1)(A) of the Bankruptcy Code.

30. The assignments of each of the Assumable Executory Contracts are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

31. Entry by GM into the Deferred Termination Agreements with accepting dealers is hereby approved. Executed Deferred Termination Agreements represent valid and binding contracts, enforceable in accordance with their terms.

32. Entry by GM into the Participation Agreements with accepting dealers is hereby approved and the offer by GM of entry into the Participation Agreements and entry into the Participation Agreements was appropriate and not the product of coercion. The Court makes no finding as to whether any specific provision of any Participation Agreement governing the obligations of Purchaser and its dealers is enforceable under applicable provisions of state law. Any disputes that may arise under the Participation Agreements shall be adjudicated on a case by case basis in an appropriate forum other than this Court.

33. Nothing contained in the preceding two paragraphs shall impact the authority of any state or of the federal government to regulate Purchaser subsequent to the Closing.

34. Notwithstanding any other provision in the MPA or this Order, no assignment of any rights and interests of the Debtors in any federal license issued by the Federal Communications Commission ("**FCC**") shall take place prior to the issuance of FCC regulatory approval for such assignment pursuant to the Communications Act of 1934, and the rules and regulations promulgated thereunder.

TPC Property

35. The TPC Participation Agreement and the other TPC Operative Documents are financing transactions secured to the extent of the TPC Value (as hereinafter defined) and shall be Retained Liabilities.

36. As a result of the Debtors' interests in the TPC Property being transferred to the Purchaser free and clear of all liens, claims, interests, and encumbrances (other than Permitted Encumbrances), including, without limitation, the TPC Lenders' Liens and Claims, pursuant to section 363(e) of the Bankruptcy Code, the TPC Lenders shall have an allowed secured claim in a total amount equal to the fair market value of the TPC Property on the Commencement Date under section 506 of the Bankruptcy Code (the "**TPC Value**"), as determined at a valuation hearing conducted by this Court or by mutual agreement of the Debtors, the Purchaser, and the TPC Lenders (such claim, the "**TPC Secured Claim**"). Either the Debtors, the Purchaser, the TPC Lenders, or the Creditors' Committee may file a motion with this Court to determine the TPC Value on twenty (20) days notice.

37. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection for the TPC Secured Claim and for the sole benefit of the TPC Lenders, at the Closing or as soon as commercially practicable thereafter, but in any event not later than five (5) business days after the Closing, the Purchaser shall place $90,700,000 (the "**TPC Escrow Amount**") in cash into an interest-bearing escrow account (the "**TPC Escrow Account**") at a financial institution selected by the Purchaser and acceptable to the other parties (the "**Escrow Bank**"). Interest earned on the TPC Escrow Amount from the date of deposit through the date of the disposition of the proceeds of such account (the "**TPC Escrow Interest**") will follow principal, such that interest earned on the amount of cash deposited into the TPC Escrow Account equal to the TPC Value shall be paid to the TPC Lenders and interest earned on the balance of the TPC Escrow Amount shall be paid to the Purchaser.

38. Promptly after the determination of the TPC Value, an amount of cash equal to the TPC Secured Claim plus the TPC Lenders' pro rata share of the TPC Escrow Interest shall be released from the TPC Escrow Account and paid to the TPC Lenders (the "**TPC**

Payment") without further order of this Court. If the TPC Value is less than $90,700,000, the TPC Lenders shall have, in addition to the TPC Secured Claim, an aggregate allowed unsecured claim against GM's estate equal to the lesser of (i) $45,000,000 and (ii) the difference between $90,700,000 and the TPC Value (the "**TPC Unsecured Claim**").

39. If the TPC Value exceeds $90,700,000, the TPC Lenders shall be entitled to assert a secured claim against GM's estate to the extent the TPC Lenders would have an allowed claim for such excess under section 506 of the Bankruptcy Code (the "**TPC Excess Secured Claim**"); *provided, however*, that any TPC Excess Secured Claim shall be paid from the consideration of the 363 Transaction as a secured claim thereon and shall not be payable from the proceeds of the Wind-Down Facility; *and provided further, however,* that the Debtors, the Creditors' Committee, and all parties in interest shall have the right to contest the allowance and amount of the TPC Excess Secured Claim under section 506 of the Bankruptcy Code (other than to contest the TPC Value as previously determined by the Court). All parties' rights and arguments respecting the determination of the TPC Secured Claim are reserved; *provided, however*, that in consideration of the settlement contained in these paragraphs, the TPC Lenders waive any legal argument that the TPC Lenders are entitled to a secured claim equal to the face amount of their claim under section 363(f)(3) or any other provision of the Bankruptcy Code solely as a matter of law, including, without limitation, on the grounds that the Debtors are required to pay the full face amount of the TPC Lenders' secured claims in order to transfer, or as a result of the transfer of, the TPC Property to the Purchaser. After the TPC Payment is made, any funds remaining in the TPC Escrow Account plus the Purchasers' pro rata share of the TPC Escrow Interest shall be released and paid to the Purchaser without further order of this Court. Upon the receipt of the TPC Payment by the TPC Lenders, other than any right to payment from GM on account of the TPC Unsecured Claim and the TPC Excess Secured Claim, the TPC

Lenders' Claims relating to the TPC Property shall be deemed fully satisfied and discharged, including, without limitation, any claims the TPC Lenders might have asserted against the Purchaser relating to the TPC Property, the TPC Participation Agreement, or the TPC Operative Documents. For the avoidance of doubt, any and all claims of the TPC Lenders arising from or in connection with the TPC Property, the TPC Participation Agreement, or the TPC Operative Documents shall be payable solely from the TPC Escrow Account or GM and shall be nonrecourse to the Purchaser.

40. The TPC Lenders shall not be entitled to payment of any fees, costs, or expenses (including legal fees) except to the extent that the TPC Value results in a TPC Excess Secured Claim and is thereby oversecured under the Bankruptcy Code and such claim is allowed by the Court as a secured claim under section 506 of the Bankruptcy Code.

41. In connection with the foregoing, and pursuant to Section 11.2 of the TPC Trust Agreement, GM, as the sole Certificate Holder and Beneficiary under the TPC Trust, together with the consent of GM as the Lessee, effective as of the date of the Closing, (a) exercises its election to terminate the TPC Trust and (b) in connection therewith, assumes all of the obligations of the TPC Trust and TPC Trustee under or contemplated by the TPC Operative Documents to which the TPC Trust or TPC Trustee is a party and all other obligations of the TPC Trust or TPC Trustee incurred under the TPC Trust Agreement (other than obligations set forth in clauses (i) through (iii) of the second sentence of Section 7.1 of the TPC Trust Agreement).

42. As a condition precedent to the 363 Transaction, in connection with the termination of the TPC Trust, effective as of the date of the Closing, all of the assets of the TPC Trust (the "**TPC Trust Assets**") shall be distributed to GM, as sole Certificate Holder and beneficiary under the TPC Trust, including, without limitation, the following:

(i) Industrial Development Revenue Real Property Note (General Motors Project) Series 1999-I, dated November 18, 1999, in the principal amount of $21,700,000, made by the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, to PVV Southpoint 14, LLC, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds (the "**TPC Tennessee Ground Lease**");

(ii) Real Property Lease Agreement dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Lessor, and PVV Southpoint 14, LLC, as Lessee, recorded as JW1262 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Real Property Lease dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1267 in the records of the Shelby County Register of Deeds;

(iii) Deed of Trust dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Grantor, in favor of Mid-South Title Corporation, as Trustee, for the benefit of PVV Southpoint 14, LLC, Beneficiary, recorded as JW1263 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds;

(iv) Assignment of Rents and Lease dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Assignor, and PVV Southpoint 14, LLC, as Assignee, recorded as JW1264 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds;

(v) The Tennessee Master Lease (as defined in the TPC Participation Agreement);

(vi) A certain tract of land being known and designated as Lot 1, as shown on a Subdivision Plat entitled "Final Plat – Lot 1, Whitemarsh Associates, LLC Property," which Plat is recorded among the Land Records of Baltimore County in Plat Book SM No. 71 at folio 144, Maryland, together with a certain tract of land being known and designated as "1.1865 Acre of Highway Widening," as shown on a Subdivision Plat entitled "Final Plat – Lot 1, Whitemarsh Associates, LLC Property," which Plat is recorded among the Land Records of Baltimore County in Plat Book SM No. 71 at folio 144, Baltimore, Maryland, saving and excepting from the above described property all that land conveyed to the State of Maryland to the use of the State Highway Administration of the Department of Transportation dated November 24, 2003, and

recorded among the Land Records of Baltimore County in Liber 19569, folio 074, Maryland, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way, including, without limitation, those easements benefiting Parcel I set forth in the Declaration and Agreement Respecting Easements, Restrictions and Operations, between the TPC Trust, GM, and Whitemarsh Associates, LLC, recorded among the Land Records of Baltimore County in Liber 14019, folio 430, as amended (collectively, the "**Maryland Property**");

(vii) alternatively to the transfer of a direct interest in the Maryland Property pursuant to item (vi) above, if such documents are still extant, the following interests shall be transferred: (a) Ground Lease Agreement dated as of September 8, 1999, between the TPC Trustee of the TPC Trust. as lessor, and Maryland Economic Development Corporation, as lessee, recorded among the Land Records of Baltimore County in Liber 14019, folio 565, (b) Sublease Agreement dated as of September 8, 1999, between the Maryland Economic Development Corporation, as sublessor, and the TPC Trustee of the TPC Trust, as sublessee, recorded among the Land Records of Baltimore County in Liber 14019, folio 589, together with (c) all agreements, loan agreements, notes, rights, obligations, and interests held by the TPC Trustee of the TPC Trust and/or issued by the TPC Trustee of the TPC Trust in connection therewith; and

(viii) The Maryland Master Lease (as defined in the TPC Participation Agreement).

43. As a result of the distribution of the TPC Trust Assets, effective as of the date of the Closing, title to the leasehold interest of the TPC Trustee of the TPC Trust under the TPC Tennessee Ground Lease and the lessor's interest under the Tennessee Master Lease shall be held by GM, as are the lessor's and lessee's interests under the Tennessee Master Lease, and as permitted by the TPC Trust Agreement, the Tennessee Master Lease shall hereby be terminated, and GM shall succeed to all rights of the lessor thereunder to the property leased thereby, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way.

44. As a result of the distribution of the TPC Trust Assets, effective as of the date of the Closing, title to the Maryland Property, the lessor's and lessee's interests under the Maryland Master Lease shall be held by GM, and as permitted by the TPC Trust Agreement, the Maryland Master Lease shall hereby be terminated, and GM shall succeed to all rights of the

lessor thereunder to the property leased thereby, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way.

45. All of the TPC Trust Assets and the TPC Property are Purchased Assets under the MPA and shall be transferred by GM pursuant thereto to the Purchaser free and clear of all liens, claims, encumbrances, and interests (other than Permitted Encumbrances), including, without limitation, any liens, claims, encumbrances, and interests of the TPC Lenders. To the extent any of the TPC Trust Assets are executory contracts and unexpired leases, they shall be Assumable Executory Contracts, which shall be assumed by GM and assigned to Purchaser pursuant to section 365 of the Bankruptcy Code and the Sale Procedures Order.

Additional Provisions

46. 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.

47. Effective upon the Closing and except as may be otherwise provided by stipulation filed with or announced to the Court with respect to a specific matter or an order of the Court, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding against the Purchaser, its present or contemplated members or shareholders, its successors and assigns, or the Purchased Assets, with respect to any (i) claim against the Debtors other than Assumed Liabilities, or (ii) successor or transferee liability of the Purchaser for any of the Debtors, including, without limitation, the following actions: (a) commencing or continuing any action or other proceeding pending or threatened against the Debtors as against the Purchaser, or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Debtors as against the Purchaser, its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (c) creating, perfecting, or enforcing any lien, claim, interest, or encumbrance against the Debtors as against the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (d) asserting any setoff, right of subrogation, or recoupment of any kind for any obligation of any of the Debtors as against any obligation due the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (e) commencing or continuing any action, in any manner or place, that does not comply, or is inconsistent with, the provisions of this Order or other orders of this Court, or

the agreements or actions contemplated or taken in respect thereof; or (f) revoking, terminating, or failing or refusing to renew any license, permit, or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with such assets. Notwithstanding the foregoing, a relevant taxing authority's ability to exercise its rights of setoff and recoupment are preserved.

48. 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.

49. The Purchaser has given fair and substantial consideration under the MPA for the benefit of the holders of liens, claims, encumbrances, or other interests. The consideration provided by the Purchaser for the Purchased Assets under the MPA is greater than the liquidation value of the Purchased Assets and shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

50. The consideration provided by the Purchaser for the Purchased Assets under the MPA is fair and reasonable, and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

51. If there is an Agreed G Transaction (determined no later than the due date, with extensions, of GM's tax return for the taxable year in which the 363 Transaction occurs), (i) the MPA shall, and hereby does, constitute a "plan" of GM and the Purchaser solely for purposes of sections 368 and 354 of the Tax Code, and (ii) the 363 Transaction, as set forth in the MPA, and the subsequent liquidation of the Sellers, are intended to constitute a tax reorganization of GM pursuant to section 368(a)(1)(G) of the Tax Code.

52. This Order (a) shall be effective as a determination that, except for the Assumed Liabilities, at Closing, all liens, claims, encumbrances, and other interests of any kind or nature whatsoever existing as to the Sellers with respect to the Purchased Assets prior to the Closing (other than Permitted Encumbrances) have been unconditionally released and terminated, and that the conveyances described in this Order have been effected, and (b) shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets.

53. Each and every federal, state, and local governmental agency or department is authorized to accept any and all documents and instruments necessary or appropriate to consummate the transactions contemplated by the MPA.

54. Any amounts that become payable by the Sellers to the Purchaser pursuant to the MPA (and related agreements executed in connection therewith, including, but not limited to, any obligation arising under Section 8.2(b) of the MPA) shall (a) constitute administrative expenses of the Debtors' estates under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code and (b) be paid by the Debtors in the time and manner provided for in the MPA without further Court order.

55. The transactions contemplated by the MPA are undertaken by the Purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and were negotiated by the parties at arm's length, and, accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the 363 Transaction shall not affect the validity of the 363 Transaction (including the assumption and assignment of any of the Assumable Executory Contracts and the UAW Collective Bargaining Agreement), unless such authorization is duly stayed pending such appeal. The Purchaser is a purchaser in good faith of the Purchased Assets and the Purchaser and its agents, officials, personnel, representatives, and advisors are entitled to all the protections afforded by section 363(m) of the Bankruptcy Code.

56. The Purchaser is assuming the obligations of the Sellers pursuant to and subject to conditions and limitations contained in their express written warranties, which were delivered in connection with the sale of vehicles and vehicle components prior to the Closing of the 363 Transaction and specifically identified as a "warranty." The Purchaser is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs, and point of purchase materials. Notwithstanding the foregoing, the Purchaser has assumed the

Sellers' obligations under state "lemon law" statutes, which require a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty, as defined in the applicable statute, after a reasonable number of attempts as further defined in the statute, and other related regulatory obligations under such statutes.

57. Subject to further Court order and consistent with the terms of the MPA and the Transition Services Agreement, the Debtors and the Purchaser are authorized to, and shall, take appropriate measures to maintain and preserve, until the consummation of any chapter 11 plan for the Debtors, (a) the books, records, and any other documentation, including tapes or other audio or digital recordings and data in, or retrievable from, computers or servers relating to or reflecting the records held by the Debtors or their affiliates relating to the Debtors' business, and (b) the cash management system maintained by the Debtors prior to the Closing, as such system may be necessary to effect the orderly administration of the Debtors' estates.

58. The Debtors are authorized to take any and all actions that are contemplated by or in furtherance of the MPA, including transferring assets between subsidiaries and transferring direct and indirect subsidiaries between entities in the corporate structure, with the consent of the Purchaser.

59. Upon the Closing, the Purchaser shall assume all liabilities of the Debtors arising out of, relating to, in respect of, or in connection with workers' compensation claims against any Debtor, except for workers' compensation claims against the Debtors with respect to Employees residing in or employed in, as the case may be as defined by applicable law, the states of Alabama, Georgia, New Jersey, and Oklahoma.

60. During the week after Closing, the Purchaser shall send an e-mail to the Debtors' customers for whom the Debtors have usable e-mail addresses in their database, which will provide information about the Purchaser and procedures for consumers to opt out of being

contacted by the Purchaser for marketing purposes. For a period of ninety (90) days following the Closing Date, the Purchaser shall include on the home page of GM's consumer web site (www.gm.com) a conspicuous disclosure of information about the Purchaser, its procedures for consumers to opt out of being contacted by the Purchaser for marketing purposes, and a notice of the Purchaser's new privacy statement. The Debtors and the Purchaser shall comply with the terms of established business relationship provisions in any applicable state and federal telemarketing laws. The Dealers who are parties to Deferred Termination Agreements shall not be required to transfer personally identifying information in violation of applicable law or existing privacy policies.

61. Nothing in this Order or the MPA releases, nullifies, or enjoins the enforcement of any Liability to a governmental unit under Environmental Laws or regulations (or any associated Liabilities for penalties, damages, cost recovery, or injunctive relief) that any entity would be subject to as the owner, lessor, or operator of property after the date of entry of this Order. Notwithstanding the foregoing sentence, nothing in this Order shall be interpreted to deem the Purchaser as the successor to the Debtors under any state law successor liability doctrine with respect to any Liabilities under Environmental Laws or regulations for penalties for days of violation prior to entry of this Order. Nothing in this paragraph should be construed to create for any governmental unit any substantive right that does not already exist under law.

62. Nothing contained in this Order or in the MPA shall in any way (i) diminish the obligation of the Purchaser to comply with Environmental Laws, or (ii) diminish the obligations of the Debtors to comply with Environmental Laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. The definition of Environmental Laws in the MPA shall be amended to delete the words "in existence on the date of the Original Agreement." For purposes of clarity, the exclusion of asbestos liabilities in

section 2.3(b)(x) of the MPA shall not be deemed to affect coverage of asbestos as a Hazardous Material with respect to the Purchaser's remedial obligations under Environmental Laws.

63. No law of any state or other jurisdiction relating to bulk sales or similar laws shall apply in any way to the transactions contemplated by the 363 Transaction, the MPA, the Motion, and this Order.

64. The Debtors shall comply with their tax obligations under 28 U.S.C. § 960, except to the extent that such obligations are Assumed Liabilities.

65. Notwithstanding anything contained in their respective organizational documents or applicable state law to the contrary, each of the Debtors is authorized and directed, upon and in connection with the Closing, to change their respective names, and any amendment to the organizational documents (including the certificate of incorporation) of any of the Debtors to effect such a change is authorized and approved, without Board or shareholder approval. Upon any such change with respect to GM, the Debtors shall file with the Court a notice of change of case caption within two (2) business days of the Closing, and the change of case caption for these chapter 11 cases shall be deemed effective as of the Closing.

66. The terms and provisions of the MPA and this Order shall inure to the benefit of the Debtors, their estates, and their creditors, the Purchaser, and their respective agents, officials, personnel, representatives, and advisors.

67. The failure to specifically include any particular provisions of the MPA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the MPA be authorized and approved in its entirety, except as modified herein.

68. The MPA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification,

amendment, or supplement does not have a material adverse effect on the Debtors' estates. Any such proposed modification, amendment, or supplement that does have a material adverse effect on the Debtors' estates shall be subject to further order of the Court, on appropriate notice.

69. The provisions of this Order are nonseverable and mutually dependent on each other.

70. As provided in Fed.R.Bankr.P. 6004(h) and 6006(d), this Order shall not be stayed for ten days after its entry, and instead shall be effective as of 12:00 noon, EDT, on Thursday, July 9, 2009. The Debtors and the Purchaser are authorized to close the 363 Transaction on or after 12:00 noon on Thursday, July 9. Any party objecting to this Order must exercise due diligence in filing any appeal and pursuing a stay or risk its appeal being foreclosed as moot in the event Purchaser and the Debtors elect to close prior to this Order becoming a Final Order.

Deleted: Pursuant to Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed for ten days after its entry and shall be effective immediately upon entry, and the Debtors and the Purchaser are authorized to close the 363 Transaction immediately upon entry of this Order.

71. This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the MPA, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, including the Deferred Termination Agreements, in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchased Assets to the Purchaser, (b) compel delivery of the purchase price or performance of other obligations owed by or to the Debtors, (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, (e) protect the Purchaser against any of the Retained Liabilities or the assertion of any lien, claim, encumbrance, or other interest, of any kind or nature whatsoever, against the Purchased Assets, and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements. The Court does not retain jurisdiction to hear disputes arising in connection with the application of the Participation

Agreements, stockholder agreements or other documents concerning the corporate governance of the Purchaser, and documents governed by foreign law, which disputes shall be adjudicated as

necessary under applicable law in any other court or administrative agency of competent jurisdiction.

Dated: New York, York
July 5, 2009

s/Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re: OnStar Contract Litigation

Case No. 2:07-MDL-01867

Honorable Sean F. Cox

_____/

OPINION & ORDER
GRANTING IN PART AND DENYING IN PART
PLAINTIFFS' MOTION FOR LEAVE TO FILE A THIRD AMENDED COMPLAINT

This matter is currently before the Court on Plaintiffs' Motion for Leave to File a Third Master Amended Complaint. Plaintiffs seek to file an amended complaint in order to: 1) add two additional plaintiffs as proposed class representatives; and 2) add NewGM as a Defendant and assert express warranty claims against NewGM, based on warranties that it allegedly assumed in bankruptcy proceedings. The parties have briefed the issues and the Court heard oral argument on January 6, 2011.

As explained below, the Court shall DENY THE MOTION IN PART AND GRANT THE MOTION IN PART. The Court shall DENY Plaintiffs' request for leave to assert warranty claims against NewGM. The Court shall GRANT the motion to the extent that the Court shall allow Plaintiffs to add two additional Plaintiffs as proposed class representatives.

BACKGROUND

Buyers and lessees of automobiles equipped with OnStar telematics equipment filed prospective class action complaints against four automobile manufacturers and OnStar Corporation ("OnStar"), asserting consumer protection act and warranty claims. Starting with a

Transfer Order issued on August 22, 2007, the Judicial Panel on Multidistrict Litigation consolidated the various actions before this Court for pretrial proceedings.

Plaintiffs filed their "Master Amended Class Action Complaint" ("MAC") on February 25, 2008, asserting claims against the following Defendants: 1) General Motors Corporation ("GM"); 2) Volkswagen of America ("VW"); 3) American Honda Motor Company ("Honda"); 4) Subaru of America ("Subaru"); and 5) OnStar.

In response to the MAC, Defendants filed motions to dismiss. On February 19, 2009, this Court issued an "Opinion & Order Granting In Part And Denying In Part Defendants' Motions To Dismiss." (D.E. No. 100). Following that Opinion & Order, Plaintiffs obtained leave to file a Second Master Amended Class Action Complaint ("SMAC"), which was filed on April 30, 2009.

After the SMAC was filed, OnStar filed a Motion to Compel Arbitration, asking the Court to compel Plaintiffs to arbitrate Counts I-A, VI and VII of the SMAC. Those counts involve "lost pre-paid minutes" purchased by Plaintiffs. OnStar asserted, and this Court agreed, that the OnStar T&C's arbitration provision requires arbitration of the pre-paid minutes claims. (*See* D.E. No. 156). Accordingly, the lost pre-paid minutes claims were dismissed.

On or about June 1, 2009, GM filed for bankruptcy. All claims against GM ("Old GM") in this action have been stayed since that time.

The bankruptcy proceedings have been taking place in the United States Bankruptcy Court for the Southern District of New York. In the bankruptcy proceedings, NewGM acquired substantially all of the assets of Old GM. The Bankruptcy Court approved the sale and defined the scope and limitations of New GM's responsibilities for Old GM's liabilities in an "Order (I)

Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (III) Granting Related Relief" ("the Sale Approval Order") which was entered in July 2009.

More than a year later, on August 2, 2010, Plaintiffs filed the instant motion seeking to file a Third Master Amended Complaint in order to add New GM as a Defendant and assert express warranty claims against it. Plaintiffs' proposed Third Master Amended Complaint alleges:

> 270. **GM breached its express warranties** to Plaintiff and all other Class members to repair and/or replace OnStar equipment so that it is in good operational condition and repair and suitable for its use in providing OnStar telematics services.
> 271. GM's breach of these express warranties proximately caused damages to Plaintiffs and members of the class.
> 272. **Pursuant to Section 10(b) of the Purchase Agreement and the Bankruptcy Court's Order, plaintiff's claims against GM are "Assumed Liabilities."**
> 273. By reason of the aforesaid, **NewGM is liable to plaintiffs and the Class for GM's breach of its express warranties** to Plaintiffs and the Class.

(Pls.' Proposed TMAC at ¶¶ 261-273) (emphasis added).

ANALYSIS

Plaintiffs filed their motion seeking leave to file a Third Master Amended Complaint ("TMAC") on August 2, 2010. Plaintiffs seek leave to file a TMAC in order to do two things: 1) include two additional proposed class representatives; and 2) assert claims against NewGM.

A. The Court Shall Grant Plaintiffs' Request To Include Two Additional Named Plaintiffs As Proposed Class Representatives.

Plaintiffs seek to file an amended complaint in order to include two additional proposed class representatives: 1) Jason Smith (a New York resident who purchased a Subaru with OnStar); and 2) Armand Pepper (a Florida resident who purchased a vehicle made by Honda with OnStar).

Smith was the sole named Plaintiff in the action transferred here from New York. Through oversight, Plaintiffs neglected to include him as a named plaintiff in the SMAC. Nevertheless, the parties understood him to be a plaintiff, and proposed class representative, and discovery was conducted as to Smith during the class certification discovery. Thus, adding Smith is essentially a "house-keeping matter." Subaru did not file a brief opposing Plaintiffs' motion. Plaintiffs state that Subaru does not oppose the TMAC. (*See* Pls.' Reply Br. at 3 n.3).

Although Honda does not believe that adding Pepper as a named Plaintiff warrants the filing of new complaint, Honda does not oppose adding him as a named Plaintiff, providing that it is able to take discovery from Pepper, which Plaintiffs agree it may do.

OnStar also does not oppose the addition of Pepper and Smith as named Plaintiffs, but asserts that could be done with a supplement that would simply add the allegations as to these two individuals to the SMAC. (*See* OnStar's Br. at 2 n.2).

The Court finds that Plaintiffs should be permitted to add Smith and Pepper as named Plaintiffs and proposed class representatives. Given that an automatic stay is currently in place as to one of the named Defendants in the SMAC, and the fact that Plaintiffs do not seek to add or materially change the allegations as to Defendants, the Court agrees that the filing of a Third Master Amended Complaint is not the best course of action. The Court directs the parties to meet and confer in order to submit to the Court a stipulated order to accomplish Plaintiffs' goal of adding Smith and Pepper as named Plaintiffs and proposed class representatives.

B. The Court Shall Deny Plaintiffs' Request To Assert Warranty Claims Against NewGM In This Action.

Plaintiffs also seek to assert class action claims against NewGM. Specifically, they seek to assert one claim against NewGM – a breach of express warranty claim. (*See* Count VIII of proposed TMAC) They state the following as to the proposed claim against NewGM: "The addition of a new Defendant – New GM – is proper because NewGM has assumed, through a purchase agreement and by order of a 2nd Circuit Bankruptcy Court, GM's express warranty obligations. Plaintiffs' allegations against GM for breach of express warranty are now properly attributable to NewGM." (Pls.' Br. at 2).

OnStar, Honda and VW oppose Plaintiffs' motion seeking to assert claims against NewGM at this late stage of the litigation.

OnStar notes that NewGM is an entirely new and distinct entity from GM and NewGM did not manufacture, market or sell any of the vehicles at issue in this litigation. Defendants assert that, in essence Plaintiffs are seeking "to assert successor liability against NewGM with respect to claims they purport to possess against Old GM, which remains in an ongoing Chapter

11 proceeding in the Bankruptcy Court in the South District of New York." (OnStar's Br. at 2). OnStar further states that "NewGM (which is separately represented with respect to the issues in this case), maintains that it did not assume and is not the successor to any asserted liabilities of Old GM, and has so informed Plaintiffs' counsel. To the extent Plaintiffs dispute New GM's position, that issue is within the exclusive jurisdiction of the Bankruptcy Court to interpret its Sale Approval Order." (*Id.*). OnStar and the other Defendants also oppose the motion because "the late addition of New GM and the ensuing litigation in the Bankruptcy Court would unjustifiably delay this case to the prejudice of all parties." (*Id.* at 2).

This Court shall deny Plaintiffs leave to file a TMAC to assert express warranty claims against NewGM for numerous reasons, which include: 1) the express warranty claims Plaintiffs seek to add against NewGM appear to be barred under the plain language of the Bankruptcy Court's Order; 2) the Bankruptcy Court has jurisdiction to resolve any disputes as to the liabilities that were assumed by NewGM; and 3) Plaintiffs' undue delay in attempting to assert such claims would prejudice Defendants.

First, the express warranty claims that Plaintiffs seek to assert against NewGM appear to be barred by the plain language of the Bankruptcy Court's Sale Approval Order. Notably, Plaintiffs's proposed TMAC seeks to hold NewGM liable for Old GM's alleged breaches of its express warranties:

> 273. By reason of the aforesaid, **NewGM is liable to plaintiffs and the Class for GM's breach of its express warranties** to Plaintiffs and the Class.

(Pls.' Proposed TMAC at ¶¶ 261-273). Paragraph 7 of the Sale Approval Order, however, provides that the assets acquired by NewGm were transferred "free and clear of all liens, claims,

encumbrances, and other interests of any kind or nature whatsoever . . . including rights or claims based on any successor or transferee liability, and all such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability" (Docket Entry No. 255-2 at ¶ 7). Moreover, the Sale Approval Order also provides:

> Except for the Assumed Liabilities expressly set forth in the MPA, **none** of the Purchaser, its present or contemplated members or shareholders, it successors or assigns . . . **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.**

(Sale Approval Order at ¶ 46) (emphasis added).

Second, any dispute over whether the express warranty claims Plaintiffs seek to assert against NewGM are "assumed liabilities" under the Bankruptcy Court's Orders is a dispute that should be resolved in the Bankruptcy Court. The Sale Approval Order expressly provides that the Bankruptcy Court has "exclusive jurisdiction" to enforce and implement there terms and provisions of the Sale Approval Order and the Master Purchase Agreement. That jurisdiction includes resolving any disputes arising under or related to the Master Purchase Agreement and interpreting and enforcing the provisions of the Sale Approval Order. Thus, to the extent that Plaintiffs wish to pursue warranty claims against NewGM, the forum in which to seek to do so is the bankruptcy court.

Third, Plaintiffs waited more than a year after the Sale Approval Order was entered before they sought leave to assert claims against NewGM in this action. During that year, Plaintiffs could have sought authorization from the Bankruptcy Court to pursue the claims at issue, or pursued the claims in bankruptcy court, but chose not to do so. In addition, during that

year significant class certification discovery and motion practice was conducted in this case. If the Court were to allow Plaintiffs to bring in a new Defendant at this late date, the Court would need to reopen class certification discovery, delay rulings on class certification, allow the new Defendant the opportunity to file its own motion to dismiss, and make a conflicts of law determination as to the new defendant. All of those actions would considerably delay this case – which has already been pending more than 3 years. The other Defendants would also be prejudiced as they would incur attorney fees and costs associated with the above actions.

CONCLUSION & ORDER

For the reasons above, IT IS ORDERED that Plaintiffs' Motion for Leave to File a Third Master Amended Complaint is GRANTED IN PART AND DENIED IN PART.

The motion is GRANTED to the extent that Plaintiffs shall be permitted to add Smith and Pepper as named Plaintiffs and proposed class representatives. As stated in this Opinion & Order, the Court directs the parties to meet and confer in order to submit to the Court a stipulated order to accomplish Plaintiffs' goal of adding Smith and Pepper as named Plaintiffs and proposed class representatives.

The motion is DENIED to the extent that the Court DENIES Plaintiffs' request for leave to assert claims against NewGM.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: January 25, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on January 25, 2011, by electronic and/or ordinary mail.

S/Jennifer Hernandez
Case Manager

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. TRUSKY on behalf of Herself and all others similarly situated,

Plaintiff,

vs.

GENERAL MOTORS COMPANY

Defendant.

Case No. 2:11-cv-12815-SFC-LJM

Honorable Sean F. Cox

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STIPULATED ORDER FOR EXTENSION OF TIME

Plaintiff and Defendant hereby stipulate to the entry of this Order extending the time until August 11, 2011, for Defendant to respond to or otherwise answer Plaintiff's Complaint.

IT IS HEREBY ORDERED: Based on the stipulation of the parties, Defendant is granted an extension of time until August 11, 2011, to respond to or otherwise answer Plaintiff's Complaint.

Dated: August 1, 2011

s/ Sean F. Cox
U. S. District Judge

Stipulated to by:

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Dated: July 25, 2011

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UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. TRUSKY on behalf of Herself and all others similarly situated,

Plaintiff,

vs.

GENERAL MOTORS COMPANY

Defendant.

Case No. 2:11-cv-12815-SFC-LJM

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DEFENDANT'S MOTION TO DISMISS

Defendant, General Motors Company ("New GM"), by and through its attorneys, Dykema Gossett PLLC, seeks dismissal of the Complaint pursuant to Fed.R.Civ.P. 12(b). In this case, Plaintiff seeks to assert claims against New GM relating to vehicles manufactured and sold by Motors Liquidation Company f/k/a General Motors Corporation ("Old GM") prior to Old GM's bankruptcy. The Complaint purports to be based on a responsibility New GM assumed from Old GM to administer certain express, limited warranties according to their explicit terms and limitations. However, the claims asserted in the Complaint and the relief sought by Plaintiff are manifestly and unambiguously outside the scope of the warranty terms, premised on conduct of Old GM, and therefore constitute a violation of the Order of the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") pursuant to which New GM acquired its assets and assumed specific liabilities only. The adjudication of that issue is within the exclusive jurisdiction of the Bankruptcy Court and the Complaint should be dismissed for that reason alone.

Alternatively, if an attempt is made to reform the Complaint by disregarding claims and allegations that implicate Bankruptcy Court jurisdiction (such that it is interpreted as a prayer for repairs within the scope of the assumed express warranty covering Plaintiff's vehicle), the Complaint is subject to dismissal because it fails to state a claim under that warranty.

As support for its Motion, New GM relies on Fed.R.Civ. P. 12(b) and the facts and law in the attached Brief.

Counsel for Defendant sought concurrence from Plaintiff's counsel pursuant to L.R. 7.1 but concurrence was not forthcoming.

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Dated: August 11, 2011

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. TRUSKY on behalf of Herself and all others similarly situated,

Plaintiff,

vs.

GENERAL MOTORS COMPANY

Defendant.

Case No. 2:11-cv-12815-SFC-LJM

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DEFENDANT'S BRIEF IN SUPPORT OF MOTION TO DISMISS

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I. INTRODUCTION

Plaintiff seeks to hold General Motors Company ("New GM")[1] responsible for the "liabilities" of Motors Liquidation Company f/k/a General Motors Corporation ("Old GM") in connection with Old GM's design, assembly, and sale of 2007 & 2008 model year Chevrolet Impalas. Plaintiff alleges that a design defect in her Impalas' rear wheel spindle rods led to increased wear and tear on the vehicle's tires.

Plaintiff's Complaint should be dismissed because her attempt in this Court to hold New GM responsible for Old GM's liabilities violates the exclusive jurisdiction of the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") preserved in the Sale Approval Order[2] under which New GM acquired its assets and assumed specific liabilities only. Pursuant to the Sale Approval Order, New GM's warranty obligations for vehicles sold by Old GM are limited to the express terms and conditions in the Old GM written warranties on a going-forward basis. The warranty requires New GM to repair a defect in "materials and workmanship" if such a defect manifested itself and the vehicle was presented to a New GM dealer within the time and mileage limitations of the warranty. New GM did not assume responsibility for Old GM's design choices, conduct, or alleged breaches of liability under the warranty, and its terms expressly preclude money damages. To the extent there is legitimate

[1] Although beyond the scope of this motion, Plaintiff has named the wrong party. The entity which acquired assets from Old GM and simultaneously assumed certain responsibilities of Old GM is General Motors LLC f/k/a General Motors Company. The entity currently known as General Motors Company is the ultimate parent of General Motors LLC, but was formed later as part of a subsequent corporate reorganization. For the purposes of this motion, in accepting the allegations of the Complaint as true, New GM has disregarded this distinction.

[2] The "Sale Approval Order" is the Order (i) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (ii) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases In Connection with the Sale; and (iii) Granting Related Relief," entered on July 5, 2009, a copy of which is annexed hereto as Exhibit A.

dispute on any of these points, under the express terms of the Sale Approval Order, the Bankruptcy Court retained exclusive jurisdiction over any dispute regarding the scope of New GM's limited obligations assumed pursuant to the Sale Approval Order. Plaintiff's attempt to plead a claim against New GM on a successor liability theory is a direct violation of the terms of the Sale Approval Order (including the injunction provisions contained therein), and her attempt to litigate that claim in this Court violates the exclusive jurisdiction preserved by the Bankruptcy Court pursuant to the Sale Approval Order under which only limited, specific liabilities were assumed by New GM.

Alternatively, assuming *arguendo* that Plaintiff alleged only that New GM (not Old GM) failed its assumed obligation under the terms and conditions of Old GM's express warranty (an assumption that requires the Court to disregard most of the Complaint, including the prayer for monetary damages), she nonetheless fails to state a claim.

In either case, the Court should dismiss the Complaint.

II. THE BANKRUPTCY OF OLD GM

On June 1, 2009, Old GM commenced a voluntary case under chapter 11 of title 11 of the United States Code in the Bankruptcy Court. On July 10, 2009, New GM acquired substantially all of the assets of Old GM in a transaction executed under the jurisdiction and pursuant to approval of the 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, New GM did not assume the liabilities of Old GM. Rather, the scope and limitations of New GM's responsibilities are defined in the Sale Approval Order, which is a final binding order and not subject to appeal. *See* Sale Approval Order, *see also*, *In Re: OnStar Contract Litig.*, Case No. 2:07-MDL-01867, Opinion & Order Granting in Part and

Denying In Part Plaintiffs' Motion For Leave To File A Third Amended Complaint, p. 3, a copy of which is annexed hereto as Exhibit B.

One purpose of the Sale Approval Order and the Amended and Restated Master Sale and Purchase Agreement entered into between Old GM and New GM ("ARMSPA") which the Sale Approval Order, approved, was to expressly cut off successor and derivative liability claims against New GM based on Old GM's acts or omissions. This clear finding of no successor liability is typical of bankruptcy asset sale orders and allows the debtor's estate (here, Old GM) to benefit by having buyers (New GM) pay an enhanced premium price for the debtor's assets. This public policy of the Bankruptcy Code is the basis for permitting such no "successor liability" sales pursuant to Section 363(f) of the Bankruptcy Code.

To accomplish this goal, the Sale Approval Order provides that, with the exceptions of certain liabilities expressly assumed under the relevant agreements, the assets acquired by New GM were transferred "free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever. . . including rights or claims based on any successor or transferee liability. . ." *Id*., ¶7. Moreover, the Sale Approval Order permanently enjoined claimants from attempting to enforce liabilities against New GM *other than Assumed Liabilities*, as follows:

> "[A]ll persons and entities … holding liens, claims and encumbrances, and other interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, against [Old GM] or the Purchased Assets (whether legal or equitable, secured or unsecured, ***matured or unmatured***, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to [Old GM], the Purchased Assets, the operation of the Purchased Assets prior to the Closing … are forever barred, estopped, and permanently enjoined … from asserting against [New GM] … such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability."

Sale Approval Order, ¶ 8 (emphasis added). Even more specifically, paragraph 46 of the Sale Approval Order provides as follows (emphasis added):

> "Except for the Assumed Liabilities expressly set forth in the [ARMSPA] … ***[New GM] … shall [not] 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 [Old GM] … prior to the Closing Date …. Without limiting the foregoing, [New GM] 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 … and products … liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated."

See also Sale Approval Order, ¶ 47 ("Effective upon the Closing … all persons and entities ***are forever prohibited and enjoined from commencing or continuing in any manner any action … against [New GM] … with respect to any (i) claim against [Old GM] other than Assumed Liabilities)*** (emphasis added).

The Bankruptcy Court retained "***exclusive jurisdiction*** to enforce and implement the terms and provisions of [the Sale Approval] Order [and] the [ARMSPA] …, in all respects, including, but not limited to, retaining jurisdiction to … (c) resolve any disputes arising under or related to the [ARMSPA], except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order [and] (e) ***protect [New GM] against any of the [liabilities that it did not expressly assume under the ARMSPA***] …." Sale Approval Order., ¶ 71 (emphasis added).

III. PLAINTIFF'S ALLEGATIONS AND CLAIM

On June 29, 2011, and notwithstanding being aware of the Bankruptcy Case and the Sale Approval Order (*see* Complaint ¶1), including because her counsel has been involved in the *In re OnStar* Litigation, Plaintiff filed this warranty case for economic damages based on an alleged design defect in her Chevrolet Impala. She contends that all "model year 2007 and 2008 Impalas were sold with common defective rear spindle rods that caused and continue to cause wheel misalignment and premature tire wear." Complaint, ¶2. There are no allegations that her

vehicle's spindle rods broke or were manufactured incorrectly; rather the crux of the Complaint is that the spindle rod design leads to unintended consequences in wheel alignment and tire wear.

There are very few allegations related to Plaintiff herself. In paragraphs 9 and 10, she states she is a Pennsylvania resident and purchased her vehicle in February 2008 from a Chevrolet dealer in Forest City, Pennsylvania. Complaint, ¶¶9-10. The next reference is not until paragraph 30, where she claims that "[w]ithin the first year of ownership and within 6000 miles of travel, the Goodyear tires were unserviceable, as the tread had worn so quickly on the tires that they had becomes questionable to use any further." Complaint, ¶30. At that time she presented her vehicle to the dealer, and received a free set of replacement tires and a free wheel alignment. Complaint, ¶31. She does not allege any damages or out-of-pocket costs as a result of this service visit. This occurred some time in 2008 or early 2009, but certainly before the bankruptcy in June 2009. *Id*.

The only other factual allegations specific to Plaintiff are in paragraph 32, where she contends that in November 2010, she "brought her car in for its annual inspection and was informed that the replacement rear tires were worn and would not pass inspection." *Id*. ¶32. She "paid $287.77 for a set of rear replacement tires," and at that time the "car had 24,240 miles on it." *Id*.

She does not allege in the Complaint that she had any interaction with New GM. Indeed, there are no specific factual allegations that New GM – as opposed to Old GM – did anything at all in relation to her vehicle. Because New GM was not formed until mid 2009, it could not have designed, manufactured or sold Plaintiff's 2008 vehicle.

But that does not stop Plaintiff from alleging this logical impossibility. In paragraph 5, for instance, she contends that both "GM" [which is the defendant] and "General Motors

Corporation" [which is Old GM] "manufactured, supplied, promoted and sold model year 2007 and 2008 Chevrolet Impalas with the defective rear spindle rods." Complaint, ¶5. In other instances she refers to Old GM and New GM interchangeably and without making any distinction as to which entity actually did what. *See* Complaint, ¶6 ("through a common and uniform course of conduct, GM and General Motors Corporation, acting individually and collectively . . ."; ¶33 ("Defendant, or General Motors Corporation, delivered to Plaintiff . . . a written warranty"); ¶41 ("Defendant, or General Motors Corporation, failed to disclose . . .").

The best example of her effort to equate New GM with Old GM is her allegation regarding the issuance of a Program Bulletin concerning Impala police vehicles. She contends that in June and July 2008, "Defendant," *i.e.*, ***New GM***, issued bulletins to dealers advising them to replace the spindle rods in 2007 and 2008 Impalas equipped with the police package. Complaint, ¶27. She claims that the bulletins acknowledge a problem with the spindle rods and that it was improper to have replaced them only on police vehicles because there is no functional difference between those vehicles and all other Impalas. *Id*. at ¶29. Even accepting her characterization of the bulletins as true, the problem is that she affirmatively alleges that New GM – the "defendant" in this case – made the decision to issue those bulletins in June 2008 when in fact, the Sale Approval Order had not been entered and New GM had not acquired any assets of Old GM.

Plaintiff's counsel undoubtedly knows that it is logically impossible for New GM to have done certain things alleged in the Complaint and thus, the only way for them to proceed is on a successor liability theory. Plaintiff states as much, albeit without any explanation or support, in paragraph 1 of the Complaint by alleging that New GM "assumed the express warranty ***liabilities*** of [Old GM]." Complaint, ¶1. But that is wrong, or at least so imprecise as to be an irrelevant

statement for current purposes. New GM's assumed "warranty liabilities" were limited to certain defined obligations set by specific terms and conditions that do not encompass the claim asserted by Plaintiff here. New GM did not assume responsibility for Old GM's conduct or design choices. New GM did not assume liability for purported damage claims. New GM agreed only to provide warranty repairs on pre-transaction vehicles "subject to the terms and conditions" contained in the express warranties as written. *See* Sale Approval Order, ¶56.

Plaintiff asserts a single substantive claim for "Breach of Express Warranty." *See* Count I. This claim supposedly is based on the written warranty that she and each member of the putative class received at the time of purchase. Complaint, ¶33. Attached hereto as Exhibit C is a copy of the 2008 Chevrolet Warranty ("Warranty") that Plaintiff received.[3] There are a number of important features to this Warranty. *First*, it is limited in duration. *Id*., p. 2. (the "Bumper-to-Bumper" coverage is for the first 3 years or 36,000 miles, whichever comes first). *Second*, it covers defects in materials and workmanship, not design. *Id*., p. 4. *Third*, an owner must present their vehicle to a New GM dealer in order to trigger New GM's warranty obligations. *Id*., p. 4 ("To obtain warranty repairs, take the vehicle to a Chevrolet dealer facility within the warranty period and request the needed repairs"); *see also id.*, p. 22 ("You are responsible for presenting your vehicle to a GM dealer selling your vehicle line as soon as a problem exists"). *Fourth*, New GM's obligations are limited to repair and replacement under the Warranty. The document expressly disclaims claims for damages like those that Plaintiff seeks in this case. *Id*., p. 9 ("Performance of repairs and needed adjustments is the exclusive remedy under this written

[3] Plaintiff did not attach the Warranty to her Complaint, but she quotes from it and it's obviously integral to her claim so the Court properly may evaluate it on a Motion to Dismiss. *See Commercial Money Center, Inc. v. Illinois Union Ins. Co.*, 508 F.3d 327, 335-36 (6th Cir. 2007) ("[W]hen a document is referred to in the pleadings and is integral to the claims, it may be considered without converting a motion to dismiss into one for summary judgment.").

warranty or any implied warranty. GM shall not be liable for incidental or consequential damages, such as, but not limited to, lost wage or vehicle rental expenses, resulting from breach of this written warranty or any implied warranty").

Plaintiff contends that New GM breached the Warranty by failing to repair or replace the rear spindle rods in all the class vehicles. Complaint, ¶52. In other words, she claims New GM breached the Warranties by not unilaterally recalling all vehicles without regard to whether any given owner (i) experienced a defect that manifested and caused harm during the warranty period, (ii) presented their vehicle to a New GM dealer for repairs, and (iii) failed to receive satisfactory repairs. She also presents a count for Injunctive and Declaratory Relief, but it likewise is premised on this same flawed express warranty theory. *See* Complaint, Count II. Plaintiff seeks this relief on behalf of herself and "all persons in the United States who purchased or leased a model year 2007 and 2008 Chevrolet Impala." Complaint, ¶14.

IV. ARGUMENT

Dismissal of the case is the only proper outcome. If the Court considers and accepts as true Plaintiff's Complaint in whole, then the Court must dismiss the case because Plaintiff's claim seeks to enlarge New GM's liabilities in violation of the Sale Approval Order and, more fundamentally, any dispute about this issue is within the Bankruptcy Court's exclusive jurisdiction. However, even if the Court strikes out the allegations premised on Old GM's conduct and the successor liability theory, and looks instead for any actionable connection between New GM and Plaintiff's allegations, then the Complaint fails to state a claim under the terms of the written Warranty.

Either way, the case should be dismissed under Rule 12(b). There are no circumstances under which Plaintiff may litigate the Complaint in this Court.

A. The Court should dismiss the case because Plaintiff's attempt to enlarge New GM's liability is a direct violation of the Bankruptcy Court's Sale Approval Order and the Bankruptcy Court has exclusive jurisdiction to resolve the parties' dispute.

New GM believes that it is impossible to reconcile Plaintiff's claim with the terms of the Sale Approval Order. Plaintiff apparently disagrees. But the real issue is that it is not permissible even to litigate that dispute in this Court without infringing on the Bankruptcy Court's exclusive jurisdiction. Therefore, as explained below, the Court should dismiss the case without prejudice.[4] Plaintiff may re-file it in the Bankruptcy Court if she wishes.

1. Plaintiff's claim violates the terms of the Sale Approval Order.

The claims asserted in this case are simply not cognizable under the terms and conditions of the express warranties assumed by New GM, an issue plaintiff clearly recognized in treating New GM and Old GM interchangeably throughout the Complaint. And her desire to represent a class of all purchasers further highlights her attempt to enlarge New GM's liabilities beyond that which it assumed. *See* Complaint, ¶14. A vehicle owner cannot state a claim under the Warranty where an alleged defect did not manifest itself during the Warranty period and the owner did not present the vehicle for repairs to New GM. *See* Section IV(B), *supra*. Certifying

[4] Alternatively, this Court would be empowered to transfer this action to the Bankruptcy Court pursuant to 28 U.S.C. § 1412 (transfer of cases arising in or related to cases under title 11) because it is a "core proceeding" or at minimum, is one "related to" the bankruptcy. *See Mendoza v. General Motors, LLC*, 2010 WL 5224136 (C.D.Cal. Dec. 15, 2010) (transferring a lawsuit against New GM to the Bankruptcy Court). But dismissal without prejudice is the appropriate result here because New GM affirmatively seeks dismissal in this Motion and the Court should respond to the particular request before it. *See e.g., Langley v. Prudential Mortgage Capital Co., LLC*, 546 F.3d 365 (6th Cir. 2008) (remanding so that the trial court could consider transfer or dismissal, depending on which motion the defendant chose to file). Dismissal is the proper result in any event. Plaintiff had notice of the Sale Approval Order, which clearly bars the claim and relief she seeks but nevertheless sought to evade Bankruptcy Court jurisdiction. It should be Plaintiff, not this Court, that makes the decision to put this matter on the Bankruptcy Court's docket.

a class of "all purchasers" necessarily would mean including class members who never experienced the "tire wear" issue that Plaintiff identifies and/or who never presented their vehicles *to New GM* for repairs during their Warranty period.[5]

Consequently, Plaintiff's pleading and request for class certification amounts to a direct challenge to the Bankruptcy Court's Sale Approval Order and related opinions under § 363 of the Bankruptcy Code. New GM is responsible only to continue providing warranty repairs on pre-transaction vehicles "subject to the terms and conditions" contained in the Warranty. *See* Sale Approval Order, ¶56. Holding New GM responsible for Old GM's "liabilities" as pled in the Complaint is directly at odds with the Sale Approval Order, which provides that New GM acquired Old GM's assets "free and clear," (¶7), and that except for the limited Assumed

[5] This case could never be certified as a class action for many other reasons under Rule 23 in any event. Though styled as an "all purchasers class," which suggests an objective means to define the class, in reality the case concerns whether and to what extent an alleged design flaw has manifested itself such that owners experience premature tire wear and tear during the warranty period. This presents a fundamental **ascertainability** problem. *See In re General Motors Corp., "Piston Slap" Products Liability Litig.*, No. MDL 04-1600, 2006 WL 1049259, *2 (W.D. Okla. Apr. 19, 2006) (plaintiffs sought to certify a class of owners of GM vehicles with engines experiencing a certain defect known as a "piston slap." The district court denied certification in part because identifying the persons who owned cars with the defect would be difficult (if not impossible) because not all engines had the defect). Additionally, she cannot show **typicality** because her claim is different from others she seeks to represent due to lack of manifestation of harm. Courts routinely decline to certify "all purchaser" class actions that include uninjured members. The Florida Court of Appeals decision in *Butler v. Kia Motors America*, 985 So.2d 1133 (Fla. Dist. Ct. App. 2008) reached that exact conclusion in an unsuccessful brake class action brought against various manufacturers. *See also, Oshana v. Coca-Cola, Co.*, 472 F.3d 506, 513 (7th Cir. 2006) (affirming denial of certification where class membership required only the mere purchase of the product "could include millions who were not deceived under [the Illinois consumer fraud statute]."); *In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012 (7th Cir. 2002); *Exhaust Unltd., Inc. v. Cintas Corp.*, 223 F.R.D. 506, 513-14 (S.D. Ill. 2004) (declining to certify a class where an individualized inquiry would be necessary to determine whether any class member was injured). And Plaintiff cannot prove that common issues ***predominate*** over individual issues. Fed. R. Civ. P. 23(b)(3). The list of individual issues and questions is long: Who experienced tire wear and tear? What was the cause? What is the spindle rod or the laundry list of non-covered causation factors set forth in the warranty? Who presented their vehicle for repairs? Who received repairs? Who did not?

Liabilities, New GM shall not have liabilities "for any claim that arose prior the Closing Date, relates to the production of vehicles prior to the Closing Date, or otherwise is assertable against [Old GM] . . . prior to the Closing Date." Sale Approval Order, ¶47, Ex. A.

This Court addressed a similar effort to expand New GM's warranty liabilities in the *OnStar* litigation. *See In Re: OnStar Contract Litig.*, Case No. 2:07-MDL-01867, 1/25/11, Opinion & Order Granting in Part and Denying In Part Plaintiffs' Motion For Leave To File A Third Amended Complaint, p. 3, Ex. B. There, plaintiffs sought leave to add New GM to the lawsuit under an express warranty theory. Plaintiffs asserted in their proposed amended complaint that New GM was liable to plaintiff *due to* Old GM's breaches of the warranties. *Id*., p. 3. The Court denied the Motion in part because the "express warranty claims that Plaintiffs seek to assert against New GM appear to be barred by the plain language of the Bankruptcy Court's Sale Approval Order," and expressly rejected plaintiffs' effort to hold New GM liable for Old GM's alleged breaches of the warranties. *Id*., at p. 6.

As in *In re Onstar Litigation*, Plaintiff here is trying to saddle New GM with the alleged liability and conduct of Old GM. There is no other plausible way to read the Complaint.

2. Dismissal of this case is appropriate given the Bankruptcy Court's exclusive jurisdiction to resolve any questions regarding the scope of the New GM's assumed liabilities.

Just as it is obvious that a dispute exists concerning the scope of New GM's liabilities under the Sale Approval Order, it is equally clear that this Court may not resolve it. The Sale Approval Order explicitly states the Bankruptcy Court has "exclusive jurisdiction to enforce and implement the terms and provision of [the] Order" ***including to "protect [New GM] against any of the [liabilities that it did not expressly assume under the ARMSPA***]." *See* Sale Approval Order at ¶71. Only the Bankruptcy Court is empowered to consider Plaintiff's argument that New GM assumed Old GM's warranty "liabilities." *Id*; *Travelers Indemnity Co. v. Bailey*, 129

S.Ct. 2195, 2205 (March 20, 2009) (A bankruptcy court retains continuing jurisdiction to interpret and enforce its own orders).

This Court need not, and in fact should not, resolve the merits of the parties' respective positions. When there is any question about whether a bankruptcy court has exclusive jurisdiction over a matter that concerns a bankruptcy order or the automatic stay, imposed by the Bankruptcy Code, courts hold that a motion should be made in the bankruptcy court in the first instance to resolve the jurisdictional issue. *Cf. In re Crysen/Montenay Energy Co.*, 902 F.2d 1098, 1104 (2d Cir. 1990) (even though creditor had a good faith belief that the stay did not apply, it still should have "sought the advice of the bankruptcy court as to the applicability of the automatic stay . . ."); *In re Nakash*, 190 B.R. 763, 769 (Bankr. S.D.N.Y. 1996) ("If the Receiver had doubts about the applicability of the stay he should have sought this court's opinion prior to taking unilateral action.") *In re Equivest St. Thomas, Inc.*, No. 07-30011 (JFK), 2008 WL 3108941 (D. V.I. August 4, 2008) ("Although not explicitly stated in any statute, the weight of authority suggests that motions for relief from an automatic stay should be filed in the bankruptcy court in the first instances."). The jurisdictional question here is analogous to seeking relief from the automatic stay, as the bankruptcy court arguably has the exclusive jurisdiction to grant relief from the automatic stay.[6]

[6] Having the Bankruptcy Court decide the jurisdictional issue in the first instance also promotes judicial economy because actions taken by courts without jurisdiction over the dispute will be invalid and void, and the Bankruptcy Court is required to protect its exclusive jurisdiction. *See In re McGhan*, 288 F.3d 1172 (9th Cir. 2002) ("A bankruptcy court may not decline to invoke this power in the face of a clearly invalid state court action infringing upon the bankruptcy court's exclusive jurisdiction. The bankruptcy court was required to reopen the proceeding to protect its exclusive jurisdiction over the enforcement of its own orders."); *see also In re Eidison*, 6 B.R. 613, 615 (Bankr. N.D. Ga. 1980) ("Since the property which was the subject matter of the garnishment action was in the exclusive jurisdiction of the Bankruptcy Court, the State Court judgment was void.").

The Court should dismiss the case without prejudice to Plaintiff's right to re-file in the Bankruptcy Court. If she desires, she can then seek a ruling as to the scope of the Sale Approval Order. *See In Re: OnStar Contract Litig.*, Case No. 2:07-MDL-01867, p. 7, Ex. B ("the Bankruptcy Court has jurisdiction to resolve any disputes as to the liabilities that were assumed by New GM" and holding that "to the extent that Plaintiffs wish to pursue warranty claims against New GM, the forum in which to seek to do so is the bankruptcy court"). The Court's authority to dismiss this case is implicit given the Bankruptcy Court's exclusive jurisdiction, is consistent with the result in *In re Onstar Litigation*, and is supported by the rule that dismissal of a lawsuit is appropriate where a forum selection clause dictates that litigation shall proceed in a different federal court. *See Security Watch, Inc. v. Sentinel Systems, Inc.*, 176 F.3d 369 (6th Cir. 1999). In *Security Watch*, the Sixth Circuit affirmed the district court's decision to grant a motion to dismiss under Rule 12(b) due to a forum selection clause in the contract at issue in the case. *See also, Langley v. Prudential Mortgage Capital Co., LLC*, 546 F.3d 365, 369 (6th Cir. 2008) (citing *Security Watch* as support for proposition that a trial court may dismiss an action under Rule 12(b) due to a forum selection clause and remanding to the trial court to permit defendants to move to enforce a forum selection clause either through a motion to dismiss under Rule 12(b)(6) or a motion to transfer under 28 U.S.C. § 1404(a)). The Court should dismiss this case pursuant to Rule 12(b), leaving Plaintiff to re-file in the appropriate forum if she so desires.

It has been more than two years since the entry of the Sale Approval Order. There have been numerous instances already where the Bankruptcy Court has had to address the scope of its Sale Approval Order. Other courts have deferred to the Bankruptcy Court and the exclusive jurisdiction preserved in the Sale Approval Order to allow the Bankruptcy Court to interpret its own orders. This Court should do the same in this case.

B. Additionally, Plaintiff has failed to state a claim against New GM under the terms of the express written Warranty.

Because there were 2007 and 2008 Impalas with unexpired express Warranties as of the date of the Sale Approval Order, it would be theoretically possible for a claim to exist against New GM arising from those Warranties, assuming a claimant does not seek relief outside the scope of the Warranty, including the "damages" and injunctive relief requested by Plaintiff in her Complaint. (Complaint, ¶¶ 51-58).

But in this case, even if the Court disregards Plaintiff's allegations in violation of the Sale Approval Order, this case would still be subject to dismissal because Plaintiff has not alleged New GM breached the Warranty. *See In Re: OnStar Contract Litigation*, Opinion & Order January 25, 2011, pp. 6-7 (holding that plaintiff may not assert express warranty claim against new GM premised on Old GM's alleged breach of the same warranty). In other words, the Court need not necessarily reach the issues implicating the Sale Approval Order and the Bankruptcy Court's exclusive jurisdiction in order to dismiss the case.

On this point the Court's analysis should begin and end with (i) the allegations in the Complaint specific to New GM and (ii) the terms of the Warranty. It is settled law that a party's liability for breach of an express warranty derives from, and is measured by, the terms of the warranty itself. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 525-26 (1992); *see Moeller v. Danek Medical, Inc.*, 1997 WL 1039333, *4 (W.D. Pa. 1997)[7] ("An action based upon breach

[7] We presume without admitting at this stage that Pennsylvania law would govern Plaintiff's claim. "Because this action was brought in federal court in Michigan, Michigan's choice of law rules apply." *Mill's Pride, Inc. v. Continental Insurance Co.*, 300 F.3d 701, 704 (6th Cir. 2002). Traditionally, in Michigan, a breach of warranty claim sounds in "contract." *See Curry v. Meijer, Inc.*, 286 Mich. App. 586, 595, 780 N.W.2d 603 (2009). For a contract dispute, "Michigan choice of law rules . . . require a court to balance the expectations of the parties to a contract with the interests of the states involved to determine which state's law to apply." *Equitable Life Assurance Soc. of the U.S. v. Poe*, 143 F.3d 1013, 1016 (6th Cir. 1998). The balancing approach is consistent with the Second Restatement approach adopted by the Michigan

of an express warranty is premised 'solely upon the express affirmation of fact made by the manufacturer' to the intended recipient of the product."), *quoting Rosci v. Acromed, Inc*., 447 Pa.Super. 403, 669 A.2d 959, 969 (1995); *see Woolums v. National RV*, 530 F. Supp. 2d 691, 698-99 (M.D. Pa. 2008) (plaintiff may maintain a breach of warranty claim only to the extent that the warranty imposed an obligation upon defendant). Obviously, given that New GM agreed only to continue providing warranty repairs on pre-transaction vehicles "subject to the terms and conditions" contained in the warranties issues by Old GM (Sale Approval Order, ¶56), this basic point of law is even more salient here.

The Warranty is a typical limited "repair and replacement" warranty. To establish a breach, Plaintiff must at a minimum allege and prove that her vehicle had a defect that was covered (*see* Warranty, p. 2, Ex. C), that she presented it to New GM for repairs (*id*, p. 4), that New GM did not repair the covered defect as required by the Warranty, and that she seeks relief permitted by the Warranty. *See* i*d*, p. 9 (excluding claims for damages and confirming that "[p]erformance of repairs and needed adjustments is the exclusive remedy"); *see also*, *Bailey v. Monaco Coach Corp*., 350 F. Supp. 2d 1036, 1043 (N.D. Ga. 2004) (in an express warranty case, a plaintiff must prove that (a) a covered defect existed, (b) notice of the defect was given within a reasonable time after the defect was or should have been discovered; and (c) the warrantor was unable to repair the defect after a reasonable time or a reasonable number of attempts).

Supreme Court in *Chrysler Corp. v. Skyline Industrial Servs., Inc*., 448 Mich. 113, 528 N.W.2d 698 (1995). Pursuant to Section 188 of the Second Restatement, the local law of the state with the most significant relationship applies, which takes into account the place of contracting, the place of negotiation of the contract, the place of performance, the location of the subject matter of the contract, and the domicile of the parties, as well as general policy considerations. *See, e.g. Mill's Pride*, 300 F.3d at 705-706. Here, Plaintiff purchased the car in Pennsylvania, serviced the car in Pennsylvania, and the car and the Plaintiff are located in Pennsylvania. Further, there is no compelling interest or policy to apply Michigan law. Based on these facts, there is a reasonable expectation that Pennsylvania law would apply.

Plaintiff alleges none of these elements in her Complaint. ***First***, she does not allege the existence of a covered "defect." The Warranty only covers defects in "materials and workmanship," (*see* Warranty, p. 4), whereas the theory of this case is that the vehicle contains a *design* flaw in the rear wheel spindles that in turn leads to premature tire wear and tear. *Lombard Corp. v. Quality Aluminum Products Co.* 261 F.2d 336, 338 (6th Cir. 1958) (holding that a design defect was not covered under an express warranty for defects in materials and workmanship). She is not claiming that her rear wheel spindle broke or was assembled improperly. She contends instead that Old GM made a poor design choice that is tantamount to a latent defect. Defects in design are not covered by the Warranty, and once again, for all the reasons noted in Section IV(A) above, the Court may not consider any claim against New GM premised on the design choices of Old GM.

Second, even if the "defect" were covered, its mere existence is not a breach of the Warranty. *See Bailey v. Monaco Coach Corp*., 350 F. Supp. 2d 1036, 1044 (N.D. Ga. 2004) ("a [w]arranty itself is not breached simply because a defect occurs"). Rather, Plaintiff must allege that she gave notice and presented her vehicle to a New GM dealer for repairs. Warranty, 4, Ex. C. She contends that (i) she bought her vehicle in February 2008 [obviously from Old GM], Complaint, ¶30; (ii) "[w]ithin the first year," her tires were worn and she took the vehicle for service to her dealer [to an Old GM dealer], ¶¶30, 31; and (iii) on November 30, 2010, she "brought her car in for its annual inspection" and was informed that the tires were worn and so she paid $289.77 for a set of new tires. Complaint, ¶32. But she never alleges that she brought her vehicle to a New GM dealer at any time, including for the November 2010 "inspection." This is a fatal flaw with her claim.

Third, given that she did not present the vehicle to New GM, by definition she cannot establish that New GM failed to fix her vehicle or that she purchased the new set of tires in November 2010 as a result of any conduct by New GM. *See Woolums v. National RV*, 530 F. Supp. 2d 691, 700 (M.D. Pa. 2008) ("Because these repairs were either successful or never presented to National, they cannot provide grounds for a breach of warranty claim").

Finally, she seeks relief that she may not get under the Warranty. She requests compensatory damages, attorneys' fees, exemplary damages, injunctive and declaratory relief. *See* Complaint, ¶57 and prayer for relief on page 20. None of this is recoverable by her, let alone by any putative class members; New GM only agreed to adhere to the terms of the Warranty, which expressly disclaims such relief:

> Performance of repairs and needed adjustments is the exclusive remedy under this written warranty or any implied warranty. GM shall not be liable for incidental or consequential damages, such as, but not limited to, lost wage or vehicle rental expenses, resulting from breach of this written warranty or any implied warranty.

See 2008 Chevrolet Limited Warranty, p. 9, Ex. C.[8] Plaintiff cannot reconcile her prayer for relief with the actual terms of the Warranty that forms the basis for the request in the first place.

In sum, even conducting a filtered analysis of the Complaint reveals a complete disconnect between (i) Plaintiff and what she wants; and (ii) New GM and its responsibilities assumed pursuant to the Sale Approval Order. The allegations in the Complaint fail to state a

[8] Plaintiff could never obtain declaratory "relief" in the form of a court-ordered recall in any event. Her request that New GM replace the spindle rods on every 2007 and 2008 vehicle, couched as a "safety" concern (Complaint, ¶55), is pre-empted by the National Traffic and Motor Vehicle Safety Act ("Act"). The Act gives NHTSA exclusive jurisdiction to order safety notifications and recall campaigns. *See In re Bridgeston/Firestone, Inc. Tires Prods. Liab. Litig.*, 153 F.Supp.2d 935, 945 (S.D. Ind. 2001). Moreover, there is nothing in the Warranty that supports a claim for such relief.

plausible theory of relief and the Court should therefore dismiss the Complaint on these grounds as well.

V. CONCLUSION

Plaintiff's Complaint presents the Court with two options. The Court may either dismiss the Complaint without prejudice on the grounds that Plaintiff's successor liability theory implicates the scope of New GM's liabilities and the Bankruptcy Court has exclusive jurisdiction to resolve that issue, or the Court may evaluate only those allegations that relate to New GM and dismiss the case on the merits given Plaintiff's obvious failure to state a claim.

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Dated: August 11, 2011

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2011, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to the attorneys of record in this matter.

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Dated: August 11, 2011

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UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. TRUSKY on behalf of Herself and all others similarly situated,

Plaintiff,

vs.

GENERAL MOTORS COMPANY

Defendant.

Case No. 2:11-cv-12815-SFC-LJM

Honorable Sean F. Cox

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INDEX OF EXHIBITS TO DEFENDANT'S MOTION TO DISMISS

A. New York Bankruptcy Court Sale Approval Order.

B. *In Re: OnStar Contract Litig.*, Case No. 2:07-MDL-01867, Opinion & Order Granting in Part and Denying In Part Plaintiffs' Motion For Leave To File A Third Amended Complaint.

C. 2008 Chevrolet Warranty.

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11 Case No.
GENERAL MOTORS CORP., *et al.*,	:	09-50026 (REG)
Debtors.	:	(Jointly Administered)

ORDER (I) AUTHORIZING SALE OF ASSETS PURSUANT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT WITH NGMCO, INC., A U.S. TREASURY-SPONSORED PURCHASER; (II) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE; AND (III) GRANTING RELATED RELIEF

Upon the motion, dated June 1, 2009 (the "**Motion**"), of General Motors Corporation ("**GM**") and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**"), pursuant to sections 105, 363, and 365 of title 11, United States Code (the "**Bankruptcy Code**") and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") for, among other things, entry of an order authorizing and approving (A) that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009, by and among GM and its Debtor subsidiaries (collectively, the "**Sellers**") and NGMCO, Inc., as successor in interest to Vehicle Acquisition Holdings LLC (the "**Purchaser**"), a purchaser sponsored by the United States Department of the Treasury (the "**U.S. Treasury**"), together with all related documents and agreements as well as all exhibits, schedules, and addenda thereto (as amended, the "**MPA**"), a copy of which is annexed hereto as Exhibit "A" (excluding the exhibits and schedules thereto); (B) the sale of the Purchased Assets[1] to the

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

Purchaser free and clear of liens, claims, encumbrances, and interests (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability; (C) the assumption and assignment of the Assumable Executory Contracts; (D) the establishment of certain Cure Amounts; and (E) the UAW Retiree Settlement Agreement (as defined below); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York of Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with this Court's Order, dated June 2, 2009 (the "**Sale Procedures Order**"), and it appearing that no other or further notice need be provided; and a hearing having been held on June 30 through July 2, 2009, to consider the relief requested in the Motion (the "**Sale Hearing**"); and upon the record of the Sale Hearing, including all affidavits and declarations submitted in connection therewith, and all of the proceedings had before the Court; and the Court having reviewed the Motion and all objections thereto (the "**Objections**") and found and determined that the relief sought in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003 and is in the best interests of the Debtors, their estates and creditors, and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein and in the Court's Decision dated July 5, 2009 (the "Decision") constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014.

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B. To the extent any of the following findings of fact or Findings of Fact in the Decision constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law or Conclusions of Law in the Decision constitute findings of fact, they are adopted as such.

C. This Court has jurisdiction over the Motion, the MPA, and the 363 Transaction pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief sought in the Motion are sections 105(a), 363, and 365 of the Bankruptcy Code as supplemented by Bankruptcy Rules 2002, 6004, and 6006.

E. As evidenced by the affidavits and certificates of service and Publication Notice previously filed with the Court, in light of the exigent circumstances of these chapter 11 cases and the wasting nature of the Purchased Assets and based on the representations of counsel at the Sale Procedures Hearing and the Sale Hearing, (i) proper, timely, adequate, and sufficient notice of the Motion, the Sale Procedures, the 363 Transaction, the procedures for assuming and assigning the Assumable Executory Contracts as described in the Sale Procedures Order and as modified herein (the "**Modified Assumption and Assignment Procedures**"), the UAW Retiree

Settlement Agreement, and the Sale Hearing have been provided in accordance with Bankruptcy Rules 2002(a), 6004(a), and 6006(c) and in compliance with the Sale Procedures Order; (ii) such notice was good and sufficient, reasonable, and appropriate under the particular circumstances of these chapter 11 cases, and reasonably calculated to reach and apprise all holders of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, about the Sale Procedures, the sale of the Purchased Assets, the 363 Transaction, and the assumption and assignment of the Assumable Executory Contracts, and to reach all UAW-Represented Retirees about the UAW Retiree Settlement Agreement and the terms of that certain Letter Agreement, dated May 29, 2009, between GM, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "**UAW**"), and Stember, Feinstein, Doyle & Payne, LLC (the "**UAW Claims Agreement**") relating thereto; and (iii) no other or further notice of the Motion, the 363 Transaction, the Sale Procedures, the Modified Assumption and Assignment Procedures, the UAW Retiree Settlement Agreement, the UAW Claims Agreement, and the Sale Hearing or any matters in connection therewith is or shall be required. With respect to parties who may have claims against the Debtors, but whose identities are not reasonably ascertainable by the Debtors (including, but not limited to, potential contingent warranty claims against the Debtors), the Publication Notice was sufficient and reasonably calculated under the circumstances to reach such parties.

F. On June 1, 2009, this Court entered the Sale Procedures Order approving the Sale Procedures for the Purchased Assets. The Sale Procedures provided a full, fair, and reasonable opportunity for any entity to make an offer to purchase the Purchased Assets. The Debtors received no bids under the Sale Procedures for the Purchased Assets. Therefore, the Purchaser's bid was designated as the Successful Bid pursuant to the Sale Procedures Order.

G. As demonstrated by (i) the Motion, (ii) the testimony and other evidence proffered or adduced at the Sale Hearing, and (iii) the representations of counsel made on the record at the Sale Hearing, in light of the exigent circumstances presented, (a) the Debtors have adequately marketed the Purchased Assets and conducted the sale process in compliance with the Sale Procedures Order; (b) a reasonable opportunity has been given to any interested party to make a higher or better offer for the Purchased Assets; (c) the consideration provided for in the MPA constitutes the highest or otherwise best offer for the Purchased Assets and provides fair and reasonable consideration for the Purchased Assets; (d) the 363 Transaction is a sale of deteriorating assets and the only alternative to liquidation available for the Debtors; (e) if the 363 Transaction is not approved, the Debtors will be forced to cease operations altogether; (f) the failure to approve the 363 Transaction promptly will lead to systemic failure and dire consequences, including the loss of hundreds of thousands of auto-related jobs; (g) prompt approval of the 363 Transaction is the only means to preserve and maximize the value of the Debtors' assets; (h) the 363 Transaction maximizes fair value for the Debtors' parties in interest; (i) the Debtors are receiving fair value for the assets being sold; (j) the 363 Transaction will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, including liquidation under chapters 7 or 11 of the Bankruptcy Code; (k) no other entity has offered to purchase the Purchased Assets for greater economic value to the Debtors or their estates; (l) the consideration to be paid by the Purchaser under the MPA exceeds the liquidation value of the Purchased Assets; and (m) the Debtors' determination that the MPA constitutes the highest or best offer for the Purchased Assets and that the 363 Transaction represents a better alternative for the Debtors' parties in interest than an immediate liquidation constitute valid and sound exercises of the Debtors' business judgment.

H. The actions represented to be taken by the Sellers and the Purchaser are appropriate under the circumstances of these chapter 11 cases and are in the best interests of the Debtors, their estates and creditors, and other parties in interest.

I. Approval of the MPA and consummation of the 363 Transaction at this time is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest.

J. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the sale of the Purchased Assets pursuant to the 363 Transaction prior to, and outside of, a plan of reorganization and for the immediate approval of the MPA and the 363 Transaction because, among other things, the Debtors' estates will suffer immediate and irreparable harm if the relief requested in the Motion is not granted on an expedited basis. In light of the exigent circumstances of these chapter 11 cases and the risk of deterioration in the going concern value of the Purchased Assets pending the 363 Transaction, time is of the essence in (i) consummating the 363 Transaction, (ii) preserving the viability of the Debtors' businesses as going concerns, and (iii) minimizing the widespread and adverse economic consequences for the Debtors, their estates, their creditors, employees, the automotive industry, and the national economy that would be threatened by protracted proceedings in these chapter 11 cases.

K. The consideration provided by the Purchaser pursuant to the MPA (i) is fair and reasonable, (ii) is the highest and best offer for the Purchased Assets, (iii) will provide a greater recovery to the Debtors' estates than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

L. The 363 Transaction must be approved and consummated as promptly as practicable in order to preserve the viability of the business to which the Purchased Assets relate as a going concern.

M. The MPA was not entered into and none of the Debtors, the Purchaser, or the Purchasers' present or contemplated owners have entered into the MPA or propose to consummate the 363 Transaction for the purpose of hindering, delaying, or defrauding the Debtors' present or future creditors. None of the Debtors, the Purchaser, nor the Purchaser's present or contemplated owners is entering into the MPA or proposing to consummate the 363 Transaction fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, or any other applicable jurisdiction with laws substantially similar to any of the foregoing.

N. In light of the extensive prepetition negotiations culminating in the MPA, the Purchaser's commitment to consummate the 363 Transaction is clear without the need to provide a good faith deposit.

O. Each Debtor (i) has full corporate power and authority to execute the MPA and all other documents contemplated thereby, and the sale of the Purchased Assets has been duly and validly authorized by all necessary corporate action of each of the Debtors, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the MPA, (iii) has taken all corporate action necessary to authorize and approve the MPA and the consummation by the Debtors of the transactions contemplated thereby, and (iv) subject to entry of this Order, needs no consents or approvals, other than those expressly provided for in the MPA which may be waived by the Purchaser, to consummate such transactions.

P. The consummation of the 363 Transaction outside of a plan of reorganization pursuant to the MPA neither impermissibly restructures the rights of the Debtors' creditors, allocates or distributes any of the sale proceeds, nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The 363 Transaction does not constitute a *sub rosa* plan of reorganization. The 363 Transaction in no way dictates distribution of the Debtors' property to creditors and does not impinge upon any chapter 11 plan that may be confirmed.

Q. The MPA and the 363 Transaction were negotiated, proposed, and entered into by the Sellers and the Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Sellers, the Purchaser, the U.S. Treasury, nor their respective agents, officials, personnel, representatives, and advisors, has engaged in any conduct that would cause or permit the MPA to be avoided under 11 U.S.C. § 363(n).

R. The Purchaser is a newly-formed Delaware corporation that, as of the date of the Sale Hearing, is wholly-owned by the U.S. Treasury. The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby.

S. Neither the Purchaser, the U.S. Treasury, nor their respective agents, officials, personnel, representatives, or advisors is an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

T. Upon the Closing of the 363 Transaction, the Debtors will transfer to the Purchaser substantially all of its assets. In exchange, the Purchaser will provide the Debtors with (i) cancellation of billions of dollars in secured debt; (ii) assumption by the Purchaser of a portion of the Debtors' business obligations and liabilities that the Purchaser will satisfy; and (iii) no less than 10% of the Common Stock of the Purchaser as of the Closing (100% of which the

Debtors' retained financial advisor values at between $38 billion and $48 billion) and warrants to purchase an additional 15% of the Common Stock of the Purchaser as of the Closing, the combination of which the Debtors' retained financial advisor values at between $7.4 billion and $9.8 billion (which amount, for the avoidance of doubt, does not include any amount for the Adjustment Shares).

U. The Purchaser, not the Debtors, has determined its ownership composition and capital structure. The Purchaser will assign ownership interests to certain parties based on the Purchaser's belief that the transfer is necessary to conduct its business going forward, that the transfer is to attain goodwill and consumer confidence for the Purchaser and to increase the Purchaser's sales after completion of the 363 Transaction. The assignment by the Purchaser of ownership interests is neither a distribution of estate assets, discrimination by the Debtors on account of prepetition claims, nor the assignment of proceeds from the sale of the Debtors' assets. The assignment of equity to the New VEBA (as defined in the UAW Retiree Settlement Agreement) and 7176384 Canada Inc. is the product of separately negotiated arm's-length agreements between the Purchaser and its equity holders and their respective representatives and advisors. Likewise, the value that the Debtors will receive on consummation of the 363 Transaction is the product of arm's-length negotiations between the Debtors, the Purchaser, the U.S. Treasury, and their respective representatives and advisors.

V. The U.S. Treasury and Export Development Canada ("**EDC**"), on behalf of the Governments of Canada and Ontario, have extended credit to, and acquired a security interest in, the assets of the Debtors as set forth in the DIP Facility and as authorized by the interim and final orders approving the DIP Facility (Docket Nos. 292 and 2529, respectively). Before entering into the DIP Facility and the Loan and Security Agreement, dated as of December 31, 2008 (the "**Existing UST Loan Agreement**"), the Secretary of the Treasury, in

consultation with the Chairman of the Board of Governors of the Federal Reserve System and as communicated to the appropriate committees of Congress, found that the extension of credit to the Debtors is "necessary to promote financial market stability," and is a valid use of funds pursuant to the statutory authority granted to the Secretary of the Treasury under the Emergency Economic Stabilization Act of 2008, 12 U.S.C. §§ 5201 et seq. ("**EESA**"). The U.S. Treasury's extension of credit to, and resulting security interest in, the Debtors, as set forth in the DIP Facility and the Existing UST Loan Agreement and as authorized in the interim and final orders approving the DIP Facility, is a valid use of funds pursuant to EESA.

W. The DIP Facility and the Existing UST Loan Agreement are loans and shall not be recharacterized. The Court has already approved the DIP Facility. The Existing UST Loan Agreement bears the undisputed hallmarks of a loan, not an equity investment. Among other things:

(i) The U.S. Treasury structured its prepetition transactions with GM as (a) a loan, made pursuant to and governed by the Existing UST Loan Agreement, in addition to (b) a separate, and separately documented, equity component in the form of warrants;

(ii) The Existing UST Loan Agreement has customary terms and covenants of a loan rather than an equity investment. For example, the Existing UST Loan Agreement contains provisions for repayment and pre-payment, and provides for remedies in the event of a default;

(iii) The Existing UST Loan Agreement is secured by first liens (subject to certain permitted encumbrances) on GM's and the guarantors' equity interests in most of their domestic subsidiaries and certain of their foreign subsidiaries (limited in most cases to 65% of the equity interests of the pledged foreign subsidiaries), intellectual property, domestic real estate (other than manufacturing plants or facilities) inventory that was not pledged to other lenders, and cash and cash equivalents in the United States;

(iv) The U.S. Treasury also received junior liens on certain additional collateral, and thus, its claim for recovery on such collateral under the Existing UST Loan Agreement is, in part, junior to the claims of other creditors;

(v) the Existing UST Loan Agreement requires the grant of security by its terms, as well as by separate collateral documents, including: (a) a guaranty and

security agreement, (b) an equity pledge agreement, (c) mortgages and deeds of trust, and (d) an intellectual property pledge agreement;

(vi) Loans under the Existing UST Loan Agreement are interest-bearing with a rate of 3.00% over the 3-month LIBOR with a LIBOR floor of 2.00%. The Default Rate on this loan is 5.00% above the non-default rate.

(vii) The U.S. Treasury always treated the loans under the Existing UST Loan Agreement as debt, and advances to GM under the Existing Loan Agreement were conditioned upon GM's demonstration to the United States Government of a viable plan to regain competitiveness and repay the loans.

(viii) The U.S. Treasury has acted as a prudent lender seeking to protect its investment and thus expressly conditioned its financial commitment upon GM's meaningful progress toward long-term viability.

Other secured creditors of the Debtors also clearly recognized the loans under the Existing UST Loan Agreement as debt by entering into intercreditor agreements with the U.S. Treasury in order to set forth the secured lenders' respective prepetition priority.

X. This Court has previously authorized the Purchaser to credit bid the amounts owed under both the DIP Facility and the Existing UST Loan Agreement and held the Purchaser's credit bid to be, for all purposes, a "Qualified Bid" under the Sale Procedures Order.

Y. The Debtors, the Purchaser, and the UAW, as the exclusive collective bargaining representative of the Debtors' UAW-represented employees and the authorized representative of the persons in the Class and the Covered Group (as described in the UAW Retiree Settlement Agreement) (the "**UAW-Represented Retirees**") under section 1114(c) of the Bankruptcy Code, engaged in good faith negotiations in conjunction with the 363 Transaction regarding the funding of "retiree benefits" within the meaning of section 1114(a) of the Bankruptcy Code and related matters. Conditioned upon the consummation of the 363 Transaction and the approval of the Bankruptcy Court granted in this Order, the Purchaser and the UAW will enter into that certain Retiree Settlement Agreement, dated as of the Closing Date (the "**UAW Retiree Settlement Agreement**"), which is Exhibit D to the MPA, which resolves

issues with respect to the provision of certain retiree benefits to UAW-Represented Retirees as described in the UAW Retiree Settlement Agreement. As set forth in the UAW Retiree Settlement Agreement, the Purchaser has agreed to make contributions of cash, stock, and warrants of the Purchaser to the New VEBA (as defined in the UAW Retiree Settlement Agreement), which will have the obligation to fund certain health and welfare benefits for the UAW-Represented Retirees. The New VEBA will also be funded by the transfer of assets from the Existing External VEBA and the assets in the UAW Related Account of the Existing Internal VEBA (each as defined in the UAW Retiree Settlement Agreement). GM and the UAW, as the authorized representative of the UAW-Represented Retirees, as well as the representatives for the class of plaintiffs in a certain class action against GM (the "**Class Representatives**"), through class counsel, Stemper, Feinstein, Doyle and Payne LLC ("**Class Counsel**"), negotiated in good faith the UAW Claims Agreement, which requires the UAW and the Class Representatives to take actions to effectuate the withdrawal of certain claims against the Debtors, among others, relating to retiree benefits in the event the 363 Transaction is consummated and the Bankruptcy Court approves, and the Purchaser becomes fully bound by, the UAW Retiree Settlement Agreement, subject to reinstatement of such claims to the extent of any adverse impact to the rights or benefits of UAW-Represented Retirees under the UAW Retiree Settlement Agreement resulting from any reversal or modification of the 363 Transaction, the UAW Retiree Settlement Agreement, or the approval of the Bankruptcy Court thereof, the foregoing as subject to the terms of, and as set forth in, the UAW Claims Agreement.

Z. Effective as of the Closing of the 363 Transaction, the Debtors will assume and assign to the Purchaser the UAW Collective Bargaining Agreement and all liabilities thereunder. The Debtors, the Purchaser, the UAW and Class Representatives intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings

incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2).

AA. The transfer of the Purchased Assets to the Purchaser will be a legal, valid, and effective transfer of the Purchased Assets and, except for the Assumed Liabilities, will vest the Purchaser with all right, title, and interest of the Sellers to the Purchased Assets free and clear of liens, claims, encumbrances, and other interests (other than Permitted Encumbrances), including rights or claims (for purposes of this Order, the term "claim" shall have the meaning ascribed to such term in section 101(5) of the Bankruptcy Code) based on any successor or transferee liability, including, but not limited to (i) those that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Sellers' or the Purchaser's interest in the Purchased Assets, or any similar rights and (ii) (a) those arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income, or other exercise of any attributes of ownership and (b) all claims arising in any way in connection with any agreements, acts, or failures to act, of any of the Sellers or any of the Sellers' predecessors or affiliates, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including, but not limited to, claims otherwise arising under doctrines of successor or transferee liability.

BB. The Sellers may sell the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the

Bankruptcy Code has been satisfied. Those (i) holders of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, and (ii) non-Debtor parties to the Assumable Executory Contracts who did not object, or who withdrew their Objections, to the 363 Transaction or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those (i) holders of liens, claims, and encumbrances, and (ii) non-Debtor parties to the Assumable Executory Contracts who did object, fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and, to the extent they have valid and enforceable liens or encumbrances, are adequately protected by having such liens or encumbrances, if any, attach to the proceeds of the 363 Transaction ultimately attributable to the property against or in which they assert a lien or encumbrance. To the extent liens or encumbrances secure liabilities that are Assumed Liabilities under this Order and the MPA, no such liens or encumbrances shall attach to the proceeds of the 363 Transaction.

CC. Under the MPA, GM is transferring all of its right, title, and interest in the Memphis, TN SPO Warehouse and the White Marsh, MD Allison Transmission Plant (the "**TPC Property**") to the Purchaser pursuant to section 363(f) of the Bankruptcy Code free and clear of all liens (including, without limitation, the TPC Liens (as hereinafter defined)), claims, interests, and encumbrances (other than Permitted Encumbrances). For purposes of this Order, "**TPC Liens**" shall mean and refer to any liens on the TPC Property granted or extended pursuant to the TPC Participation Agreement and any claims relating to that certain Second Amended and Restated Participation Agreement and Amendment of Other Operative Documents (the "**TPC Participation Agreement**"), dated as of June 30, 2004, among GM, as Lessee, Wilmington Trust Company, a Delaware corporation, not in its individual capacity except as expressly stated herein but solely as Owner Trustee (the "**TPC Trustee**") under GM Facilities Trust No. 1999-1 (the "**TPC Trust**"), as Lessor, GM, as Certificate Holder, Hannover Funding Company LLC, as

CP Lender, Wells Fargo Bank Northwest, N.A., as Agent, Norddeutsche Landesbank Girozentrale (New York Branch), as Administrator, and Deutsche Bank, AG, New York Branch, HSBC Bank USA, ABN AMRO Bank N.V., Royal Bank of Canada, Bank of America, N.A., Citicorp USA, Inc., Merrill Lynch Bank USA, Morgan Stanley Bank, collectively, as Purchasers (collectively, with CP Lender, Agent and Administrator, the "**TPC Lenders**"), together with the Operative Documents (as defined in the TPC Participation Agreements (the "**TPC Operative Documents**").

DD. The Purchaser would not have entered into the MPA and would not consummate the 363 Transaction (i) if the sale of the Purchased Assets was not free and clear of all liens, claims, encumbrances, and other interests (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability or (ii) if the Purchaser would, or in the future could, be liable for any such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability (collectively, the "**Retained Liabilities**"), other than, in each case, the Assumed Liabilities. The Purchaser will not consummate the 363 Transaction unless this Court expressly orders that none of the Purchaser, its affiliates, their present or contemplated members or shareholders (other than the Debtors as the holder of equity in the Purchaser), or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability or Retained Liabilities, other than as expressly provided herein or in agreements made by the Debtors and/or the Purchaser on the record at the Sale Hearing or in the MPA.

EE. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Purchased Contracts to the Purchaser in connection

with the consummation of the 363 Transaction, and the assumption and assignment of the Purchased Contracts is in the best interests of the Debtors, their estates and creditors, and other parties in interest. The Purchased Contracts being assigned to, and the liabilities being assumed by, the Purchaser are an integral part of the Purchased Assets being purchased by the Purchaser, and, accordingly, such assumption and assignment of the Purchased Contracts and liabilities are reasonable, enhance the value of the Debtors' estates, and do not constitute unfair discrimination.

FF. For the avoidance of doubt, and notwithstanding anything else in this Order to the contrary:

- The Debtors are neither assuming nor assigning to the Purchaser the agreement to provide certain retiree medical benefits specified in (i) the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between the Company and the UAW, and (ii) the Settlement Agreement, dated February 21, 2008, between the Company and the UAW (together, the "**VEBA Settlement Agreement**");

- at the Closing, and in accordance with the MPA, the UAW Collective Bargaining Agreement, and all liabilities thereunder, shall be assumed by the Debtors and assigned to the Purchaser pursuant to section 365 of the Bankruptcy Code. Assumption and assignment of the UAW Collective Bargaining Agreement is integral to the 363 Transaction and the MPA, are in the best interests of the Debtors and their estates, creditors, employees, and retirees, and represent the exercise of the Debtors' sound business judgment, enhances the value of the Debtors' estates, and does not constitute unfair discrimination;

- the UAW, as the exclusive collective bargaining representative of employees of the Purchaser and the "authorized representative" of the UAW-Represented Retirees under section 1114(c) of the Bankruptcy Code, GM, and the Purchaser engaged in good faith negotiations in conjunction with the 363 Transaction regarding the funding of retiree health benefits within the meaning of section 1114(a) of the Bankruptcy Code. Conditioned upon the consummation of the 363 Transaction, the UAW and the Purchaser have entered into the UAW Retiree Settlement Agreement, which, among other things, provides for the financing by the Purchaser of modified retiree health care obligations for the Class and Covered Group (as defined in the UAW Retiree Settlement Agreement) through contributions by the Purchaser (as referenced in paragraph Y herein). The New VEBA will also be funded by the transfer of the UAW Related Account from the Existing Internal VEBA and the assets of the Existing External VEBA to the New VEBA (each as defined in the UAW Retiree Settlement Agreement). The Debtors, the

Purchaser, and the UAW specifically intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2);

- the Debtors' sponsorship of the Existing Internal VEBA (as defined in the UAW Retiree Settlement Agreement) shall be transferred to the Purchaser under the MPA.

GG. The Debtors have (i) cured and/or provided adequate assurance of cure (through the Purchaser) of any default existing prior to the date hereof under any of the Purchased Contracts that have been designated by the Purchaser for assumption and assignment under the MPA, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided compensation or adequate assurance of compensation through the Purchaser to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Purchased Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and the Purchaser has provided adequate assurance of future performance under the Purchased Contracts, within the meaning of section 365(b)(1)(C) of the Bankruptcy Code. The Modified Assumption and Assignment Procedures are fair, appropriate, and effective and, upon the payment by the Purchaser of all Cure Amounts (as hereinafter defined) and approval of the assumption and assignment for a particular Purchased Contract thereunder, the Debtors shall be forever released from any and all liability under the Purchased Contracts.

HH. The Debtors are the sole and lawful owners of the Purchased Assets, and no other person has any ownership right, title, or interest therein. The Debtors' non-Debtor Affiliates have acknowledged and agreed to the 363 Transaction and, as required by, and in accordance with, the MPA and the Transition Services Agreement, transferred any legal, equitable, or beneficial right, title, or interest they may have in or to the Purchased Assets to the Purchaser.

II. The Debtors currently maintain certain privacy policies that govern the use of "personally identifiable information" (as defined in section 101(41A) of the Bankruptcy Code) in conducting their business operations. The 363 Transaction may contemplate the transfer of certain personally identifiable information to the Purchaser in a manner that may not be consistent with certain aspects of their existing privacy policies. Accordingly, on June 2, 2009, the Court directed the U.S. Trustee to promptly appoint a consumer privacy ombudsman in accordance with section 332 of the Bankruptcy Code, and such ombudsman was appointed on June 10, 2009. The Privacy Ombudsman is a disinterested person as required by section 332(a) of the Bankruptcy Code. The Privacy Ombudsman filed his report with the Court on July 1, 2009 (Docket No. 2873) (the "**Ombudsman Report**") and presented his report at the Sale Hearing, and the Ombudsman Report has been reviewed and considered by the Court. The Court has given due consideration to the facts, including the exigent circumstances surrounding the conditions of the sale of personally identifiable information in connection with the 363 Transaction. No showing has been made that the sale of personally identifiable information in connection with the 363 Transaction in accordance with the provisions of this Order violates applicable nonbankruptcy law, and the Court concludes that such sale is appropriate in conjunction with the 363 Transaction.

JJ. Pursuant to Section 6.7(a) of the MPA, GM offered Wind-Down Agreements and Deferred Termination Agreements (collectively, the "**Deferred Termination Agreements**") in forms prescribed by the MPA to franchised motor vehicle dealers, including dealers authorized to sell and service vehicles marketed under the Pontiac brand (which is being discontinued), dealers authorized to sell and service vehicles marketed under the Hummer, Saturn and Saab brands (which may or may not be discontinued depending on whether the brands are sold to third parties) and dealers authorized to sell and service vehicles marketed

under brands which will be continued by the Purchaser. The Deferred Termination Agreements were offered as an alternative to rejection of the existing Dealer Sales and Service Agreements of these dealers pursuant to section 365 of the Bankruptcy Code and provide substantial additional benefits to dealers which enter into such agreements. Approximately 99% of the dealers offered Deferred Termination Agreements accepted and executed those agreements and did so for good and sufficient consideration.

KK. Pursuant to Section 6.7(b) of the MPA, GM offered Participation Agreements in the form prescribed by the MPA to dealers identified as candidates for a long term relationship with the Purchaser. The Participation Agreements provide substantial benefits to accepting dealers, as they grant the opportunity for such dealers to enter into a potentially valuable relationship with the Purchaser as a component of a reduced and more efficient dealer network. Approximately 99% of the dealers offered Participation Agreements accepted and executed those agreements.

LL. This Order constitutes approval of the UAW Retiree Settlement Agreement and the compromise and settlement embodied therein.

MM. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Consistent with Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Order to the full extent to which those rules provide, but that its Order should not become effective instantaneously. Thus the Court will shorten, but not wholly eliminate, the periods set forth in Fed.R.Bankr.P. 6004(h) and 6006, and expressly directs entry of judgment as set forth in accordance with the provisions of Paragraph 70 below.

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NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

General Provisions

1. The Motion is granted as provided herein, and entry into and performance under, and in respect of, the MPA and the 363 Transaction is approved.

2. All Objections to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or resolved, and all reservation of rights included in such Objections, are overruled on the merits other than a continuing Objection (each a "**Limited Contract Objection**") that does not contest or challenge the merits of the 363 Transaction and that is limited to (a) contesting a particular Cure Amount(s) (a "**Cure Objection**"), (b) determining whether a particular Assumable Executory Contract is an executory contract that may be assumed and/or assigned under section 365 of the Bankruptcy Code, and/or (c) challenging, as to a particular Assumable Executory Contract, whether the Debtors have assumed, or are attempting to assume, such contract in its entirety or whether the Debtors are seeking to assume only part of such contract. A Limited Contract Objection shall include, until resolved, a dispute regarding any Cure Amount that is subject to resolution by the Bankruptcy Court , or pursuant to the dispute resolution procedures established by the Sale Procedures Order or pursuant to agreement of the parties, including agreements under which an objection to the Cure Amount was withdrawn in connection with a reservation of rights under such dispute resolution procedures. Limited Contract Objections shall not constitute objections to the 363 Transaction, and to the extent such Limited Contract Objections remain continuing objections to be resolved before the Court, the hearing to consider each such Limited Contract Objection shall be adjourned to August 3, 2009 at 9:00 a.m. (the "**Limited Contract Objection Hearing**"). Within two (2) business days of the entry of this Order, the Debtors shall serve upon each of the counterparties to the remaining Limited Contract Objections a notice of the Limited Contract Objection Hearing. The Debtors or any party that withdraws, or has withdrawn, a Limited

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Contract Objection without prejudice shall have the right, unless it has agreed otherwise, to schedule the hearing to consider a Limited Contract Objection on not less than fifteen (15) days notice to the Debtors, the counterparties to the subject Assumable Executory Contracts, the Purchaser, and the Creditors' Committee, or within such other time as otherwise may be agreed by the parties.

Approval of the MPA

3. The MPA, all transactions contemplated thereby, and all the terms and conditions thereof (subject to any modifications contained herein) are approved. If there is any conflict between the MPA, the Sale Procedures Order, and this Order, this Order shall govern.

4. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors are authorized to perform their obligations under, and comply with the terms of, the MPA and consummate the 363 Transaction pursuant to, and in accordance with, the terms and provisions of the MPA and this Order.

5. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement, the MPA, together with all additional instruments and documents that the Sellers or the Purchaser deem necessary or appropriate to implement the MPA and effectuate the 363 Transaction, and to take all further actions as may reasonably be required by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser or reducing to possession the Purchased Assets or as may be necessary or appropriate to the performance of the obligations as contemplated by the MPA.

6. This Order and the MPA shall be binding in all respects upon the Debtors, their affiliates, all known and unknown creditors of, and holders of equity security interests in, any Debtor, including any holders of liens, claims, encumbrances, or other interests, including

rights or claims based on any successor or transferee liability, all non-Debtor parties to the Assumable Executory Contracts, all successors and assigns of the Purchaser, each Seller and their Affiliates and subsidiaries, the Purchased Assets, all interested parties, their successors and assigns, and any trustees appointed in the Debtors' chapter 11 cases or upon a conversion of any of such cases to cases under chapter 7 of the Bankruptcy Code and shall not be subject to rejection. Nothing contained in any chapter 11 plan confirmed in any of the Debtors' chapter 11 cases or the order confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the MPA or this Order.

Transfer of Purchased Assets Free and Clear

7. Except for the Assumed Liabilities, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Purchaser in accordance with the MPA, and, upon the Closing, shall be free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, and all such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, shall attach to the net proceeds of the 363 Transaction in the order of their priority, with the same validity, force, and effect that they now have as against the Purchased Assets, subject to any claims and defenses a Seller or any other party in interest may possess with respect thereto.

8. Except as expressly permitted or otherwise specifically provided by the MPA or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, dealers, employees, litigation claimants, and other creditors, holding liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including rights or claims

based on any successor or transferee liability, against or in a Seller or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Sellers, the Purchased Assets, the operation of the Purchased Assets prior to the Closing, or the 363 Transaction, are forever barred, estopped, and permanently enjoined (with respect to future claims or demands based on exposure to asbestos, to the fullest extent constitutionally permissible) from asserting against the Purchaser, its successors or assigns, its property, or the Purchased Assets, such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability.

9. This Order (a) shall be effective as a determination that, as of the Closing, (i) no claims other than Assumed Liabilities, will be assertable against the Purchaser, its affiliates, their present or contemplated members or shareholders, successors, or assigns, or any of their respective assets (including the Purchased Assets); (ii) the Purchased Assets shall have been transferred to the Purchaser free and clear of all claims (other than Permitted Encumbrances); and (iii) the conveyances described herein have been effected; and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks, or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is directed to accept for filing any and all of the documents

and instruments necessary and appropriate to consummate the transactions contemplated by the MPA.

10. The transfer of the Purchased Assets to the Purchaser pursuant to the MPA constitutes a legal, valid, and effective transfer of the Purchased Assets and shall vest the Purchaser with all right, title, and interest of the Sellers in and to the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities.

11. On the Closing of the 363 Transaction, each of the Sellers' creditors and any other holder of a lien, claim, encumbrance, or other interest, is authorized and directed to execute such documents and take all other actions as may be necessary to release its lien, claim, encumbrance (other than Permitted Encumbrances), or other interest in the Purchased Assets, if any, as such lien, claim, encumbrance, or other interest may have been recorded or may otherwise exist.

12. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing a lien, claim, encumbrance, or other interest in the Sellers or the Purchased Assets (other than Permitted Encumbrances) shall not have delivered to the Sellers prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens, claims, encumbrances, or other interests, which the person or entity has with respect to the Sellers or the Purchased Assets or otherwise, then (a) the Sellers are authorized and directed to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Sellers or the Purchased Assets, and (b) the Purchaser is authorized to file, register, or otherwise record a certified copy of this Order, which

shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever in the Sellers or the Purchased Assets.

13. All persons or entities in possession of any of the Purchased Assets are directed to surrender possession of such Purchased Assets to the Purchaser or its respective designees at the time of Closing of the 363 Transaction.

14. Following the Closing of the 363 Transaction, no holder of any lien, claim, encumbrance, or other interest (other than Permitted Encumbrances) shall interfere with the Purchaser's title to, or use and enjoyment of, the Purchased Assets based on, or related to, any such lien, claim, encumbrance, or other interest, or based on any actions the Debtors may take in their chapter 11 cases.

15. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Purchaser in accordance with the MPA and this Order; *provided, however*, that the foregoing restriction shall not prevent any person or entity from appealing this Order or opposing any appeal of this Order.

16. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these chapter 11 cases or the consummation of the 363 Transaction contemplated by the MPA.

17. From and after the Closing, the Purchaser shall comply with the certification, reporting, and recall requirements of the National Traffic and Motor Vehicle Safety Act, as amended and recodified, including by the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety

Code, and similar Laws, in each case, to the extent applicable in respect of motor vehicles, vehicles, motor vehicle equipment, and vehicle parts manufactured or distributed by the Sellers prior to the Closing.

18. Notwithstanding anything to the contrary in this Order or the MPA, (a) any Purchased Asset that is subject to any mechanic's, materialman's, laborer's, workmen's, repairman's, carrier's liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings, or any lien for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable, or delinquent (or which may be paid without interest or penalties) shall continue to be subject to such lien after the Closing Date if and to the extent that such lien (i) is valid, perfected and enforceable as of the Commencement Date (or becomes valid, perfected and enforceable after the Commencement Date as permitted by section 546(b) or 362(b)(18) of the Bankruptcy Code), (ii) could not be avoided by any Debtor under sections 544 to 549, inclusive, of the Bankruptcy Code or otherwise, were the Closing not to occur; and (iii) the Purchased Asset subject to such lien could not be sold free and clear of such lien under applicable non-bankruptcy law, and (b) any Liability as of the Closing Date that is secured by a lien described in clause (a) above (such lien, a "**Continuing Lien**") that is not otherwise an Assumed Liability shall constitute an Assumed Liability with respect to which there shall be no recourse to the Purchaser or any property of the Purchaser other than recourse to the property subject to such Continuing Lien. The Purchased Assets are sold free and clear of any reclamation rights, *provided, however,* that nothing, in this Order or the MPA shall in any way impair the right of any claimant against the Debtors with respect to any alleged reclamation right to the extent such reclamation right is not subject to the prior rights of a holder of a security interest in

the goods or proceeds with respect to which such reclamation right is alleged, or impair the ability of a claimant to seek adequate protection against the Debtors with respect to any such alleged reclamation right. Further, nothing in this Order or the MPA shall prejudice any rights, defenses, objections or counterclaims that the Debtors, the Purchaser, the U.S. Treasury, EDC, the Creditors' Committee or any other party in interest may have with respect to the validity or priority of such asserted liens or rights, or with respect to any claim for adequate protection.

Approval of the UAW Retiree Settlement Agreement

19. The UAW Retiree Settlement Agreement, the transactions contemplated therein, and the terms and conditions thereof, are fair, reasonable, and in the best interests of the retirees, and are approved. The Debtors, the Purchaser, and the UAW are authorized and directed to perform their obligations under, or in connection with, the implementation of the UAW Retiree Settlement Agreement and to comply with the terms of the UAW Retiree Settlement Agreement, including the obligation of the Purchaser to reimburse the UAW for certain expenses relating to the 363 Transaction and the transition to the New VEBA arrangements. The amendments to the Trust Agreement (as defined in the UAW Retiree Settlement Agreement) set forth on Exhibit E to the UAW Retiree Settlement Agreement, are approved, and the Trust Agreement is reformed accordingly.

20. In accordance with the terms of the UAW Retiree Settlement Agreement, (I) as of the Closing, there shall be no requirement to amend the Pension Plan as set forth in section 15 of the Henry II Settlement (as such terms are defined in the UAW Retiree Settlement Agreement); (II) on the later of December 31, 2009, or the Closing of the 363 Transaction (the "**Implementation Date**"), (i) the committee and the trustees of the Existing External VEBA (as defined in the UAW Retiree Settlement Agreement) are directed to transfer to the New VEBA all assets and liabilities of the Existing External VEBA and to terminate the Existing External

VEBA within fifteen (15) days thereafter, as provided under Section 12.C of the UAW Retiree Settlement Agreement, (ii) the trustee of the Existing Internal VEBA is directed to transfer to the New VEBA the UAW Related Account's share of assets in the Existing Internal VEBA within ten (10) business days thereafter as provided in Section 12.B of the UAW Retiree Settlement Agreement, and, upon the completion of such transfer, the Existing Internal VEBA shall be deemed to be amended to terminate participation and coverage regarding Retiree Medical Benefits for the Class and the Covered Group, effective as of the Implementation Date (each as defined in the UAW Retiree Settlement Agreement); and (III) all obligations of the Purchaser and the Sellers to provide Retiree Medical Benefits to members of the Class and Covered Group shall be governed by the UAW Retiree Settlement Agreement, and, in accordance with section 5.D of the UAW Retiree Settlement Agreement, all provisions of the Purchaser's Plan relating to Retiree Medical Benefits for the Class and/or the Covered Group shall terminate as of the Implementation Date or otherwise be amended so as to be consistent with the UAW Retiree Settlement Agreement (as each term is defined in the UAW Retiree Settlement Agreement), and the Purchaser shall not thereafter have any such obligations as set forth in Section 5.D of the UAW Retiree Settlement Agreement.

Approval of GM's Assumption of the UAW Claims Agreement

21. Pursuant to section 365 of the Bankruptcy Code, GM's assumption of the UAW Claims Agreement is approved, and GM, the UAW, and the Class Representatives are authorized and directed to perform their obligations under, or in connection with, the implementation of the UAW Claims Agreement and comply with the terms of the UAW Claims Agreement.

Assumption and Assignment to the Purchaser of Assumable Executory Contracts

22. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code and subject to and conditioned upon (a) the Closing of the 363 Transaction, (b) the occurrence of the Assumption Effective Date, and (c) the resolution of any relevant Limited Contract Objections, other than a Cure Objection, by order of this Court overruling such objection or upon agreement of the parties, the Debtors' assumption and assignment to the Purchaser of each Assumable Executory Contract (including, without limitation, for purposes of this paragraph 22) the UAW Collective Bargaining Agreement) is approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are deemed satisfied.

23. The Debtors are authorized and directed in accordance with sections 105(a) and 365 of the Bankruptcy Code to (i) assume and assign to the Purchaser, effective as of the Assumption Effective Date, as provided by, and in accordance with, the Sale Procedures Order, the Modified Assumption and Assignment Procedures, and the MPA, those Assumable Executory Contracts that have been designated by the Purchaser for assumption pursuant to sections 6.6 and 6.31 of the MPA and that are not subject to a Limited Contract Objection other than a Cure Objection, free and clear of all liens, claims, encumbrances, or other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities, and (ii) execute and deliver to the Purchaser such documents or other instruments as the Purchaser reasonably deems may be necessary to assign and transfer such Assumable Executory Contracts and Assumed Liabilities to the Purchaser. The Purchaser shall Promptly Pay (as defined below) the following (the "**Cure Amount**"): (a) all amounts due under such Assumable Executory Contract as of the Commencement Date as reflected on the website established by the Debtors (the "**Contract Website**"), which is referenced and is accessible as set forth in the Assumption and Assignment

Notice or as otherwise agreed to in writing by an authorized officer of the parties (for this purpose only, Susanna Webber shall be deemed an authorized officer of the Debtors) (the "**Prepetition Cure Amount**"), less amounts, if any, paid after the Commencement Date on account of the Prepetition Cure Amount (such net amount, the "**Net Prepetition Cure Amount**"), plus (b) any such amount past due and owing as of the Assumption Effective Date, as required under the Modified Assumption and Assignment Procedures, exclusive of the Net Prepetition Cure Amount. For the avoidance of doubt, all of the Debtors' rights to assert credits, chargebacks, setoffs, rebates, and other claims under the Purchased Contracts are purchased by and assigned to the Purchaser as of the Assumption Effective Date. As used herein, "**Promptly Pay**" means (i) with respect to any Cure Amount (or portion thereof, if any) which is undisputed, payment as soon as reasonably practicable, but not later than five (5) business days after the Assumption Effective Date, and (ii) with respect to any Cure Amount (or portion thereof, if any) which is disputed, payment as soon as reasonably practicable, but not later than five (5) business days after such dispute is resolved or such later date upon agreement of the parties and, in the event Bankruptcy Court approval is required, upon entry of a final order of the Bankruptcy Court. On and after the Assumption Effective Date, the Purchaser shall (i) perform any nonmonetary defaults that are required under section 365(b) of the Bankruptcy Code; *provided* that such defaults are undisputed or directed by this Court and are timely asserted under the Modified Assumption and Assignment Procedures, and (ii) pay all undisputed obligations and perform all obligations that arise or come due under each Assumable Executory Contract in the ordinary course. Notwithstanding any provision in this Order to the contrary, the Purchaser shall not be obligated to pay any Cure Amount or any other amount due with respect to any Assumable Executory Contract before such amount becomes due and payable under the applicable payment terms of such Contract.

24. The Debtors shall make available a writing, acknowledged by the Purchaser, of the assumption and assignment of an Assumable Executory Contract and the effective date of such assignment (which may be a printable acknowledgment of assignment on the Contract Website). The Assumable Executory Contracts shall be transferred and assigned to, pursuant to the Sale Procedures Order and the MPA, and thereafter remain in full force and effect for the benefit of, the Purchaser, notwithstanding any provision in any such Assumable Executory Contract (including those of the type described in sections 365(b)(2), (e)(1), and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Sellers shall be relieved from any further liability with respect to the Assumable Executory Contracts after such assumption and assignment to the Purchaser. Except as may be contested in a Limited Contract Objection, each Assumable Executory Contract is an executory contract or unexpired lease under section 365 of the Bankruptcy Code and the Debtors may assume each of their respective Assumable Executory Contracts in accordance with section 365 of the Bankruptcy Code. Except as may be contested in a Limited Contract Objection other than a Cure Objection, the Debtors may assign each Assumable Executory Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Assumable Executory Contract that prohibit or condition the assignment of such Assumable Executory Contract or terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Assumable Executory Contract, constitute unenforceable antiassignment provisions which are void and of no force and effect in connection with the transactions contemplated hereunder. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser of each Assumable Executory Contract have been satisfied, and, pursuant to section 365(k) of the Bankruptcy Code, the

Debtors are hereby relieved from any further liability with respect to the Assumable Executory Contracts, including, without limitation, in connection with the payment of any Cure Amounts related thereto which shall be paid by the Purchaser. At such time as provided in the Sale Procedures Order and the MPA, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title, and interest of each Purchased Contract. With respect to leases of personal property that are true leases and not subject to recharacterization, nothing in this Order or the MPA shall transfer to the Purchaser an ownership interest in any leased property not owned by a Debtor. Any portion of any of the Debtors' unexpired leases of nonresidential real property that purport to permit the respective landlords thereunder to cancel the remaining term of any such leases if the Sellers discontinue their use or operation of the Leased Real Property are void and of no force and effect and shall not be enforceable against the Purchaser, its assignees and sublessees, and the landlords under such leases shall not have the right to cancel or otherwise modify such leases or increase the rent, assert any Claim, or impose any penalty by reason of such discontinuation, the Sellers' cessation of operations, the assignment of such leases to the Purchaser, or the interruption of business activities at any of the leased premises.

25. Except in connection with any ongoing Limited Contract Objection, each non-Debtor party to an Assumable Executory Contract is forever barred, estopped, and permanently enjoined from (a) asserting against the Debtors or the Purchaser, their successors or assigns, or their respective property, any default arising prior to, or existing as of, the Commencement Date, or, against the Purchaser, any counterclaim, defense, or setoff (other than defenses interposed in connection with, or related to, credits, chargebacks, setoffs, rebates, and other claims asserted by the Sellers or the Purchaser in its capacity as assignee), or other claim asserted or assertable against the Sellers and (b) imposing or charging against the Debtors, the

Purchaser, or its Affiliates any rent accelerations, assignment fees, increases, or any other fees as a result of the Sellers' assumption and assignment to the Purchaser of the Assumable Executory Contracts. The validity of such assumption and assignment of the Assumable Executory Contracts shall not be affected by any dispute between the Sellers and any non-Debtor party to an Assumable Executory Contract.

26. Except as expressly provided in the MPA or this Order, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Liabilities other than certain Cure Amounts as provided in the MPA, and all holders of such claims are forever barred and estopped from asserting such claims against the Debtors, their successors or assigns, and their estates.

27. The failure of the Sellers or the Purchaser to enforce at any time one or more terms or conditions of any Assumable Executory Contract shall not be a waiver of such terms or conditions, or of the Sellers' and the Purchaser's rights to enforce every term and condition of the Assumable Executory Contracts.

28. The authority hereunder for the Debtors to assume and assign an Assumable Executory Contract to the Purchaser includes the authority to assume and assign an Assumable Executory Contract, as amended.

29. Upon the assumption by a Debtor and the assignment to the Purchaser of any Assumable Executory Contract and the payment of the Cure Amount in full, all defaults under the Assumable Executory Contract shall be deemed to have been cured, and any counterparty to such Assumable Executory Contract shall be prohibited from exercising any rights or remedies against any Debtor or non-Debtor party to such Assumable Executory Contract based on an asserted default that occurred on, prior to, or as a result of, the Closing, including the type of default specified in section 365(b)(1)(A) of the Bankruptcy Code.

30. The assignments of each of the Assumable Executory Contracts are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

31. Entry by GM into the Deferred Termination Agreements with accepting dealers is hereby approved. Executed Deferred Termination Agreements represent valid and binding contracts, enforceable in accordance with their terms.

32. Entry by GM into the Participation Agreements with accepting dealers is hereby approved and the offer by GM of entry into the Participation Agreements and entry into the Participation Agreements was appropriate and not the product of coercion. The Court makes no finding as to whether any specific provision of any Participation Agreement governing the obligations of Purchaser and its dealers is enforceable under applicable provisions of state law. Any disputes that may arise under the Participation Agreements shall be adjudicated on a case by case basis in an appropriate forum other than this Court.

33. Nothing contained in the preceding two paragraphs shall impact the authority of any state or of the federal government to regulate Purchaser subsequent to the Closing.

34. Notwithstanding any other provision in the MPA or this Order, no assignment of any rights and interests of the Debtors in any federal license issued by the Federal Communications Commission ("**FCC**") shall take place prior to the issuance of FCC regulatory approval for such assignment pursuant to the Communications Act of 1934, and the rules and regulations promulgated thereunder.

TPC Property

35. The TPC Participation Agreement and the other TPC Operative Documents are financing transactions secured to the extent of the TPC Value (as hereinafter defined) and shall be Retained Liabilities.

36. As a result of the Debtors' interests in the TPC Property being transferred to the Purchaser free and clear of all liens, claims, interests, and encumbrances (other than Permitted Encumbrances), including, without limitation, the TPC Lenders' Liens and Claims, pursuant to section 363(e) of the Bankruptcy Code, the TPC Lenders shall have an allowed secured claim in a total amount equal to the fair market value of the TPC Property on the Commencement Date under section 506 of the Bankruptcy Code (the "**TPC Value**"), as determined at a valuation hearing conducted by this Court or by mutual agreement of the Debtors, the Purchaser, and the TPC Lenders (such claim, the "**TPC Secured Claim**"). Either the Debtors, the Purchaser, the TPC Lenders, or the Creditors' Committee may file a motion with this Court to determine the TPC Value on twenty (20) days notice.

37. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection for the TPC Secured Claim and for the sole benefit of the TPC Lenders, at the Closing or as soon as commercially practicable thereafter, but in any event not later than five (5) business days after the Closing, the Purchaser shall place $90,700,000 (the "**TPC Escrow Amount**") in cash into an interest-bearing escrow account (the "**TPC Escrow Account**") at a financial institution selected by the Purchaser and acceptable to the other parties (the "**Escrow Bank**"). Interest earned on the TPC Escrow Amount from the date of deposit through the date of the disposition of the proceeds of such account (the "**TPC Escrow Interest**") will follow principal, such that interest earned on the amount of cash deposited into the TPC Escrow Account equal to the TPC Value shall be paid to the TPC Lenders and interest earned on the balance of the TPC Escrow Amount shall be paid to the Purchaser.

38. Promptly after the determination of the TPC Value, an amount of cash equal to the TPC Secured Claim plus the TPC Lenders' pro rata share of the TPC Escrow Interest shall be released from the TPC Escrow Account and paid to the TPC Lenders (the "**TPC**

Payment") without further order of this Court. If the TPC Value is less than $90,700,000, the TPC Lenders shall have, in addition to the TPC Secured Claim, an aggregate allowed unsecured claim against GM's estate equal to the lesser of (i) $45,000,000 and (ii) the difference between $90,700,000 and the TPC Value (the "**TPC Unsecured Claim**").

39. If the TPC Value exceeds $90,700,000, the TPC Lenders shall be entitled to assert a secured claim against GM's estate to the extent the TPC Lenders would have an allowed claim for such excess under section 506 of the Bankruptcy Code (the "**TPC Excess Secured Claim**"); *provided, however*, that any TPC Excess Secured Claim shall be paid from the consideration of the 363 Transaction as a secured claim thereon and shall not be payable from the proceeds of the Wind-Down Facility; *and provided further, however,* that the Debtors, the Creditors' Committee, and all parties in interest shall have the right to contest the allowance and amount of the TPC Excess Secured Claim under section 506 of the Bankruptcy Code (other than to contest the TPC Value as previously determined by the Court). All parties' rights and arguments respecting the determination of the TPC Secured Claim are reserved; *provided, however*, that in consideration of the settlement contained in these paragraphs, the TPC Lenders waive any legal argument that the TPC Lenders are entitled to a secured claim equal to the face amount of their claim under section 363(f)(3) or any other provision of the Bankruptcy Code solely as a matter of law, including, without limitation, on the grounds that the Debtors are required to pay the full face amount of the TPC Lenders' secured claims in order to transfer, or as a result of the transfer of, the TPC Property to the Purchaser. After the TPC Payment is made, any funds remaining in the TPC Escrow Account plus the Purchasers' pro rata share of the TPC Escrow Interest shall be released and paid to the Purchaser without further order of this Court. Upon the receipt of the TPC Payment by the TPC Lenders, other than any right to payment from GM on account of the TPC Unsecured Claim and the TPC Excess Secured Claim, the TPC

Lenders' Claims relating to the TPC Property shall be deemed fully satisfied and discharged, including, without limitation, any claims the TPC Lenders might have asserted against the Purchaser relating to the TPC Property, the TPC Participation Agreement, or the TPC Operative Documents. For the avoidance of doubt, any and all claims of the TPC Lenders arising from or in connection with the TPC Property, the TPC Participation Agreement, or the TPC Operative Documents shall be payable solely from the TPC Escrow Account or GM and shall be nonrecourse to the Purchaser.

40. The TPC Lenders shall not be entitled to payment of any fees, costs, or expenses (including legal fees) except to the extent that the TPC Value results in a TPC Excess Secured Claim and is thereby oversecured under the Bankruptcy Code and such claim is allowed by the Court as a secured claim under section 506 of the Bankruptcy Code.

41. In connection with the foregoing, and pursuant to Section 11.2 of the TPC Trust Agreement, GM, as the sole Certificate Holder and Beneficiary under the TPC Trust, together with the consent of GM as the Lessee, effective as of the date of the Closing, (a) exercises its election to terminate the TPC Trust and (b) in connection therewith, assumes all of the obligations of the TPC Trust and TPC Trustee under or contemplated by the TPC Operative Documents to which the TPC Trust or TPC Trustee is a party and all other obligations of the TPC Trust or TPC Trustee incurred under the TPC Trust Agreement (other than obligations set forth in clauses (i) through (iii) of the second sentence of Section 7.1 of the TPC Trust Agreement).

42. As a condition precedent to the 363 Transaction, in connection with the termination of the TPC Trust, effective as of the date of the Closing, all of the assets of the TPC Trust (the "**TPC Trust Assets**") shall be distributed to GM, as sole Certificate Holder and beneficiary under the TPC Trust, including, without limitation, the following:

(i) Industrial Development Revenue Real Property Note (General Motors Project) Series 1999-I, dated November 18, 1999, in the principal amount of $21,700,000, made by the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, to PVV Southpoint 14, LLC, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds (the "**TPC Tennessee Ground Lease**");

(ii) Real Property Lease Agreement dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Lessor, and PVV Southpoint 14, LLC, as Lessee, recorded as JW1262 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Real Property Lease dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1267 in the records of the Shelby County Register of Deeds;

(iii) Deed of Trust dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Grantor, in favor of Mid-South Title Corporation, as Trustee, for the benefit of PVV Southpoint 14, LLC, Beneficiary, recorded as JW1263 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds;

(iv) Assignment of Rents and Lease dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Assignor, and PVV Southpoint 14, LLC, as Assignee, recorded as JW1264 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds;

(v) The Tennessee Master Lease (as defined in the TPC Participation Agreement);

(vi) A certain tract of land being known and designated as Lot 1, as shown on a Subdivision Plat entitled "Final Plat – Lot 1, Whitemarsh Associates, LLC Property," which Plat is recorded among the Land Records of Baltimore County in Plat Book SM No. 71 at folio 144, Maryland, together with a certain tract of land being known and designated as "1.1865 Acre of Highway Widening," as shown on a Subdivision Plat entitled "Final Plat – Lot 1, Whitemarsh Associates, LLC Property," which Plat is recorded among the Land Records of Baltimore County in Plat Book SM No. 71 at folio 144, Baltimore, Maryland, saving and excepting from the above described property all that land conveyed to the State of Maryland to the use of the State Highway Administration of the Department of Transportation dated November 24, 2003, and

recorded among the Land Records of Baltimore County in Liber 19569, folio 074, Maryland, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way, including, without limitation, those easements benefiting Parcel I set forth in the Declaration and Agreement Respecting Easements, Restrictions and Operations, between the TPC Trust, GM, and Whitemarsh Associates, LLC, recorded among the Land Records of Baltimore County in Liber 14019, folio 430, as amended (collectively, the "**Maryland Property**");

(vii) alternatively to the transfer of a direct interest in the Maryland Property pursuant to item (vi) above, if such documents are still extant, the following interests shall be transferred: (a) Ground Lease Agreement dated as of September 8, 1999, between the TPC Trustee of the TPC Trust. as lessor, and Maryland Economic Development Corporation, as lessee, recorded among the Land Records of Baltimore County in Liber 14019, folio 565, (b) Sublease Agreement dated as of September 8, 1999, between the Maryland Economic Development Corporation, as sublessor, and the TPC Trustee of the TPC Trust, as sublessee, recorded among the Land Records of Baltimore County in Liber 14019, folio 589, together with (c) all agreements, loan agreements, notes, rights, obligations, and interests held by the TPC Trustee of the TPC Trust and/or issued by the TPC Trustee of the TPC Trust in connection therewith; and

(viii) The Maryland Master Lease (as defined in the TPC Participation Agreement).

43. As a result of the distribution of the TPC Trust Assets, effective as of the date of the Closing, title to the leasehold interest of the TPC Trustee of the TPC Trust under the TPC Tennessee Ground Lease and the lessor's interest under the Tennessee Master Lease shall be held by GM, as are the lessor's and lessee's interests under the Tennessee Master Lease, and as permitted by the TPC Trust Agreement, the Tennessee Master Lease shall hereby be terminated, and GM shall succeed to all rights of the lessor thereunder to the property leased thereby, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way.

44. As a result of the distribution of the TPC Trust Assets, effective as of the date of the Closing, title to the Maryland Property, the lessor's and lessee's interests under the Maryland Master Lease shall be held by GM, and as permitted by the TPC Trust Agreement, the Maryland Master Lease shall hereby be terminated, and GM shall succeed to all rights of the

lessor thereunder to the property leased thereby, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way.

45. All of the TPC Trust Assets and the TPC Property are Purchased Assets under the MPA and shall be transferred by GM pursuant thereto to the Purchaser free and clear of all liens, claims, encumbrances, and interests (other than Permitted Encumbrances), including, without limitation, any liens, claims, encumbrances, and interests of the TPC Lenders. To the extent any of the TPC Trust Assets are executory contracts and unexpired leases, they shall be Assumable Executory Contracts, which shall be assumed by GM and assigned to Purchaser pursuant to section 365 of the Bankruptcy Code and the Sale Procedures Order.

Additional Provisions

46. 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.

47. Effective upon the Closing and except as may be otherwise provided by stipulation filed with or announced to the Court with respect to a specific matter or an order of the Court, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding against the Purchaser, its present or contemplated members or shareholders, its successors and assigns, or the Purchased Assets, with respect to any (i) claim against the Debtors other than Assumed Liabilities, or (ii) successor or transferee liability of the Purchaser for any of the Debtors, including, without limitation, the following actions: (a) commencing or continuing any action or other proceeding pending or threatened against the Debtors as against the Purchaser, or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Debtors as against the Purchaser, its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (c) creating, perfecting, or enforcing any lien, claim, interest, or encumbrance against the Debtors as against the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (d) asserting any setoff, right of subrogation, or recoupment of any kind for any obligation of any of the Debtors as against any obligation due the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (e) commencing or continuing any action, in any manner or place, that does not comply, or is inconsistent with, the provisions of this Order or other orders of this Court, or

the agreements or actions contemplated or taken in respect thereof; or (f) revoking, terminating, or failing or refusing to renew any license, permit, or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with such assets. Notwithstanding the foregoing, a relevant taxing authority's ability to exercise its rights of setoff and recoupment are preserved.

48. 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.

49. The Purchaser has given fair and substantial consideration under the MPA for the benefit of the holders of liens, claims, encumbrances, or other interests. The consideration provided by the Purchaser for the Purchased Assets under the MPA is greater than the liquidation value of the Purchased Assets and shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

50. The consideration provided by the Purchaser for the Purchased Assets under the MPA is fair and reasonable, and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

51. If there is an Agreed G Transaction (determined no later than the due date, with extensions, of GM's tax return for the taxable year in which the 363 Transaction occurs), (i) the MPA shall, and hereby does, constitute a "plan" of GM and the Purchaser solely for purposes of sections 368 and 354 of the Tax Code, and (ii) the 363 Transaction, as set forth in the MPA, and the subsequent liquidation of the Sellers, are intended to constitute a tax reorganization of GM pursuant to section 368(a)(1)(G) of the Tax Code.

52. This Order (a) shall be effective as a determination that, except for the Assumed Liabilities, at Closing, all liens, claims, encumbrances, and other interests of any kind or nature whatsoever existing as to the Sellers with respect to the Purchased Assets prior to the Closing (other than Permitted Encumbrances) have been unconditionally released and terminated, and that the conveyances described in this Order have been effected, and (b) shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets.

53. Each and every federal, state, and local governmental agency or department is authorized to accept any and all documents and instruments necessary or appropriate to consummate the transactions contemplated by the MPA.

54. Any amounts that become payable by the Sellers to the Purchaser pursuant to the MPA (and related agreements executed in connection therewith, including, but not limited to, any obligation arising under Section 8.2(b) of the MPA) shall (a) constitute administrative expenses of the Debtors' estates under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code and (b) be paid by the Debtors in the time and manner provided for in the MPA without further Court order.

55. The transactions contemplated by the MPA are undertaken by the Purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and were negotiated by the parties at arm's length, and, accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the 363 Transaction shall not affect the validity of the 363 Transaction (including the assumption and assignment of any of the Assumable Executory Contracts and the UAW Collective Bargaining Agreement), unless such authorization is duly stayed pending such appeal. The Purchaser is a purchaser in good faith of the Purchased Assets and the Purchaser and its agents, officials, personnel, representatives, and advisors are entitled to all the protections afforded by section 363(m) of the Bankruptcy Code.

56. The Purchaser is assuming the obligations of the Sellers pursuant to and subject to conditions and limitations contained in their express written warranties, which were delivered in connection with the sale of vehicles and vehicle components prior to the Closing of the 363 Transaction and specifically identified as a "warranty." The Purchaser is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs, and point of purchase materials. Notwithstanding the foregoing, the Purchaser has assumed the

Sellers' obligations under state "lemon law" statutes, which require a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty, as defined in the applicable statute, after a reasonable number of attempts as further defined in the statute, and other related regulatory obligations under such statutes.

57. Subject to further Court order and consistent with the terms of the MPA and the Transition Services Agreement, the Debtors and the Purchaser are authorized to, and shall, take appropriate measures to maintain and preserve, until the consummation of any chapter 11 plan for the Debtors, (a) the books, records, and any other documentation, including tapes or other audio or digital recordings and data in, or retrievable from, computers or servers relating to or reflecting the records held by the Debtors or their affiliates relating to the Debtors' business, and (b) the cash management system maintained by the Debtors prior to the Closing, as such system may be necessary to effect the orderly administration of the Debtors' estates.

58. The Debtors are authorized to take any and all actions that are contemplated by or in furtherance of the MPA, including transferring assets between subsidiaries and transferring direct and indirect subsidiaries between entities in the corporate structure, with the consent of the Purchaser.

59. Upon the Closing, the Purchaser shall assume all liabilities of the Debtors arising out of, relating to, in respect of, or in connection with workers' compensation claims against any Debtor, except for workers' compensation claims against the Debtors with respect to Employees residing in or employed in, as the case may be as defined by applicable law, the states of Alabama, Georgia, New Jersey, and Oklahoma.

60. During the week after Closing, the Purchaser shall send an e-mail to the Debtors' customers for whom the Debtors have usable e-mail addresses in their database, which will provide information about the Purchaser and procedures for consumers to opt out of being

contacted by the Purchaser for marketing purposes. For a period of ninety (90) days following the Closing Date, the Purchaser shall include on the home page of GM's consumer web site (www.gm.com) a conspicuous disclosure of information about the Purchaser, its procedures for consumers to opt out of being contacted by the Purchaser for marketing purposes, and a notice of the Purchaser's new privacy statement. The Debtors and the Purchaser shall comply with the terms of established business relationship provisions in any applicable state and federal telemarketing laws. The Dealers who are parties to Deferred Termination Agreements shall not be required to transfer personally identifying information in violation of applicable law or existing privacy policies.

61. Nothing in this Order or the MPA releases, nullifies, or enjoins the enforcement of any Liability to a governmental unit under Environmental Laws or regulations (or any associated Liabilities for penalties, damages, cost recovery, or injunctive relief) that any entity would be subject to as the owner, lessor, or operator of property after the date of entry of this Order. Notwithstanding the foregoing sentence, nothing in this Order shall be interpreted to deem the Purchaser as the successor to the Debtors under any state law successor liability doctrine with respect to any Liabilities under Environmental Laws or regulations for penalties for days of violation prior to entry of this Order. Nothing in this paragraph should be construed to create for any governmental unit any substantive right that does not already exist under law.

62. Nothing contained in this Order or in the MPA shall in any way (i) diminish the obligation of the Purchaser to comply with Environmental Laws, or (ii) diminish the obligations of the Debtors to comply with Environmental Laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. The definition of Environmental Laws in the MPA shall be amended to delete the words "in existence on the date of the Original Agreement." For purposes of clarity, the exclusion of asbestos liabilities in

section 2.3(b)(x) of the MPA shall not be deemed to affect coverage of asbestos as a Hazardous Material with respect to the Purchaser's remedial obligations under Environmental Laws.

63. No law of any state or other jurisdiction relating to bulk sales or similar laws shall apply in any way to the transactions contemplated by the 363 Transaction, the MPA, the Motion, and this Order.

64. The Debtors shall comply with their tax obligations under 28 U.S.C. § 960, except to the extent that such obligations are Assumed Liabilities.

65. Notwithstanding anything contained in their respective organizational documents or applicable state law to the contrary, each of the Debtors is authorized and directed, upon and in connection with the Closing, to change their respective names, and any amendment to the organizational documents (including the certificate of incorporation) of any of the Debtors to effect such a change is authorized and approved, without Board or shareholder approval. Upon any such change with respect to GM, the Debtors shall file with the Court a notice of change of case caption within two (2) business days of the Closing, and the change of case caption for these chapter 11 cases shall be deemed effective as of the Closing.

66. The terms and provisions of the MPA and this Order shall inure to the benefit of the Debtors, their estates, and their creditors, the Purchaser, and their respective agents, officials, personnel, representatives, and advisors.

67. The failure to specifically include any particular provisions of the MPA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the MPA be authorized and approved in its entirety, except as modified herein.

68. The MPA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification,

amendment, or supplement does not have a material adverse effect on the Debtors' estates. Any such proposed modification, amendment, or supplement that does have a material adverse effect on the Debtors' estates shall be subject to further order of the Court, on appropriate notice.

69. The provisions of this Order are nonseverable and mutually dependent on each other.

70. As provided in Fed.R.Bankr.P. 6004(h) and 6006(d), this Order shall not be stayed for ten days after its entry, and instead shall be effective as of 12:00 noon, EDT, on Thursday, July 9, 2009. The Debtors and the Purchaser are authorized to close the 363 Transaction on or after 12:00 noon on Thursday, July 9. Any party objecting to this Order must exercise due diligence in filing any appeal and pursuing a stay or risk its appeal being foreclosed as moot in the event Purchaser and the Debtors elect to close prior to this Order becoming a Final Order.

Deleted: Pursuant to Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed for ten days after its entry and shall be effective immediately upon entry, and the Debtors and the Purchaser are authorized to close the 363 Transaction immediately upon entry of this Order.

71. This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the MPA, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, including the Deferred Termination Agreements, in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchased Assets to the Purchaser, (b) compel delivery of the purchase price or performance of other obligations owed by or to the Debtors, (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, (e) protect the Purchaser against any of the Retained Liabilities or the assertion of any lien, claim, encumbrance, or other interest, of any kind or nature whatsoever, against the Purchased Assets, and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements. The Court does not retain jurisdiction to hear disputes arising in connection with the application of the Participation

Agreements, stockholder agreements or other documents concerning the corporate governance of the Purchaser, and documents governed by foreign law, which disputes shall be adjudicated as

necessary under applicable law in any other court or administrative agency of competent jurisdiction.

Dated: New York, York
July 5, 2009

s/Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re: OnStar Contract Litigation

Case No. 2:07-MDL-01867

Honorable Sean F. Cox

_____/

OPINION & ORDER
GRANTING IN PART AND DENYING IN PART
PLAINTIFFS' MOTION FOR LEAVE TO FILE A THIRD AMENDED COMPLAINT

This matter is currently before the Court on Plaintiffs' Motion for Leave to File a Third Master Amended Complaint. Plaintiffs seek to file an amended complaint in order to: 1) add two additional plaintiffs as proposed class representatives; and 2) add NewGM as a Defendant and assert express warranty claims against NewGM, based on warranties that it allegedly assumed in bankruptcy proceedings. The parties have briefed the issues and the Court heard oral argument on January 6, 2011.

As explained below, the Court shall DENY THE MOTION IN PART AND GRANT THE MOTION IN PART. The Court shall DENY Plaintiffs' request for leave to assert warranty claims against NewGM. The Court shall GRANT the motion to the extent that the Court shall allow Plaintiffs to add two additional Plaintiffs as proposed class representatives.

BACKGROUND

Buyers and lessees of automobiles equipped with OnStar telematics equipment filed prospective class action complaints against four automobile manufacturers and OnStar Corporation ("OnStar"), asserting consumer protection act and warranty claims. Starting with a

Transfer Order issued on August 22, 2007, the Judicial Panel on Multidistrict Litigation consolidated the various actions before this Court for pretrial proceedings.

Plaintiffs filed their "Master Amended Class Action Complaint" ("MAC") on February 25, 2008, asserting claims against the following Defendants: 1) General Motors Corporation ("GM"); 2) Volkswagen of America ("VW"); 3) American Honda Motor Company ("Honda"); 4) Subaru of America ("Subaru"); and 5) OnStar.

In response to the MAC, Defendants filed motions to dismiss. On February 19, 2009, this Court issued an "Opinion & Order Granting In Part And Denying In Part Defendants' Motions To Dismiss." (D.E. No. 100). Following that Opinion & Order, Plaintiffs obtained leave to file a Second Master Amended Class Action Complaint ("SMAC"), which was filed on April 30, 2009.

After the SMAC was filed, OnStar filed a Motion to Compel Arbitration, asking the Court to compel Plaintiffs to arbitrate Counts I-A, VI and VII of the SMAC. Those counts involve "lost pre-paid minutes" purchased by Plaintiffs. OnStar asserted, and this Court agreed, that the OnStar T&C's arbitration provision requires arbitration of the pre-paid minutes claims. (*See* D.E. No. 156). Accordingly, the lost pre-paid minutes claims were dismissed.

On or about June 1, 2009, GM filed for bankruptcy. All claims against GM ("Old GM") in this action have been stayed since that time.

The bankruptcy proceedings have been taking place in the United States Bankruptcy Court for the Southern District of New York. In the bankruptcy proceedings, NewGM acquired substantially all of the assets of Old GM. The Bankruptcy Court approved the sale and defined the scope and limitations of New GM's responsibilities for Old GM's liabilities in an "Order (I)

Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (III) Granting Related Relief" ("the Sale Approval Order") which was entered in July 2009.

More than a year later, on August 2, 2010, Plaintiffs filed the instant motion seeking to file a Third Master Amended Complaint in order to add New GM as a Defendant and assert express warranty claims against it. Plaintiffs' proposed Third Master Amended Complaint alleges:

> 270. **GM breached its express warranties** to Plaintiff and all other Class members to repair and/or replace OnStar equipment so that it is in good operational condition and repair and suitable for its use in providing OnStar telematics services.
> 271. GM's breach of these express warranties proximately caused damages to Plaintiffs and members of the class.
> 272. **Pursuant to Section 10(b) of the Purchase Agreement and the Bankruptcy Court's Order, plaintiff's claims against GM are "Assumed Liabilities."**
> 273. By reason of the aforesaid, **NewGM is liable to plaintiffs and the Class for GM's breach of its express warranties** to Plaintiffs and the Class.

(Pls.' Proposed TMAC at ¶¶ 261-273) (emphasis added).

ANALYSIS

Plaintiffs filed their motion seeking leave to file a Third Master Amended Complaint ("TMAC") on August 2, 2010. Plaintiffs seek leave to file a TMAC in order to do two things: 1) include two additional proposed class representatives; and 2) assert claims against NewGM.

A. The Court Shall Grant Plaintiffs' Request To Include Two Additional Named Plaintiffs As Proposed Class Representatives.

Plaintiffs seek to file an amended complaint in order to include two additional proposed class representatives: 1) Jason Smith (a New York resident who purchased a Subaru with OnStar); and 2) Armand Pepper (a Florida resident who purchased a vehicle made by Honda with OnStar).

Smith was the sole named Plaintiff in the action transferred here from New York. Through oversight, Plaintiffs neglected to include him as a named plaintiff in the SMAC. Nevertheless, the parties understood him to be a plaintiff, and proposed class representative, and discovery was conducted as to Smith during the class certification discovery. Thus, adding Smith is essentially a "house-keeping matter." Subaru did not file a brief opposing Plaintiffs' motion. Plaintiffs state that Subaru does not oppose the TMAC. (*See* Pls.' Reply Br. at 3 n.3).

Although Honda does not believe that adding Pepper as a named Plaintiff warrants the filing of new complaint, Honda does not oppose adding him as a named Plaintiff, providing that it is able to take discovery from Pepper, which Plaintiffs agree it may do.

OnStar also does not oppose the addition of Pepper and Smith as named Plaintiffs, but asserts that could be done with a supplement that would simply add the allegations as to these two individuals to the SMAC. (*See* OnStar's Br. at 2 n.2).

The Court finds that Plaintiffs should be permitted to add Smith and Pepper as named Plaintiffs and proposed class representatives. Given that an automatic stay is currently in place as to one of the named Defendants in the SMAC, and the fact that Plaintiffs do not seek to add or materially change the allegations as to Defendants, the Court agrees that the filing of a Third Master Amended Complaint is not the best course of action. The Court directs the parties to meet and confer in order to submit to the Court a stipulated order to accomplish Plaintiffs' goal of adding Smith and Pepper as named Plaintiffs and proposed class representatives.

B. The Court Shall Deny Plaintiffs' Request To Assert Warranty Claims Against NewGM In This Action.

Plaintiffs also seek to assert class action claims against NewGM. Specifically, they seek to assert one claim against NewGM – a breach of express warranty claim. (*See* Count VIII of proposed TMAC) They state the following as to the proposed claim against NewGM: "The addition of a new Defendant – New GM – is proper because NewGM has assumed, through a purchase agreement and by order of a 2nd Circuit Bankruptcy Court, GM's express warranty obligations. Plaintiffs' allegations against GM for breach of express warranty are now properly attributable to NewGM." (Pls.' Br. at 2).

OnStar, Honda and VW oppose Plaintiffs' motion seeking to assert claims against NewGM at this late stage of the litigation.

OnStar notes that NewGM is an entirely new and distinct entity from GM and NewGM did not manufacture, market or sell any of the vehicles at issue in this litigation. Defendants assert that, in essence Plaintiffs are seeking "to assert successor liability against NewGM with respect to claims they purport to possess against Old GM, which remains in an ongoing Chapter

11 proceeding in the Bankruptcy Court in the South District of New York." (OnStar's Br. at 2). OnStar further states that "NewGM (which is separately represented with respect to the issues in this case), maintains that it did not assume and is not the successor to any asserted liabilities of Old GM, and has so informed Plaintiffs' counsel. To the extent Plaintiffs dispute New GM's position, that issue is within the exclusive jurisdiction of the Bankruptcy Court to interpret its Sale Approval Order." (*Id.*). OnStar and the other Defendants also oppose the motion because "the late addition of New GM and the ensuing litigation in the Bankruptcy Court would unjustifiably delay this case to the prejudice of all parties." (*Id.* at 2).

This Court shall deny Plaintiffs leave to file a TMAC to assert express warranty claims against NewGM for numerous reasons, which include: 1) the express warranty claims Plaintiffs seek to add against NewGM appear to be barred under the plain language of the Bankruptcy Court's Order; 2) the Bankruptcy Court has jurisdiction to resolve any disputes as to the liabilities that were assumed by NewGM; and 3) Plaintiffs' undue delay in attempting to assert such claims would prejudice Defendants.

First, the express warranty claims that Plaintiffs seek to assert against NewGM appear to be barred by the plain language of the Bankruptcy Court's Sale Approval Order. Notably, Plaintiffs's proposed TMAC seeks to hold NewGM liable for Old GM's alleged breaches of its express warranties:

> 273. By reason of the aforesaid, **NewGM is liable to plaintiffs and the Class for GM's breach of its express warranties** to Plaintiffs and the Class.

(Pls.' Proposed TMAC at ¶¶ 261-273). Paragraph 7 of the Sale Approval Order, however, provides that the assets acquired by NewGm were transferred "free and clear of all liens, claims,

encumbrances, and other interests of any kind or nature whatsoever . . . including rights or claims based on any successor or transferee liability, and all such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability" (Docket Entry No. 255-2 at ¶ 7). Moreover, the Sale Approval Order also provides:

> Except for the Assumed Liabilities expressly set forth in the MPA, **none** of the Purchaser, its present or contemplated members or shareholders, it successors or assigns . . . **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.**

(Sale Approval Order at ¶ 46) (emphasis added).

Second, any dispute over whether the express warranty claims Plaintiffs seek to assert against NewGM are "assumed liabilities" under the Bankruptcy Court's Orders is a dispute that should be resolved in the Bankruptcy Court. The Sale Approval Order expressly provides that the Bankruptcy Court has "exclusive jurisdiction" to enforce and implement there terms and provisions of the Sale Approval Order and the Master Purchase Agreement. That jurisdiction includes resolving any disputes arising under or related to the Master Purchase Agreement and interpreting and enforcing the provisions of the Sale Approval Order. Thus, to the extent that Plaintiffs wish to pursue warranty claims against NewGM, the forum in which to seek to do so is the bankruptcy court.

Third, Plaintiffs waited more than a year after the Sale Approval Order was entered before they sought leave to assert claims against NewGM in this action. During that year, Plaintiffs could have sought authorization from the Bankruptcy Court to pursue the claims at issue, or pursued the claims in bankruptcy court, but chose not to do so. In addition, during that

year significant class certification discovery and motion practice was conducted in this case. If the Court were to allow Plaintiffs to bring in a new Defendant at this late date, the Court would need to reopen class certification discovery, delay rulings on class certification, allow the new Defendant the opportunity to file its own motion to dismiss, and make a conflicts of law determination as to the new defendant. All of those actions would considerably delay this case – which has already been pending more than 3 years. The other Defendants would also be prejudiced as they would incur attorney fees and costs associated with the above actions.

CONCLUSION & ORDER

For the reasons above, IT IS ORDERED that Plaintiffs' Motion for Leave to File a Third Master Amended Complaint is GRANTED IN PART AND DENIED IN PART.

The motion is GRANTED to the extent that Plaintiffs shall be permitted to add Smith and Pepper as named Plaintiffs and proposed class representatives. As stated in this Opinion & Order, the Court directs the parties to meet and confer in order to submit to the Court a stipulated order to accomplish Plaintiffs' goal of adding Smith and Pepper as named Plaintiffs and proposed class representatives.

The motion is DENIED to the extent that the Court DENIES Plaintiffs' request for leave to assert claims against NewGM.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: January 25, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on January 25, 2011, by electronic and/or ordinary mail.

S/Jennifer Hernandez
Case Manager

EXHIBIT C

IMPORTANT: This booklet contains important information about the vehicle's warranty coverage. It also explains **owner assistance information and GM's participation in an Alternative Dispute Resolution Program.** Keep this booklet with your vehicle and make it available to a Chevrolet dealer if warranty work is needed. Be sure to keep it with your vehicle if you sell it so future owners will have the information.
Owner's Name:
Street Address:
City & State:
Vehicle Identification Number (VIN):
Date Vehicle First Delivered or Put In Use:
Odometer Reading on Date Vehicle First Delivered or Put In Use:

Have you purchased the Genuine GM Protection Plan? The GM Protection Plan may be purchased within specific time/mileage limitations. See the information request form in the back of this booklet. Remember, if the service contract you are considering for purchase does not have the GM Protection Plan emblem shown above on it, then it is not the Genuine GM Protection Plan from GM.

Part No. 15854844 B Second Printing

An Important Message to Chevrolet Owners...

Chevrolet's Commitment to You

We are committed to assuring your satisfaction with your new Chevrolet.

Your Chevrolet dealer also wants you to be completely satisfied and invites you to return for all your service needs, both during and after the warranty period.

Owner Assistance

Your Chevrolet dealer is best equipped to provide all of your service needs. Should you ever encounter a problem that is not resolved during or after the limited warranty period, talk to a member of dealer management. Under certain circumstances, GM and/or GM dealers may provide assistance after the limited warranty period has expired when the problem results from a defect in material or workmanship. These instances will be reviewed on a case-by-case basis. If your problem has not been resolved to your satisfaction, follow the "Customer Satisfaction Procedure" as outlined under *Owner Assistance on page 30*.

We thank you for choosing a Chevrolet.

GM Participation in an Alternative Dispute Resolution Program

See the "Customer Satisfaction Procedure" under *Owner Assistance on page 30* for information on the voluntary, non-binding Alternative Dispute Resolution Program in which GM participates.

Warranty Service — United States and Canada

Your selling dealership has made a large investment to ensure that they have the proper tools, training, and parts inventory to make any necessary warranty repairs should they be required during the warranty period. We ask that you return to your selling dealer for warranty repairs. In the event of an emergency repair, you may take your vehicle to any authorized GM dealer for warranty repairs. However, certain warranty repairs require special tools or training that only a dealer selling your brand may have. Therefore, not all dealers are able to perform every repair. If a particular dealership cannot assist you, then contact the Customer Assistance Center. If you have changed your residence, visit any Chevrolet dealer in the United States or Canada for warranty service.

Warranty Coverage at a Glance

The warranty coverages are summarized below.

New Vehicle Limited Warranty

Bumper-to-Bumper (Includes Tires)

- Coverage is for the first 3 years or 36,000 miles, whichever comes first.

Powertrain

- Coverage is for 5 years or 100,000 miles, whichever comes first.

Sheet Metal

- Corrosion coverage is for the first 3 years or 36,000 miles, whichever comes first.
- Rust-through coverage is for the first 6 years or 100,000 miles, whichever comes first.

6.6L DURAMAX® Diesel Engine (If Equipped)

- Coverage is for 5 years or 100,000 miles, whichever comes first.

Emission Control System Warranty

For light duty trucks, see “How to Determine the Applicable Emissions Control System Warranty” under *Emission Control Systems Warranty on page 18* for more information.

Federal

- Gasoline Engines
  - Defects and performance for cars and light duty truck emission control systems are covered for the first 2 years or 24,000 miles, whichever comes first. From the first 2 years or 24,000 miles to 3 years or 36,000 miles defects in material or workmanship continue to be covered under the New Vehicle Limited Warranty Bumper-to-Bumper coverage explained previously. Specified major components are covered for the first 8 years or 80,000 miles, whichever comes first.

– Defects and performance for heavy duty truck emission control systems are covered for the first 5 years or 50,000 miles, whichever comes first.

- 6.6L DURAMAX® Diesel Engines are covered for the first 5 years or 50,000 miles, whichever comes first.

California

- Gasoline Engines
  – Defects and performance for cars and trucks with light duty or medium duty emission control systems are covered for the first 3 years or 50,000 miles, whichever comes first.
  – Specified components for cars or light duty trucks equipped with light duty or medium duty truck emission control systems are covered for the first 7 years or 70,000 miles, whichever comes first.
- 6.6L DURAMAX® Diesel Engines
  – Defects and performance for the emission control systems are covered for the first 5 years or 50,000 miles, whichever comes first.
  – Specified components for the emission control system are covered for the first 7 years or 70,000 miles, whichever comes first.

Important: Some California emission vehicles may have special coverages longer than those listed here. See “California Emission Control System Warranty” under *Emission Control Systems Warranty on page 18*.

Noise Emissions

- Coverage is for applicable vehicles weighing over 10,000 lbs based on the Gross Vehicle Weight Rating (GVWR) only, for the entire life of the vehicle.

General Motors Corporation New Vehicle Limited Warranty

GM will provide for repairs to the vehicle during the warranty period in accordance with the following terms, conditions, and limitations.

What Is Covered

Warranty Applies

This warranty is for GM vehicles registered in the United States and normally operated in the United States or Canada, and is provided to the original and any subsequent owners of the vehicle during the warranty period.

Repairs Covered

The warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Obtaining Repairs

To obtain warranty repairs, take the vehicle to a Chevrolet dealer facility within the warranty period and request the needed repairs. A reasonable time must be allowed for the dealer to perform necessary repairs.

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first, except for other coverages listed here under “What is Covered” and those items listed under “What Is Not Covered” later in this section.

Powertrain Coverage

The powertrain is covered for 5 years or 100,000 miles, whichever comes first, except for other coverages listed here under “What is Covered” and those items listed under “What is Not Covered” later in this section.

Engine: Cylinder head, block, timing gears, timing chain, timing cover, oil pump/oil pump housing, OHC carriers, valve covers, oil pan, seals, gaskets, turbocharger, supercharger and all internal lubricated parts as well as manifolds, flywheel, water pump, harmonic balancer and engine mount. Timing belts are covered until the first scheduled maintenance interval.

Transmission/Transaxle/Transfer Case: Case, all internal lubricated parts, torque converter, transfer case, transmission/transaxle mounts, seals, and gaskets.

Drive Systems: Final drive housing, all internal lubricated parts, axle shafts and bearings, constant velocity joints, axle housing, propeller shafts, universal joints, wheel bearings, locking hubs, front differential actuator, supports, front and rear hub bearings, seals and gaskets.

Tire Coverage

The tires supplied with your vehicle are covered against defects in material or workmanship under the Bumper-to-Bumper coverage. Any tire replaced will continue to be warranted for the remaining portion of the Bumper-to-Bumper coverage period.

Following expiration of the Bumper-to-Bumper coverage, tires may continue to be covered under the tire manufacturer’s warranty. Review the tire manufacturer’s warranty booklet or consult the tire manufacturer distributor for specific details.

Accessory Coverages

All GM accessories and parts sold by GM and permanently installed on a GM vehicle prior to delivery will be covered under the provisions of the New Vehicle Limited Warranty. In the event GM accessories are installed after vehicle delivery, or are replaced under the new vehicle warranty, they will be covered, parts and labor, for the balance of the vehicle warranty, but in no event less than 12 months/12,000 miles. This coverage is only effective for GM accessories permanently installed by a GM dealer or an associated GM-approved Accessory Distributor/Installer (ADI).

GM accessories sold over-the-counter, or those not requiring installation, will continue to receive the standard GM Dealer Parts Warranty of 12 months from the date of purchase, parts only.

GM Licensed Accessories are covered under the accessory-specific manufacturer's warranty and are not warranted by GM or its dealers.

Notice: **This warranty excludes:**

Any communications device that becomes unusable or unable to function as intended due to unavailability of compatible wireless service from the wireless communication carrier that provides service for the OnStar® system.

Sheet Metal Coverage

Sheet metal panels are covered against corrosion and rust-through as follows:

Corrosion: Body sheet metal panels are covered against rust for 3 years or 36,000 miles, whichever comes first.

Rust-Through: Any body sheet metal panel that rusts through, an actual hole in the sheet metal, is covered for up to 6 years or 100,000 miles, whichever comes first.

Important: Cosmetic or surface corrosion, resulting from stone chips or scratches in the paint, for example, is not included in sheet metal coverage.

Towing

Towing is covered to the nearest Chevrolet dealer if your vehicle cannot be driven because of a warranted defect.

6.6L DURAMAX® Diesel Engine Coverage

For trucks equipped with a 6.6L DURAMAX® Diesel Engine, the diesel engine, except those items listed under "What Is Not Covered" later in this section is covered for 5 years or 100,000 miles, whichever comes first. For additional information, refer to *Things You Should Know About the New Vehicle Limited Warranty on page 12*. Also refer to the appropriate emission control system warranty for possible additional coverages.

What Is Not Covered

Tire Damage or Wear

Normal tire wear or wear-out is not covered. Road hazard damage such as punctures, cuts, snags, and breaks resulting from pothole impact, curb impact, or from other objects is not covered. Also, damage from improper inflation, spinning, as when stuck in mud or snow, tire chains, racing, improper mounting or dismounting, misuse, negligence, alteration, vandalism, or misapplication is not covered.

Damage Due to Bedliners

Owners of trucks with a bedliner, whether after-market or factory installed, should expect that with normal operation the bedliner will move. This movement may cause finish damage and/or squeaks and rattles. Therefore, any damage caused by the bedliner is not covered under the terms of the warranty.

Damage Due to Accident, Misuse, or Alteration

Damage caused as the result of any of the following is not covered:

- Collision, fire, theft, freezing, vandalism, riot, explosion, or objects striking the vehicle
- Misuse of the vehicle such as driving over curbs, overloading, racing, or other competition. Proper vehicle use is discussed in the owner manual.
- Alteration or modification to the vehicle including the body, chassis, or components after final assembly by GM.
- Coverages do not apply if the odometer has been disconnected, its reading has been altered, or mileage cannot be determined.

Important: This warranty is void on vehicles currently or previously titled as salvaged, scrapped, junked, or totaled.

Damage or Corrosion Due to Environment, Chemical Treatments, and/or Aftermarket Products

Damage caused by airborne fallout, salt from sea air, salt or other materials used to control road conditions, chemicals, tree sap, stones, hail, earthquake, water or flood, windstorm, lightning, the application of chemicals or sealants subsequent to manufacture, etc., is not covered. See “Chemical Paint Spotting” under *Things You Should Know About the New Vehicle Limited Warranty on page 12* for more details.

Damage Due to Insufficient or Improper Maintenance

Damage caused by failure to follow the recommended maintenance schedule intervals and/or failure to use or maintain fluids, fuel, lubricants, or refrigerants recommended in the owner manual is not covered.

Damage Due to Contaminated or Poor Quality Fuel

Poor fuel quality or incorrect fuel may cause driveability problems such as hesitation, lack of power, stall, or no start. It may also render gauges inoperable or degrade functionality for components such as spark plugs, oxygen sensors, and the catalytic converter. Damage from poor fuel quality, water contamination, incorrect diesel fuel or gasoline may not be covered.

It is recommended that gasoline meet specifications which were developed by automobile manufacturers around the world and contained in the World-Wide Fuel Charter which is available from the Alliance of Automobile Manufacturers at www.autoalliance.org/fuel_charter.htm. Gasoline meeting these specifications could provide improved driveability and emission control system performance compared to other gasoline.

Maintenance

All vehicles require periodic maintenance. Maintenance services, such as those detailed in the owner manual are the owner’s expense. Vehicle lubrication, cleaning, or polishing are not covered. Failure of or damage to components requiring replacement or repair due to vehicle use, wear, exposure, or lack of maintenance is not covered.

Items such as:

- Audio System Cleaning
- Brake Pads/Linings
- Clutch Linings
- Coolants and Fluids

- Filters
- Keyless Entry Batteries *
- Limited Slip Rear Axle Service
- Tire Rotation
- Wheel Alignment/Balance **
- Wiper Inserts

are covered only when replacement or repair is the result of a defect in material or workmanship.

* Consumable battery covered up to 12 months only.

** Maintenance items after 7,500 miles.

Extra Expenses

Economic loss or extra expense is not covered.

Examples include:

- Inconvenience
- Lodging, meals, or other travel costs
- Loss of vehicle use
- Payment for loss of time or pay
- State or local taxes required on warranty repairs
- Storage

Other Terms: This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

GM does not authorize any person to create for it any other obligation or liability in connection with these vehicles. **Any implied warranty of merchantability or fitness for a particular purpose applicable to this vehicle is limited in duration to the duration of this written warranty. Performance of repairs and needed adjustments is the exclusive remedy under this written warranty or any implied warranty. GM shall not be liable for incidental or consequential damages, such as, but not limited to, lost wages or vehicle rental expenses, resulting from breach of this written warranty or any implied warranty. ***

* Some states do not allow limitations on how long an implied warranty will last or the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

Hybrid Specific Warranty

For vehicles sold in the United States, in addition to the Bumper-to-Bumper Coverage described previously, General Motors will warrant certain Hybrid components for each 2008 Chevrolet Tahoe Two-mode Hybrid and Chevrolet Malibu Hybrid (hereafter referred to as Hybrid) for 8 years or 100,000 miles (160 000 kilometres), whichever comes first, from the original in-service date of the vehicle, against warrantable repairs to the specific Hybrid components of the vehicle.

For vehicles sold in Canada, in addition to the Base Warranty Coverage described in the GM Canadian Limited Warranty, Maintenance and Owner Assistance Booklet, General Motors of Canada Limited will warrant certain Hybrid components for each 2008 Chevrolet Tahoe Two-mode Hybrid and Chevrolet Malibu Hybrid (hereafter referred to as Hybrid) for 8 years, or 160,000 kilometres, whichever comes first, from the original in-service date of the vehicle, against warrantable repairs to the specific Hybrid components of the vehicle.

This warranty is for Hybrid vehicles registered in the United States or Canada, and normally operated in the United States or Canada. In addition to the initial owner of the vehicle, the coverage described in this Hybrid warranty is transferable at no cost to any subsequent person(s) who assumes ownership of the vehicle within the above described 8 years or 100,000 mile (160 000 kilometres) term. No deductibles are associated with this Hybrid warranty.

This Hybrid warranty is in addition to the express conditions and warranties described previously. The coverage and benefits described under “New Vehicle Limited Warranty” are not extended or altered because of this special Hybrid Component Warranty.

For 2008 Hybrid owners requiring more comprehensive coverage than that provided under this Hybrid warranty, a GM Protection Plan may be available. See your Chevrolet dealer for more details.

What is Covered

This Hybrid warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the 8 year or 100,000 mile (160 000 kilometres) term for the following:

Towing

During the 8 year or 100,000 mile (160 000 km) Hybrid warranty period, towing is covered to the nearest Chevrolet servicing dealer if your vehicle cannot be driven because of a warranted Hybrid specific defect. Contact the Chevrolet Roadside Assistance Center for towing. Refer to the owner manual for details.

Malibu Hybrid Coverage

Hybrid Components

The energy storage control module and components including the Hybrid NiMh batteries, Hybrid battery disconnect, and Hybrid battery cooling fan.

Starter Generator Unit

The starter generator unit, starter generator control module, starter generator control module coolant pump, 3-phase cable assembly, starter generator drive belt, belt tensioner and brackets, belt pulley and brackets.

Other Hybrid Components

The 42-volt cable assembly, auxiliary transmission pump, hill start valve, and cabin heater coolant pump.

Tahoe Two-mode Hybrid Coverage

Transmission

Automatic transmission components including the transmission auxiliary fluid pump, transmission auxiliary pump controller, and 3 phase transmission cables.

Brakes

Brake modulator.

Other Hybrid Components

Battery pack, 300v cables, Drive Motor/Generator Control Module (DMCM), and Accessory Power Module.

What is Not Covered

In addition to the “What is Not Covered” section previously, this Hybrid warranty does not cover the following items:

Wear Items

Wear items, such as brake linings, are not covered in this Hybrid warranty.

Maintenance

As the vehicle owner, you are responsible for the performance of the scheduled maintenance listed in your owner manual. Maintenance intervals, checks, inspections, and recommended fluids and lubricants as prescribed in the owner manual are necessary to keep your vehicle in good working condition. Any damage caused by owner/lessee failure to follow scheduled maintenance may not be covered by warranty. Scheduled maintenance includes such items as:

- Brake Pads/Linings
- Coolants and Fluids
- Filters

Warranty Repairs — Component Exchanges

In the interest of customer satisfaction, GM may offer exchange service on some vehicle components. This service is intended to reduce the amount of time your vehicle is not available for use due to repairs. Components used in exchange are service replacement parts which may be new, remanufactured, reconditioned, or repaired, depending on the component involved.

All exchange components used meet GM standards and are warranted the same as new components. Examples of the types of components that might be serviced in this fashion include: engine and transmission assemblies, instrument cluster assemblies, radios, compact disc players, tape players, batteries, and powertrain control modules.

Warranty Repairs — Recycled Materials

Environmental Protection Agency (EPA) guidelines and GM support the capture, purification, and reuse of automotive air conditioning refrigerant gases and engine coolant. As a result, any repairs GM may make to your vehicle may involve the installation of purified reclaimed refrigerant and coolant.

Tire Service

Any authorized Chevrolet or tire dealer for your brand of tires can assist you with tire service. If, after contacting one of these dealers, you need further assistance or you have questions, contact Chevrolet Customer Assistance Center. The toll-free telephone numbers are listed under *Owner Assistance on page 30*.

6.6L DURAMAX® Diesel Engine Components

For trucks equipped with a 6.6L Duramax® Diesel Engine, the complete engine assembly, including turbocharger components, is covered for defects in material or workmanship for 5 years or 100,000 miles, whichever comes first.

- Cylinder block and heads and all internal parts, intake and exhaust manifolds, timing gears, timing gear chain or belt and cover, flywheel, harmonic balancer, valve covers, oil pan, oil pump, water pump, fuel pump, engine mounts, seals, and gaskets
- Diesel Fuel Metering System: injection pump, nozzles, high pressure lines, and high pressure sealing devices
- Glow Plug Control System: control/glow plug assembly, glow plugs, cold advance relay, and Engine Control Module (ECM)
- Fuel injection control module, integral oil cooler, transmission adapter plate, left and right common fuel rails, fuel filter assembly, fuel temperature sensor, and function block

Important: Some of these components may also be covered by the Emission Warranty. See the "Emission Warranty Parts List" under *Emission Control Systems Warranty on page 18* for details.

Aftermarket Engine Performance Enhancement Products and Modifications

Some aftermarket engine performance products and modifications promise a way to increase the horsepower and torque levels of your vehicle's powertrain. You should be aware that these products may have detrimental effects on the performance and life of the engine, exhaust emission system, transmission, and drivetrain. The Duramax® Diesel Engine, Allison Automatic Transmission®, and drivetrain have been designed and built to offer industry leading durability and performance in the most demanding applications. Engine power enhancement products may enable the engine to operate at horsepower and torque levels that could damage, create failure, or reduce the life of the engine, engine emission system, transmission, and drivetrain. Damage, failure, or reduced life of the engine, transmission, emission system, drivetrain or other vehicle components caused by aftermarket engine performance enhancement products or modifications may not be covered under your vehicle warranty.

After-Manufacture “Rustproofing”

Your vehicle was designed and built to resist corrosion. Application of additional rust-inhibiting materials is neither necessary nor required under the Sheet Metal Coverage. GM makes no recommendations concerning the usefulness or value of such products.

Application of after-manufacture rustproofing products may create an environment which reduces the corrosion resistance built into your vehicle. Repairs to correct damage caused by such applications are not covered under your New Vehicle Limited Warranty.

Paint, Trim, and Appearance Items

Defects in paint, trim, upholstery, or other appearance items are normally corrected during new vehicle preparation. If you find any paint or appearance concerns, advise your dealer as soon as possible. Your owner manual has instructions regarding the care of these items.

Vehicle Operation and Care

Considering the investment you have made in your Chevrolet, we know you will want to operate and maintain it properly. We urge you to follow the maintenance instructions in your owner manual.

If you have questions on how to keep your vehicle in good working condition, see your Chevrolet dealer, the place many customers choose to have their maintenance work done. You can rely on your Chevrolet dealer to use the proper parts and repair practices.

Maintenance and Warranty Service Records

Retain receipts covering performance of regular maintenance. Receipts can be very important if a question arises as to whether a malfunction is caused by lack of maintenance or a defect in material or workmanship.

A “Maintenance Record” is provided in the maintenance schedule section of the owner manual for recording services performed.

The servicing dealer can provide a copy of any warranty repairs for your records.

Chemical Paint Spotting

Some weather and atmospheric conditions can create a chemical fallout. Airborne pollutants can fall upon and adhere to painted surfaces on your vehicle. This damage can take two forms: blotchy, ring-shaped discolorations, and/or small irregular dark spots etched into the paint surface.

Although no defect in the factory applied paint causes this, Chevrolet will repair, at no charge to the owner, the painted surfaces of new vehicles damaged by this fallout condition within 12 months or 12,000 miles of purchase, whichever comes first.

Warranty Coverage — Extensions

Time Extensions: The New Vehicle Limited Warranty will be extended one day for each day beyond the first 24 hour period in which your vehicle is at an authorized dealer facility for warranty service. You may be asked to show the repair orders to verify the period of time the warranty is to be extended. Your extension rights may vary depending on state law.

Mileage Extension: Prior to delivery, some mileage is put on your vehicle during testing at the assembly plant, during shipping, and while at the dealer facility. The dealer records this mileage on the first page of this warranty booklet at delivery. For eligible vehicles, this mileage will be added to the mileage limits of the warranty ensuring that you will receive full benefit of the coverage. Mileage extension eligibility:

- Applies only to new vehicles held exclusively in new vehicle inventory.
- Does not apply to used vehicles, GM-owned vehicles, dealer owned used vehicles, or dealer demonstrator vehicles.
- Does not apply to vehicles with more than 1,000 miles on the odometer even though the vehicle may not have been registered for license plates.

Touring Owner Service — Foreign Countries

If you are touring in a foreign country and repairs are needed, take your vehicle to a GM dealer facility, preferably one which sells and services Chevrolet vehicles. Once you return to the United States provide your dealer with a statement of circumstances, the original repair order, proof of ownership, and any paid receipt indicating the work performed and parts replaced for reimbursement consideration.

Important: Repairs made necessary by the use of improper or dirty fuels and lubricants are not covered under the warranty. See your owner manual for additional information on fuel requirements when operating in foreign countries.

Warranty Service — Foreign Countries

This warranty applies to GM vehicles registered in the United States and normally operated in the United States or Canada. If you have permanently relocated and established household residency in another country, GM may authorize the performance of repairs under the warranty authorized for vehicles generally sold by GM in that country. Contact an authorized GM dealer in your country for assistance.

Important: GM warranty coverages may be void on GM vehicles that have been imported/exported for resale.

Original Equipment Alterations

This warranty does not cover any damage or failure resulting from modification or alteration to the vehicle's original equipment as manufactured or assembled by General Motors. Examples of the types of alterations that would not be covered include cutting, welding, or disconnecting of the vehicle's original equipment parts and components.

Additionally, General Motors does not warranty non-GM parts and/or calibrations. The use of parts and/or control module calibrations not issued through General Motors will void the warranty coverage for those components that are damaged or otherwise affected by the installation of the non-GM part and/or control module calibration.

The only exception is that non-GM parts labeled "Certified to EPA Standards" are covered by the Federal Emissions Performance Warranty.

Recreation Vehicle and Special Body or Equipment Alterations

Installations or alterations to the original equipment vehicle, or chassis, as manufactured and assembled by GM, are not covered by this warranty. The special body company, assembler, or equipment installer is solely responsible for warranties on the body or equipment and any alterations to any of the parts, components, systems, or assemblies installed by GM. Examples include, but are not limited to, special body installations, such as recreational vehicles, the installation of any non-GM part, cutting, welding, or the disconnecting of original equipment vehicle or chassis parts and components, extension of wheelbase, suspension and driveline modifications, and axle additions.

Pre-Delivery Service

Defects in the mechanical, electrical, sheet metal, paint, trim, and other components of your vehicle may occur at the factory or while it is being transported to the dealer facility. Normally, any defects occurring during assembly are identified and corrected at the factory during the inspection process. In addition, dealers inspect each vehicle before delivery. They repair any uncorrected factory defects and any transit damage detected before the vehicle is delivered to you.

Any defects still present at the time the vehicle is delivered to you are covered by the warranty. If you find any defects, advise your dealer without delay. For further details concerning any repairs which the dealer may have made prior to you taking delivery of your vehicle, ask your dealer.

Production Changes

GM and GM dealers reserve the right to make changes in vehicles built and/or sold by them at any time without incurring any obligation to make the same or similar changes on vehicles previously built and/or sold by them.

Noise Emissions Warranty for Light Duty Trucks Over 10,000 LBS Gross Vehicle Weight Rating (GVWR) Only

GM warrants to the first person who purchases this vehicle for purposes other than resale and to each subsequent purchaser of this vehicle, as manufactured by GM, that this vehicle was designed, built, and equipped to conform at the time it left GM's control with all applicable United States EPA Noise Control Regulations.

This warranty covers this vehicle as designed, built, and equipped by GM, and is not limited to any particular part, component, or system of the vehicle manufactured by GM. Defects in design, assembly, or in any part, component, or vehicle system as manufactured by GM, which, at the time it left GM's control, caused noise emissions to exceed Federal Standards, are covered by this warranty for the life of the vehicle.

Emission Control Systems Warranty

The emission warranty on your vehicle is issued in accordance with the U.S. Federal Clean Air Act. Defects in material or workmanship in GM emission parts may also be covered under the New Vehicle Limited Warranty Bumper-to-Bumper coverage. There may be additional coverage on GM diesel engine vehicles. In any case, the warranty with the broadest coverage applies.

What Is Covered

The parts covered under the emission warranty are listed under “Emission Warranty Parts List” later in this section.

How to Determine the Applicable Emissions Control System Warranty

State and Federal agencies may require different emission control system warranty depending on:

- Whether the vehicle conforms to regulations applicable to light duty or heavy duty emission control systems.
- Whether the vehicle conforms to or is certified for California regulations in addition to U.S. EPA Federal regulations.

All vehicles are eligible for Federal Emissions Control System Warranty Coverage. If the emissions control label contains language stating the vehicle conforms to California regulations, the vehicle is also eligible for California Emissions Control System Warranty Coverage.

Federal Emission Control System Warranty

Federal Warranty Coverage

- Car or Light Duty Truck with a Gross Vehicle Weight Rating (GVWR) of 8,500 lbs. or less
  - 2 years or 24,000 miles and 8 years or 80,000 miles for the catalytic converter and the vehicle/powertrain control module (including emission-related software), whichever comes first.
- Light Duty Truck equipped with Heavy Duty Gasoline Engine and with a Gross Vehicle Weight Rating (GVWR) greater than 8,500 lbs.
  - 5 years or 50,000 miles, whichever comes first.

- Light Duty Truck equipped with Heavy Duty Diesel Engine and with a Gross Vehicle Weight Rating (GVWR) greater than 8,500 lbs.
  - 5 years or 50,000 miles, whichever comes first.

Federal Emission Defect Warranty

GM warrants to the owner the following:

- The vehicle was designed, equipped, and built so as to conform at the time of sale with the applicable regulations of the Federal Environmental Protection Agency (EPA).
- The vehicle is free from defects in material and workmanship which cause the vehicle to fail to conform with those regulations during the emission warranty period.

Emission related defects in the genuine GM parts listed under the Emission Warranty Parts List, including related diagnostic costs, parts, and labor are covered by this warranty.

Federal Emission Performance Warranty

Some states and/or local jurisdictions have established periodic vehicle Inspection and Maintenance (I/M) programs to encourage proper maintenance of your vehicle. If an EPA-approved I/M program is enforced in your area, you may also be eligible for Emission Performance Warranty coverage when all of the following three conditions are met:

- The vehicle has been maintained and operated in accordance with the instructions for proper maintenance and use set forth in the owner manual supplied with your vehicle.
- The vehicle fails an EPA-approved I/M test during the emission warranty period.
- The failure results, or will result, in the owner of the vehicle having to bear a penalty or other sanctions, including the denial of the right to use the vehicle, under local, state, or federal law.

GM warrants that your dealer will replace, repair, or adjust to GM specifications, at no charge to you, any of the parts listed under the “Emission Warranty Parts List” later in this section which may be necessary to conform to the applicable emission standards. Non-GM parts labeled “Certified to EPA Standards” are covered by the Federal Emission Performance Warranty.

California Emission Control System Warranty

This section outlines the emission warranty that GM provides for your vehicle in accordance with the California Air Resources Board. Defects in material or workmanship in GM emission parts may also be covered under the New Vehicle Limited Warranty Bumper-to-Bumper coverage. There may be additional coverage on GM diesel engine vehicles. In any case, the warranty with the broadest coverage applies.

This warranty applies if your vehicle meets both of the following requirements:

- Your vehicle is registered in California **or other states adopting California emission and warranty regulations.***
- Your vehicle is certified for sale in California as indicated on the vehicle's emission control information label.

***Important:** Connecticut, Maine, Massachusetts, Pennsylvania, Rhode Island, and Vermont have California Emissions Warranty coverage. (New York adopted California emission standards, but not the California Emissions Warranty. The Federal Emissions Control Warranty applies to all non-PZEV vehicles in New York.)

California Partial Zero Emission Vehicles (PZEV) have extended coverage on all emission related parts.

***Important:** California, New York, Massachusetts, Vermont, Maine, Connecticut, Rhode Island, and New Jersey have PZEV Emission Warranty Coverage.

Your Rights and Obligations (For Vehicles Subject to California Exhaust Emission Standards)

In California, new motor vehicles must be designed, equipped, and built to meet the state's stringent anti-smog standards. GM must warrant your vehicle's emission control system for the periods of time and mileage listed provided there has been no abuse, neglect, or improper maintenance of your vehicle. Your vehicle's emission control system may include parts such as the fuel injection system, ignition system, catalytic converter, and engine computer. Also included are hoses, belts, connectors, and other emission related assemblies.

Where a warrantable condition exists, GM will repair your vehicle at no cost to you including diagnosis, parts, and labor.

California Emission Defect and Emission Performance Warranty Coverage

For cars and trucks with light duty or medium duty emissions:

- For 3 years or 50,000 miles, whichever comes first:
  - If your vehicle fails a smog check inspection, GM will make all necessary repairs and adjustments to ensure that your vehicle passes the inspection. This is your Emission Control System Performance Warranty.
  - If any emission related part on your vehicle is defective, GM will repair or replace it. This is your Short-term Emission Defects Warranty.
- For 7 years or 70,000 miles whichever comes first:
  - If an emission related part listed in this booklet specially noted with coverage for 7 years or 70,000 miles is defective, GM will repair or replace it. This is your Long-term Emission Control System Defects Warranty.
- For 8 years or 80,000 miles, whichever comes first:
  - If the catalytic converter, vehicle powertrain control module including emission related software is found to be defective, GM will repair or replace it under the Federal Emission Control System Warranty.
- For 8 years or 100,000 miles, whichever comes first for California Low Emission Vehicle 2 (LEV2) vehicles equipped with option code NUA:
  - If an emission related part listed in this booklet specially noted with 7 years/70,000 miles or 8 years/80,000 miles is defective, GM will repair or replace it. This is your Long-term Emission Control System Defect Warranty.
- For 15 years or 150,000 miles, whichever comes first for a Partial Zero Emission Vehicle (PZEV):
  - If any emission related part listed in this booklet is defective GM will repair or replace it. This is your (PZEV) Emission Control System Defects Warranty.

Any authorized Chevrolet dealer will, as necessary under these warranties, replace, repair, or adjust to GM specifications any genuine GM parts that affect emissions.

The applicable warranty period shall begin on the date the vehicle is delivered to the first retail purchaser or, if the vehicle is first placed in service as a demonstrator or company vehicle prior to sale at retail, on the date the vehicle is placed in such service.

Owner's Warranty Responsibilities

As the vehicle owner, you are responsible for the performance of the scheduled maintenance listed in your owner manual. GM recommends that you retain all maintenance receipts for your vehicle, but GM cannot deny warranty coverage solely for the lack of receipts or for your failure to ensure the performance of all scheduled maintenance.

You are responsible for presenting your vehicle to a GM dealer selling your vehicle line as soon as a problem exists. The warranted repairs should be completed in a reasonable amount of time, not to exceed 30 days.

As the vehicle owner, you should also be aware that GM may deny warranty coverage if your vehicle or a part has failed due to abuse, neglect, improper or insufficient maintenance, or modifications not approved by GM.

If you have any questions regarding your rights and responsibilities under these warranties, you should contact the Customer Assistance Center at 1-800-222-1020 or, in California, write to:

State of California Air Resources Board
Mobile Source Operations Division
P.O. Box 8001
El Monte, CA 91731-2990

Emission Warranty Parts List

The emission parts listed here are covered under the Emission Control System Warranty. The terms are explained previously in this section under the "Federal Emission Control System Warranty" and the "California Emission Control System Warranty".

Important: Certain parts may be covered beyond these warranties if shown with asterisk(s) as follows:

- (*) 7 years/70,000 miles, whichever comes first, California Emission Control System Warranty coverage.
- (**) 8 years/80,000 miles, whichever comes first, Federal Emission Control System Warranty coverage. (Also applies to California certified light duty and medium duty vehicles.)
- (*) and (**) are 8 years/100,000 miles, whichever comes first, for California LEV2 vehicles equipped with option code NUA.

The Emission Control System Warranty obligations do not apply to conditions resulting from tampering, abuse, neglect, or improper maintenance; or any other item listed under "What Is Not Covered" under *General Motors Corporation New Vehicle Limited Warranty on page 4*. The "Other Terms" presented under *General Motors Corporation New Vehicle Limited Warranty on page 4* also apply to the emission related warranties.

Powertrain Control System

ABS Control Module **

Camshaft Position Actuator *

Camshaft Position Actuator Valve

Coolant Level Sensor

Data Link Connector

Electronic Throttle Control (ETC) Motor

Engine Control Module (ECM) **

Engine Coolant Temperature Sensor

Fast Idle Solenoid

Flexible Fuel Sensor *

Fuel Control Module **

Intake Air Temperature Sensor

Malfunction Indicator Lamp

Manifold Absolute Pressure Sensor

Mass Air Flow Sensor

Oil Pressure Sensor (DoD™ only)

Oxygen Sensors

Powertrain Control Module (PCM) **

Programmable Read Only Memory (PROM)

Throttle Position Sensor

Throttle Position Switch

Vehicle Control Module (VCM) **

Vehicle Speed Sensor

Wheel Speed Sensor

Transmission Controls and Torque Management

GMLAN (CAN) Communications Circuit

Manual Transmission Clutch Switch

Park/Neutral Switch

Torque Converter Clutch Solenoids

Torque Converter Clutch Switch

Transmission Control Module **

Transmission Fluid Temperature Sensor

Transmission Gear Selection Switch (Diesel)

Transmission Internal Mode Switch

Transmission Pressure Control Solenoids

Transmission Pressure Switches

Transmission Shift Solenoids

Transmission Speed Sensors

Fuel Management System

Common Rail Assembly (6.6L DURAMAX® Diesel) *

Diesel Fuel Injection Pump *

Diesel Fuel Injection Pump Timing Adjust

Diesel Fuel Injector Control Module – EDU (6.6L DURAMAX® Diesel) *

Diesel Fuel Temperature Sensor

Direct Fuel Injector Assembly (6.6L DURAMAX® Diesel) *

Fuel Injector

Fuel Pressure Regulator

Fuel Rail Assembly *

Fuel Rail Pressure Sensor

Function Block (6.6L DURAMAX® Diesel)

High Pressure Fuel Pump (SIDI) *

Air Management System

Air Cleaner

Air Cleaner Diaphragm Motor

Air Cleaner Resonator

Air Cleaner Temperature Compensator Valve

Air Intake Ducts

Charge Air Control Actuator

Charge Air Control Solenoid Valve

Charge Air Control Valve

Charge Air Cooler *

Charge Air Cooler Fan

Idle Air Control Valve

Idle Speed Control Motor

Intake Manifold *

Intake Manifold Gasket (7/70 Only Uplander, Montana SV6, and DURAMAX® Diesel) *

Intake Manifold Heater

Intake Manifold Tuning Valve

Intake Manifold Tuning Valve Relay

Supercharger Assembly *

Throttle Body * (Replacement Only)

Throttle Body Heater

Throttle Closing Dashpot

Turbocharger Assembly *

Turbocharger Boost Sensor

Turbocharger Oil Separator

Turbocharger Thermo Purge Switch

Vacuum Pump (6.6L DURAMAX® Diesel)

Ignition System

Camshaft Position Sensor(s)

Crankshaft Position Sensor(s)

Distributor

Distributor Cap

Distributor Pick Up Coil

Distributor Rotor

Glow Plug(s) (Diesel)

Glow Plug Controller (Diesel)

Glow Plug Relay (Diesel)

Ignition Coil(s)

Ignition Control Module

Ignition Timing Adjustment

Knock Sensor

Spark Plug Wires

Spark Plugs

Catalytic Converter System

Catalytic Converter(s) and Muffler if attached as assembly **

Diesel Exhaust Temperature and Pressure Sensors

Diesel Particulate Filter (DPF) *

Exhaust Manifold (7/70 Only Corvette 7.0L, Equinox, Torrent, Uplander, Montana SV6, Cadillac DTS 4.6L and XLR, (Impala and Grand Prix 5.3L right side) and C/K Trucks < 14,000 GVWR 8.1L) *

Exhaust Manifold with Catalytic Converter attached as assembly **

Exhaust Manifold Gasket

Exhaust Pipes and/or Mufflers (when located between catalytic converters and exhaust manifold)

Positive Crankcase Ventilation System

Oil Filler Cap

PCV Filter

PCV Oil Separator

PCV Valve

Exhaust Gas Recirculation System

EGR Feed and Delivery Pipes or Cast-in Passages

EGR Valve

EGR Valve Cooler (6.6L DURAMAX® Diesel) *

EGR Vacuum Pump Assembly (6.6L DURAMAX® Diesel)

Secondary Air Injection System

Air Pump

Check Valves

Evaporative Emission Control System (Gasoline Engines)

Canister

Canister Purge Solenoid Valve

Canister Vent Solenoid

Fuel Feed and Return Pipes and Hoses

Fuel Filler Cap

Fuel Level Sensor

Fuel Limiter Vent Valve *

Fuel Tank(s) *

Fuel Tank Filler Pipe (with restrictor)

Fuel Tank Vacuum or Pressure Sensor

Hybrid

Auxiliary Transmission Fluid Pump

Battery Cooling Fan

Battery Pack Control Module (BPCM) *

Battery Pack Current Sensor

Brake Pedal Travel Sensor

Drive Motors A and B

Drive Motor A and B Resolvers

Drive Motor/Generator Control Module (DMCM - HCP, MCPA, MCPB) **

Electro-Hydraulic Brake Control Module (EBCM) **

Energy Storage Control Module **

Fuel Filler Pipe Adapter Seal

Hybrid Batteries

Hybrid Battery Temperature Sensors

Hybrid Battery Voltage Sensors

SGCM Coolant Circuit (fan and fan relay and pump)

Starter Generator Control Module **

Transmission Friction Elements

Transmission Substrate Temperature Sensor

Miscellaneous Items Used with Above Components are Covered

Belts

Boots

Clamps

Connectors

Ducts

Fittings

Gaskets

Grommets

Hoses

Housings

Mounting Hardware

Pipes

Pulleys

Sealing Devices

Springs

Tubes

Wiring

Parts specified in your maintenance schedule that require scheduled replacement are covered up to their first replacement interval or the applicable emission warranty coverage period, whichever comes first. If failure of one of these parts results in failure of another part, both will be covered under the Emission Control System Warranty.

Parts specified in your maintenance schedule that require scheduled replacement are covered up to their first replacement interval or the applicable emission warranty coverage period, whichever comes first. If failure of one of these parts results in failure of another part, both will be covered under the Emission Control System Warranty.

For detailed information concerning specific parts covered by these emission control systems warranties, ask your dealer.

Replacement Parts

The emission control systems of your vehicle were designed, built, and tested using genuine GM parts* and the vehicle is certified as being in conformity with applicable federal and California emission requirements. **Accordingly, it is recommended that any replacement parts used for maintenance or for the repair of emission control systems be new, genuine GM parts.**

The warranty obligations are not dependent upon the use of any particular brand of replacement parts. The owner may elect to use non-genuine GM parts for replacement purposes. Use of replacement parts which are not of equivalent quality may impair the effectiveness of emission control systems.

If other than new, genuine GM parts are used for maintenance replacements or for the repair of parts affecting emission control, the owner should assure himself/herself that such parts are warranted by their manufacturer to be equivalent to genuine GM parts in performance and durability.

* “Genuine GM parts,” when used in connection with GM vehicles means parts manufactured by or for GM, designed for use on GM vehicles, and distributed by any division or subsidiary of GM.

Maintenance and Repairs

Maintenance and repairs can be performed by any qualified service outlet; however, warranty repairs must be performed by an authorized dealer except in an emergency situation when a warranted part or a warranty station is not reasonably available to the vehicle owner.

In an emergency, where an authorized dealer is not reasonably available, repairs may be performed at any available service establishment or by the owner, using any replacement part. Chevrolet will consider reimbursement for the expense incurred, including diagnosis, not to exceed the manufacturer’s suggested retail price for all warranted parts replaced and labor charges based on Chevrolet’s recommended time allowance for the warranty repair and the geographically appropriate labor rate. A part not being available within 10 days or a repair not being completed within 30 days constitutes an emergency. Retain receipts and failed parts in order to receive compensation for warranty repairs reimbursable due to an emergency.

If, in an emergency situation, it is necessary to have repairs performed by other than a Chevrolet dealer and you believe the repairs are covered by emission warranties, take the replaced parts and your receipt to a Chevrolet dealer for reimbursement consideration. This applies to both the Federal Emission Defect Warranty and Federal Emission Performance Warranty.

Receipts and records covering the performance of regular maintenance or emergency repairs should be retained in the event questions arise concerning maintenance. These receipts and records should be transferred to each subsequent owner. GM will not deny warranty coverage solely on the absence of maintenance records. However, GM may deny a warranty claim if a failure to perform scheduled maintenance resulted in the failure of a warranty part.

Claims Procedure

As with the other warranties covered in this booklet, take your vehicle to any authorized Chevrolet dealer facility to obtain service under the emission warranty. This should be done as soon as possible after failing an EPA-approved I/M test or a California smog check test, or at any time you suspect a defect in a part.

Those repairs qualifying under the warranty will be performed by any Chevrolet dealer at no charge. Repairs which do not qualify will be charged to you. You will be notified as to whether or not the repair qualifies under the warranty within a reasonable time, not to exceed 30 days after receipt of the vehicle by the dealer, or within the time period required by local or state law. The only exceptions would be if you request or agree to an extension, or if a delay results from events beyond the control of your dealer or GM. If you are not so notified, GM will provide any required repairs at no charge.

In the event a warranty matter is not handled to your satisfaction, refer to the “Customer Satisfaction Procedure” under *Owner Assistance on page 30*.

For further information or to report violations of the Emission Control System Warranty, you may contact the EPA at:

Manager, Certification and Compliance
Division (6405J)
Warranty Claims
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

For a vehicle subject to the California Exhaust Emission Standards, you may contact the:

State of California Air Resources Board
Mobile Source Operations Division
P.O. Box 8001
El Monte, CA 97131-2990

Customer Satisfaction Procedure

Your satisfaction and goodwill are important to your dealer and to Chevrolet. Normally, any concerns with the sales transaction or the operation of your vehicle will be resolved by your dealer's sales or service departments. Sometimes, however, despite the best intentions of all concerned, misunderstandings can occur. If your concern has not been resolved to your satisfaction, the following steps should be taken:

STEP ONE: Discuss your concern with a member of dealer management. Normally, concerns can be quickly resolved at that level. If the matter has already been reviewed with the sales, service, or parts manager, **contact the owner of the dealer facility** or the general manager.

STEP TWO: If after contacting a member of dealer management, it appears your concern cannot be resolved by the dealer without further help **contact the Chevrolet Customer Assistance Center** by calling 1-800-222-1020. In Canada, contact GM of Canada Central Office in Oshawa by calling 1-800-263-3777: English, or 1-800-263-7854: French.

We encourage you to call the toll-free number in order to give your inquiry prompt attention. Have the following information available to give the Customer Assistance Representative:

- The Vehicle Identification Number (VIN). This is available from the vehicle registration, title, or the plate above the top of the instrument panel on the driver side, and visible through the windshield.
- The dealer name and location
- The vehicle's delivery date and present mileage

When contacting Chevrolet, remember that your concern will likely be resolved at a dealer's facility. That is why we suggest you follow Step One first if you have a concern.

STEP THREE: Both GM and your GM dealer are committed to making sure you are completely satisfied with your new vehicle. However, if you continue to remain unsatisfied after following the procedure outlined in Steps One and Two, you should file with the BBB Auto Line Program to enforce any additional rights you may have.

The BBB Auto Line Program is an out of court program administered by the Council of Better Business Bureaus to settle automotive disputes regarding vehicle repairs or the interpretation of the New Vehicle Limited Warranty.

Although you may be required to resort to this informal dispute resolution program prior to filing a court action, use of the program is free of charge and your case will generally be heard within 40 days. If you do not agree with the decision given in your case, you may reject it and proceed with any other venue for relief available to you.

You may contact the BBB Auto Line Program using the toll-free telephone number or write them at the following address:

BBB Auto Line Program
Council of Better Business Bureaus, Inc.
4200 Wilson Boulevard
Suite 800
Arlington, VA 22203-1804

www.lemonlaw.bbb.org
Telephone: 1-800-955-5100

This program is available in all 50 states and the District of Columbia. Eligibility is limited by vehicle age, mileage, and other factors. GM reserves the right to change eligibility limitations and/or to discontinue its participation in this program.

State Warranty Enforcement Laws

Laws in many states permit owners to obtain a replacement vehicle or a refund of the purchase price under certain circumstances. The provisions of these laws vary from state to state. To the extent allowed by state law, GM requires that you first provide us with written notification of any service difficulty you have experienced so that we have an opportunity to make any needed repairs before you are eligible for the remedies provided by these laws. Your written notification should be sent to the Chevrolet Customer Assistance Center.

Assistance For Text Telephone (TTY) Users

To assist customers who are deaf or hard of hearing and who use Text Telephones (TTYs), Chevrolet has TTY equipment available at its Customer Assistance Center and Roadside Assistance Center.

The TTY for the Chevrolet Customer Assistance Center is:

1-800-833-2438 in the United States
1-800-263-3830 in Canada

The TTY for the Chevrolet Roadside Assistance Center is:

1-888-889-2438 in the U.S.

Chevrolet Roadside Assistance

Chevrolet is proud to offer the response, security, and convenience of Chevrolet's 24-hour Roadside Assistance Program for a period of 5 years or 100,000 miles, whichever comes first. Consult your dealer or refer to the owner manual for details. The Chevrolet Roadside Assistance Center can be reached by calling 1-800-CHEV-USA (243-8872).

Roadside Assistance is not part of or included in the coverage provided by the New Vehicle Limited Warranty. General Motors and General Motors of Canada Limited reserve the right to make any changes or discontinue the Roadside Assistance program at any time without notification.

Chevrolet Courtesy Transportation

If your vehicle requires warranty repairs during the 5 year/100,000 mile (8 year/100,000 miles for Hybrid vehicles) warranty coverage period, alternate transportation and/or reimbursement of certain transportation expenses are available under the Courtesy Transportation Program. Several transportation options are available. Consult your dealer or refer to the owner manual for details.

Courtesy Transportation is not part of or included in the coverage provided by the New Vehicle Limited Warranty. General Motors and General Motors of Canada Limited reserve the right to make any changes or discontinue the Courtesy Transportation program at any time without notification.

Warranty Information for California Only

California Civil Code Section 1793.2(d) requires that, if GM or its representatives are unable to repair a new motor vehicle to conform to the vehicle's applicable express warranties after a reasonable number of attempts, GM shall either replace the new motor vehicle or reimburse the buyer the amount paid or payable by the buyer. California Civil Code Section 1793.22(b) creates a presumption that GM has had a reasonable number of attempts to conform the vehicle to its applicable express warranties if, within 18 months from delivery to the buyer or 18,000 miles on the vehicle's odometer, whichever occurs first, one or more of the following occurs:

- The same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven AND the nonconformity has been subject to repair two or more times by GM or its agents AND the buyer or lessee has directly notified GM of the need for the repair of the nonconformity.
- The same nonconformity has been subject to repair four or more times by GM or its agents AND the buyer has notified GM of the need for the repair of the nonconformity.

- The vehicle is out of service by reason of repair nonconformities by GM or its agents for a cumulative total of more than 30 calendar days after delivery of the vehicle to the buyer.

NOTICE TO GENERAL MOTORS AS REQUIRED ABOVE SHALL BE SENT TO THE FOLLOWING ADDRESS:

General Motors Corporation
P.O. Box 33170
Detroit, MI 48232-5170

Fax Number: 1-866-962-2868

When you make an inquiry, you will need to give the year, model, and mileage of your vehicle and your VIN.

Special Coverage Adjustment Programs Beyond the Warranty Period

Chevrolet is proud of the protection afforded by its warranty coverages. In order to achieve maximum customer satisfaction, there may be times when Chevrolet will establish a special coverage adjustment program to pay all or part of the cost of certain repairs not covered by the warranty or to reimburse certain repair expenses you may have incurred. Check with your Chevrolet dealer or call the Chevrolet Customer Assistance Center to determine whether any special coverage adjustment program is applicable to your vehicle.

When you make an inquiry, you will need to give the year, model, and mileage of your vehicle and your VIN.

Customer Assistance Offices

Chevrolet encourages customers to call the toll-free telephone number for assistance. However, if you wish to write or e-mail Chevrolet, refer to the address below.

United States

Chevrolet Customer Assistance Center
P.O. Box 33170
Detroit, MI 48232-5170

www.Chevrolet.com
1-800-222-1020
1-800-833-2438 (For Text Telephone devices (TTYs))

Roadside Assistance:

1-800-CHEV-USA (243-8872)
Fax Number: 1-866-962-2868

From Puerto Rico:

1-800-496-9992 (English)
1-800-496-9993 (Spanish)
Fax Number: 313-381-0022

From U.S. Virgin Islands:

1-800-496-9994
Fax Number: 313-381-0022

Canada

Customer Assistance Centre, CA1-163-005
General Motors of Canada Limited
1908 Colonel Sam Drive
Oshawa, Ontario L1H 8P7

1-800-263-3777 (English)
1-800-263-7854 (French)
1-800-263-3830 (For Text Telephone devices (TTYs))
Roadside Assistance: 1-800-268-6800

Mexico, Central America, and Caribbean Islands/Countries (Except Puerto Rico and U.S. Virgin Islands)

General Motors de Mexico, S. de R.L. de C.V.
Customer Assistance Center
Paseo de la Reforma # 2740
Col. Lomas de Bezares
C.P. 11910, Mexico, D.F.

01-800-508-0000
Long Distance: 011-52-53 29 0 800

Online Owner Center

The Owner Center is a resource for your GM ownership needs. Specific vehicle information can be found in one place.

The Online Owner Center allows you to:

- Get e-mail service reminders.
- Access information about your specific vehicle, including tips and videos and an electronic version of this warranty manual.
- Keep track of your vehicle's service history and maintenance schedule.
- Find GM dealers for service nationwide.
- Receive special promotions and privileges only available to members.

Refer to the web for updated information.

To register your vehicle, visit www.MyGMLink.com.

Don't Wait Until Your New Vehicle Limited Warranty – and Your Opportunity to Purchase the GM Protection Plan – Expire.

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UNITED STATES DISTRICT COURT
EASTERNDISTRICT OF MICHIGAN

----------X

DONNA M. TRUSKY on behalf of :
Herself and all others similarly situated, Case No. 2:11-cv-12815-SFC-LJM

Plaintiff,

Vs.

GENERAL MOTORS COMPANY :
300 Renaissance Center
Detroit, MI 48243

Defendant, :

----------X

NOTICE OF APPEARANCE
OF RONALD JAY SMOLOW, ATTORNEY AT LAW,
ON BEHALF OF PLAINTIFF DONNA M. TRUSKY

The parties are hereby notified that Ronald Jay Smolow, Attorney at Law, hereby enters his appearance as counsel for Donna M. Trusky in the above captioned matter.

Dated this 15th day of August, 2011

Respectfully submitted,

By: _____

Ronald Jay Smolow, Attorney at Law
3 Three Ponds Lane
Newtown, Pennsylvania 18940
215-579-1111
ron@smolow.com

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

DONNA M. TRUSKY, ASHA JEFFRIES, GAYNELL COLE on behalf of themselves and all others similarly situated, Plaintiffs, vs GENERAL MOTORS COMPANY 300 Renaissance Center Detroit, MI48243 Defendant.	Case No. 2:11-cv-12815 HON. SEAN F. COX JURY TRIAL DEMANDED CLASS ACTION

AMENDED CLASS ACTION COMPLAINT

You are hereby notified to preserve all records and documents in all forms and formats (digital, electronic, film, magnetic, optical, print, etc.) during the pendency of this action that are relevant or may lead to relevant information and to notify your employees, agents and contractors that they are required to take appropriate action to do so.

Plaintiffs, by and through counsel, bring this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, individually and on behalf all others similarly situated, and alleges the following:

INTRODUCTION

1. This is a breach of warranty action against General Motors Company, also known as "New GM," with respect to model year 2007 and 2008 Impalas. These vehicles were primarily manufactured by General Motors Corporation, also known as "Old GM". In July 2009, New GM acquired substantially all of the assets and assumed

some of the liabilities of Old GM when the later filed for bankruptcy relief in 2009. New GM assumed the express warranty liabilities of Old GM "pursuant to and subject to conditions and limitations contained in their express written warranties," including those which Plaintiffs and the class now seek to enforce. New GM is the Defendant in this action. Old GM is not a party to this action.

2. The model year 2007 and 2008 Impalas were sold with common defective rear spindle rods. These rear spindle rods were defective in workmanship and material and failed at the time of sale. This defect caused the rear spindle rods to fail and to directly damage other related components of the vehicle including the rear wheel alignment and premature tire wear, which manifests on the inner sections of the rear tires. Even though recall bulletins were issued for model year 2007 and 2008 Impalas operated as police vehicles, New GM has failed to honor its warranties with Plaintiffs and the putative class, by failing to correct this manufacturing defect in their vehicles. There are no relevant material differences between police vehicles and class members' vehicles relating to the defective spindle rods.

3. The fact that New GM moved to fix certain Impalas shows that it knew of the defect. Despite this, New GM refused to honor the warranties on hundreds of thousands of defective and potentially unsafe vehicles.

4. This class action seeks damages, injunctive and declaratory relief on behalf of a class of all persons who purchased model years 2007 and 2008 Chevrolet Impalas. Plaintiffs reasonably believe that the defendant New GM is the sole source and supply of non-defective replacement rear spindle rods, making injunctive and declaratory relief appropriate.

5. Through a common uniform course of conduct, New GM's predecessor manufactured, supplied, promoted, and sold model year 2007 and 2008 Chevrolet Impalas with rear spindle rods that were defective in workmanship and materials.

6. Through a common and uniform course of conduct, New GM acting individually and collectively through its agents and dealers:

   i. failed to repair or replace the defective rear spindle rods under its express warranties, causing the 2007 and 2008 Chevrolet Impalas to incur premature and/or abnormal tire wear;

   ii. failed to honor its warranties with Plaintiffs and the putative class, by failing to correct the manufacturing defect in their vehicles.

JURISDICTION

7. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, as the claims alleged herein are asserted on behalf of a class of all persons in the United States who purchased model year 2007 and 2008 Chevrolet Impalas. The Class' aggregate claims are in excess of $5 million. Further, defendant New GM and the Class are of diverse citizenship under the Class Action Fairness Act.

8. Venue is proper in this district because Defendant New GM is headquartered in the District and many of New GM's actions or decisions relating to the defective Impalas took place in this District.

THE PARTIES

9. Plaintiff Donna M. Trusky is a retail consumer residing at 101 7th Street, Blakely, Pennsylvania, 18447. Plaintiff Trusky is a citizen of the Commonwealth of Pennsylvania.

10. In February 2008, Plaintiff Trusky purchased a new 2008 model year Chevrolet Impala from Allan Hornbeck Chevrolet, an authorized dealer, located at 400 Main Street, Forest City, Pennsylvania, 18421.

11. The Goodyear tires were separately warranted by Goodyear to be free of defects in materials, workmanship and design.

12. Plaintiff Asha Jeffries is a retail consumer residing at 13927 Chandler Park Dr., Detroit, Michigan 48213. Plaintiff Jeffries is a citizen of the State of Michigan.

13. In June of 2009, Plaintiff Jeffries purchased a used 2007 Chevrolet Impala from Merolis Chevrolet, an authorized dealer, in East Pointe, Michigan.

14. Plaintiff Gaynell Cole is a retail consumer residing at Rt. 1, Box 571, Peterstown, West Virginia, 24963. Plaintiff Cole is a citizen of the State of West Virginia.

15. In 2008, Plaintiff Cole purchased a new 2008 Chevrolet Impala from Ramey Motors, an authorized dealer, in Princeton, West Virginia.

16. Defendant New GM is a Delaware corporation headquartered in this District and with its principal executive offices located at 300 Renaissance Center, Detroit, Michigan, 48243. New GM designs, tests, manufactures, distributes, sells or leases cars, trucks and sports utility trucks under several brand names, including but not limited to GMC, Chevrolet, Buick, Cadillac and Pontiac throughout the United States. Defendant New GM is a citizen of the State of Delaware and the State of Michigan.

17. New GM conducts business throughout Michigan and the United States.

CLASS ALLEGATIONS

18. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23 on behalf of themselves and all others similarly situated, comprising a class consisting of "all persons in the United States who purchased or leased a model year 2007 or 2008 Chevrolet Impala (the "Class").

19. Plaintiffs are members of the Class.

20. Excluded from the Class are judicial personnel involved in considering the claims herein, all persons and entities with claims for personal injury, the defendant New GM, any entities in which the defendant has a controlling interest, and all of their legal representatives, heirs and successors.

21. The members of the Class are so numerous that joinder of all members, whether otherwise required or permitted, is impracticable. The exact number of Class members is presently unknown to Plaintiffs, but can easily be ascertained from the sales and warranty claim records of Defendant New GM. Approximately 197,000 model year 2007 Impalas and approximately 226,000 model year 2008 Impalas were sold and subject to defendant New GM's express warranty obligation.

22. These are numerous questions of law or fact common to the members of the Class, which predominate over any questions affecting only individual members and which make class certification appropriate in this case, including:

    a. Whether all Class members' 2007 and 2008 Impalas had rear spindle rods that are defective in workmanship and material?

b. Whether all Class members' 2007 and 2008 Impalas suffered damage from a defective spindle rod?

c. Whether the defect and failure manifested during the warranties' durational terms?

d. Whether Defendant New GM improperly concealed the defect from class members?

e. Whether Defendant New GM failed to repair or replace the defective rear spindle rods during the warranty period for all Class members?

f. Whether Defendant New GM breached its warranties with Plaintiffs and members of the putative class, by failing to correct the defective rear spindle rods?

23. The claims asserted by the named Plaintiffs are typical of the claims of the members of the Class.

24. This class action satisfies the criteria set forth in Fed. R. Civ. P. 23(a) and 23(b)(3) in that Plaintiffs are members of the Class; Plaintiffs will fairly and adequately protect the interests of the members of the Class; Plaintiffs' interests are coincident with and not antagonistic to those of the Class; Plaintiffs have retained attorneys experienced in class and complex litigation; and Plaintiffs have, through counsel, access to adequate financial recourses to assure that the interests of the Class are adequately protected.

25. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for, among other reasons, it is economically

impractical for most members of the Class to prosecute separate, individual actions; and

26. Litigation of separate actions by individual Class members would create the risk of inconsistent or varying adjudications with respect to the individual Class members which would substantially impair or impede the ability of other Class members to protect their interests.

27. Class certification is also appropriate because Defendant New GM has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate declaratory and/or injunctive relief with respect to the claims of Plaintiffs and the Class members.

FACTUAL BACKGROUND

28. Plaintiffs incorporate by reference all preceding paragraphs.

29. Defendant New GM, or its predecessor in interest, sold model year 2007 and 2008 Chevrolet Impalas throughout the United States which were delivered with defective rear spindle rods. These spindle rods were defective in workmanship and material and failed during the warranty period causing direct damage to the rear wheel alignment, and premature tire wear including lower tread depth on the inboard side of the rear tires.

30. In June and July 2008, Old GM issued Program Bulletins to its dealers numbered 08032 and 08032A pursuant to its customer satisfaction program. A copy of the latter bulletin is attached as Exhibit "1" hereto.

31. The subject line of bulletin 08032A reads "Uneven Police Car Rear Tire Wear – Replace Rear Spindle Rods" which covers model year 2007 and 2008 Chevrolet

Impalas equipped with the Police Package. Under the heading "Condition" the bulletin reads, "On certain 2007-2008 model year Chevrolet Impala vehicles equipped with a police package (RPG9C1/9C3), the rear wheel spindle rods cause rear wheel misalignment, resulting in lower tread depth on the inboard side of the rear tire".

32. To remedy the defect in the cars subject to the bulletin 08032A, "Dealers are to replace the rear wheel spindle rods, align the rear wheels, and if necessary, replace the rear tires (only) that exhibit lower tread depth on the inboard side. If the tires have already been replaced to this condition, the customer may request reimbursement for the replacement tires until July 31, 2009".

33. The bulletin only applied to police vehicles. However, the issues affecting the cars subject to bulletin 08032A are the same as those affecting members of the Class. The defective rear spindle rods on the cars subject to bulletin 08032A are the same as those in cars purchased by members of the Class.

34. In February, 2008, Plaintiff Trusky purchased a new Chevrolet Impala equipped with Goodyear tires as part of the original equipment on the car. Within the first 6,000 miles driven and within the first year of, the tires were unserviceable, as the tread had worn so quickly that they had become questionable to use any further.

35. Plaintiff Trusky informed Defendant New GM's and/or its predecessor's dealer of the defect in manufacturing and workmanship when she raised the issue of premature tread wear on the tires with Allen Hornbeck Chevrolet, the dealer from whom Plaintiff had purchased the new car. Allen Hornbeck Chevrolet referred Plaintiff Trusky to Kost Tire, which replaced the rear tires and provided a front-

end realignment. Allen Hornbeck paid for the replacement tires and realignment, but made no mention of any defect in the rear spindle rods, which caused the premature tire wear, nor was any work done to remedy the car free from future defects.

36. On November 30, 2010 Plaintiff Trusky brought her car in for its annual inspection and was informed that the replacement rear tires were worn and would not pass inspection. Plaintiff Trusky paid $289.77 for a set of rear replacement tires. At the time of inspection, the car had 24,240 miles on it and was within the original durational and mileage limitations of the warranty.

37. In June of 2009, Plaintiff Jeffries purchased a used model year 2007 Chevrolet Impala, which was within the durational and mileage limitations of the original warranty. Shortly thereafter, Plaintiff Jeffries brought her vehicle back to the dealership for repairs. She was advised by the dealership that the rotors of the vehicle needed repair. She was not advised that there was a defect in the rear spindle rod which would lead to premature tire wear.

38. By January of 2010, the vehicle's two rear tires had worn bare – the wear was primarily within the inner section of the tires. Plaintiff Jeffries replaced the two rear tires in January of 2010.

39. Also in January of 2010, Plaintiff Jeffries brought the vehicle to a Chevrolet dealership – Allstar Chevrolet – in Olive Branch, Mississippi for additional repair. The vehicle was within the original durational and mileage limitations of the warranty. The dealership advised Plaintiff Jeffries that the car needed an alignment. The dealership advised her that they had received numerous

complaints from other owners of 2007 and 2008 Impalas regarding premature tire wear on their vehicles. The dealership advised that the alignment would only be a temporary fix for the problem and that it would not be covered under the vehicle's warranty. Plaintiff Jeffries paid the dealership to perform the alignment.

40. In 2008, Plaintiff Cole purchased a new 2008 Chevrolet Impala from Ramey Motors, an authorized dealer, in Princeton, West Virginia.

41. By July of 2011, the treads on Ms. Cole's rear tires had worn bare. Ms. Cole presented her vehicle to Ramey Motors for repair. The vehicle was within the original durational and mileage limitations of the warranty. The dealership advised that the repair would not be covered by Ms. Cole's warranty. Ms. Cole spent $486.94 to have her vehicle aligned, for a new rear tire, and for a "camber kit."

42. Defendant New GM, or its predecessor, delivered to Plaintiffs – as it also did for every member of the Class – a written warranty containing affirmations of fact as to the absence of defects in materials and workmanship, including design, and the durability and longevity of the rear spindle rods. Further, Defendant New GM, or its predecessor, delivered to Plaintiffs – as it also did for every member of the Class – a written warranty in which it promised to repair or replace warranted parts that were defective in workmanship and materials, including the rear spindle rods, during the warranty period.

43. In particular, the written affirmations and warranties stated as follows:

Bumper-to-Bumper (Includes Tires)

- Coverage is for the first 3 years or 36,000 miles, whichever comes first.

Powertrain

- Coverage is for 5 years or 100,000 miles, whichever comes first.

Powertrain Coverage

The powertrain is covered for 5 years or 100,000 miles, whichever comes first, except for other coverages listed here under "What is Covered" and those items listed under "What is Not Covered" later in this section.

Engine: Cylinder head, block, timing gears, timing chain, timing cover, oil pump/oil pump housing, OHC carriers, valve covers, oil pan, seals, gaskets, turbocharger, supercharger and all internal lubricated parts as well as manifolds, flywheel, water pump, harmonic balancer and engine mount. Timing belts are covered until the first scheduled maintenance interval.

Transmission/Transaxle/Transfer Case: Case, all internal lubricated parts, torque converter, transfer case, transmission/transaxle mounts, seals, and gaskets.

Drive Systems: Final drive housing, all internal lubricated parts, axle shafts and bearings, constant velocity joints, axle housing, propeller shafts, universal joints, wheel bearings, locking hubs, front differential actuator, supports, front and rear hub bearings, seals and gaskets.

Tire Coverage

The tires supplied with your vehicle are covered against defects in material or workmanship under the Bumper-to-Bumper coverage. Any tire replaced will continue to be warranted for the remaining portion of the Bumper-to-Bumper coverage period.

Following expiration of the Bumper-to-Bumper coverage, tires may continue to be covered under the tire manufacturer's warranty. Review the tire manufacturer's warranty booklet or consult the tire manufacturer distributor for specific details.

44. Defendant New GM, or its predecessor, extended these warranties to all Class members.

45. At the time of sale, Defendant New GM or its predecessor sold to Plaintiffs, as with all Class members, an Impala with defective rear spindle rods which failed during the warranty period.

46. Plaintiffs reasonably believe and aver that Defendant New GM, based on the aforesaid recalls, had actual knowledge during their warranty periods that all Class members' vehicles had defective and failed rear spindle rods and that such defective and failed parts would cause failure and/or abnormal and/or premature wear of other parts and systems including wheel alignment and tires.

47. Plaintiffs believe and therefore aver that thousands of other persons who purchased 2007 and 2008 model year Chevrolets also informed Defendant, through its dealership network, of this defect in workmanship and material in their vehicles in the same or similar manner.

48. Defendant New GM failed to comply with the foregoing warranties with respect to the Plaintiffs and all Class members. Among other things, Defendant New GM failed to repair or replace the rear spindle rods during the warranty period; and failed to make such other repairs during the warranty period so that premature tire wear and misalignment will not occur.

49. From the time of purchase of these vehicles by Class members to the present, the defective spindle rods have and will continue to cause rear wheel misalignment and premature and abnormal tire wear.

50. Defendant New GM's refusal to comply with its warranty caused a failure of the essential purpose of the warranty, as that term is used in the Uniform Commercial Code, because Defendant New GM has failed to replace the defective spindle rods with non-defective spindle rods.

51. Defendant New GM, or its predecessor, failed to disclose at the time they marketed, warranted, sold or delivered the 2007 and 2008 model year Chevrolet Impalas to consumers that their vehicles' spindle rods were defective, and that this caused the wheels to be misaligned and suffer premature tire wear, often requiring replacement tires within the first 10,000 miles of use. Despite having knowledge of this premature wear problem, Defendant New GM has not recalled the subject cars which has required affected Class members to pay the cost of fixing the defective spindle rods as well as for replacement tires and realignment. In fact, numerous Class members have replaced their tires numerous times.

52. Defendant New GM concealed the existence of the defect from class members, even those who presented their vehicles for repair of the defect.

53. As evidence by numerous postings on various internet sites, Class members have experienced similar problems with their vehicles.

    a. *January 25, 2010, 2007 Chevrolet Impala*: I am new to this forum but after reading ALOT of the posts here I feel that I am not alone here. The wife and I got a settlement and bought a 2007 Impala, from Keystone Chevrolet here in Tulsa, so that we wouldn't have to worry about having problems with the car. But after having the car for about 1 1/2 years we have replaced the rear tires at least 2 or 3 times, all because of the same problem. The inside 2 or 3 treads keep wearing out down to the cords. Keystone Chevrolet called us on the phone and told us it was time to bring the car in for regular service work, so I thought it would be a good time to have the problem resolved. I asked for the Supervisor of the Service Department to make sure there wouldnt be a problem with having the rear end aligned, since I found out there was a Technical Service Bulletin on

the alignment needing to be done on this car when it comes right from the factory. But I was told that you can buy a brand new 2010 Chevy right now and after 12,000 miles there is nothing they can do with out having us pay for the work and/parts. Even if you get the car brand new and there is still the bumper to bumper warrenty on the car. I told the Supervisor there was a Technical Service Bulletin out on this car and I even gave him the TSB on this car and I was told that they cant do anything unless there was a REACLL on these cars. I really liked what I read on another forum that said it seems like Chevrolet isn't going to do anything for the common people like most of us here, but they would fix the cars with the Police Package on them for free. The person also went on to state that it was more of the common people like most of us on here that make up the sales of the Impalas and that a defect is a defect.
http://townhall-talk.edmunds.com/direct/view/.f17777c/71

b. *March 10, 2010, 2008 Chevrolet Impala, 25,000 miles*: Had to replace 4 tires at 25,000 miles due to excessive inside wear. The dealer said not a GM problem. Had to replace, balance, and align. Never had that occur before on any new vehicle I purchased - at least not with the Ford's I owned.*http://www.carcomplaints.com/Chevrolet/Impala/2008/wheels_hubs/premature_tire_wear.shtml*

c. *September 30, 2009, 2008 Chevrolet Impala LT 3.5L V6, 20,000 miles*: GM never fixes a problem, they just ignore the situation and hope you go away!! I have bought new cars my entire life and never had tires wear out this fast. GM knows how to fix the problem, but they just let it go on to the next model year. More money in the CEO's pocket, so the tax payors can bail them out!!!! The tires wear on the inside and outside edges. The middle still has plenty of tread, but unsafe.
http://www.carcomplaints.com/Chevrolet/Impala/2008/wheels_hubs/premature_tire_wear.shtml

d. *January 15, 2010, 2008 Chevrolet Impala LT V6, 17,000 miles*: This problem first started right after I bought the car. I have had the car in the shop a lot of times, they had me replace the tires, then to only have the problem come back again as soon as I rotated them. What a waste of good tread!! It doesn't shake the car & you can't feel it, but the thumping noise is bad when the tires are rotated to the front. No one can seem to find the problem or what is causing the noise. It is driving me crazy!! I just want a car that works. What is the problem here!! What happened to the dependable car. This is anything but!!
http://www.carcomplaints.com/Chevrolet/Impala/2008/wheels_hubs/premature_tire_wear.shtml

e. *August 27, 2010, 2008 Chevrolet Impala LTZ V6, 41,000 miles*: ok well at 18,000 miles had to replace my tires. i was told it was because the dealers

put on cheap tires to sell the cars and the next set i bought would last way longer than i had to worry about since i leased. well at 41,000 miles again new tires with only 6 months to go on my lease. the wear was so extensive the tires were unsafe..the inside was worn to bare metal showing yet the rest of the tire was fine.... i was told that it is a supension problem and chevy is aware of it.... just to expensive to have a recall...sssoooo that makes th 3rd set of tires in 41,000 miles.. this is the first chevy impala i have owned ..... was completely satisfied with my pontiacs... well i never liked this car from the begining and i will not but another one...just waiting for my lease to run out and i will try a ford this time.. so beware of unsafe wear on your inside (hard to see} of your tires.. take a good look before you trust your family lives ...
http://www.carcomplaints.com/Chevrolet/Impala/2008/wheels_hubs/premature_tire_wear.shtml

f. *November 1, 2010, 2008 Chevrolet Impala SS*: I believe that there is a greater issue with the 2008 Impala's. I have had to replace my rear tires because they wore completely out in the inside. I have been searching online and it looks like there is a camber issue with these cars. GM needs to look at a possible recall. I was quoted $45 a tire to adjust the camber on my 08 Impala SS by Firestone, but then they stated it would be $500 because they needed some kit. I cannot do this so I had to buy the 2 back tires ($415 for the cheapest ones) and wait. I do have an appointment with the dealership tomorrow. We will see what happens...
http://townhall-talk.edmunds.com/direct/view/.f17777c/81

g. *2008 Chevrolet Impala*: I have the same rear end tire alignment problem on my 2008 Impala. I have now gone thru 2 sets of tires. Most current one lasted 7 months, 12k miles. Tires are rated for 60k miles. The inside of the tires are getting chewed up. I've looked at the car from the rear and I can see that the alignment is poor, the tires bow out at the bottom as if there were way too much weight in the car. I'm calling the dealer on Monday to see what can be done, this is a ridiculous issue to be fighting about. The manufacturer should cover this no questions asked. My wife (a civilian) drives like a grandma, there's no way we caused this.
http://www.fixya.com/cars/t26922782007_impala_rear_tire_wear_due_rear

h. *February 22, 2011, 2008 Chevrolet Impala*: Purchased new 2008 impala, had to replace tires at 35000. Always rotated and balanced and kept proper pressures. Now at 56000 and am being told by chevy 1800.00 to repair rear alignment. Car is driven 99% on the interstate. Again need new tires whats up??? chevy denies any problems but the web is full of issues surrounding this. Is there no other recourse????
http://www.aboutautomobile.com/Complaint/2008/Chevrolet/Impala/Rear+Suspension

i. *July 4, 2010, Chevrolet Impala*: Severe inner surface tire wear on rear wheels of 2007-2008 chevrolet impala vehicles. Technical service bulletin 08032 is on file with general motors, acknowledging the problem, but willing only to pay for necessary repairs to police vehicles, when in fact the flaw exists with all 2007-2008 impala vehicles. We purchased the car as a demo model in 2009 and were not made aware of the problem. We believe the dealer was honest, and also not aware of the problem at the time. We believe this to be a safety issue as well, since handling on wet roads is effected due to the fact the rear tires are contacting the road surface only on 1-2" of the inside surface of the tires.
http://www.aboutautomobile.com/Complaint/2008/Chevrolet/Impala/Rear+Suspension

j. *June 16, 2010, Chevrolet Impala*: Had to replace rear driver's tire at 17,000 miles due to wear down to the metal. Took the vehicle into the dealer to check wheel alignment and found the rear so misaligned that the adjustment struts had to be elongated. Spoke with GM customer service rep and was told this was not a Warranty issue.
http://www.aboutautomobile.com/Complaint/2008/Chevrolet/Impala/Rear+Suspension

k. *May 28, 1010, 2008 Chevrolet Impala*: I own a 2008 chevy impala which I had new tires installed. I also had an alignment done. At my first tire rotation (6000 miles) I was told of excessive wear on the inside of the rear tires. The wear is very obvious. The tires are a 60,000 mile tire(uniroyal) after contacting the place that aligned my wheels.(ase certified) they did some investigating during which they found GM recalled "police package) vehicles with vin#s falling in a specified range. Which my car also falls in this range. They had defective spindle rods in them, however as a consumer and not a "police" vehicle GM tells me I am responsible for having the proper work done to have my car fixed. Upon searching myself I have found numerous "consumer" complaints regarding premature tire wear on these vehicles. I see this as a considerable safety concern that the manufacturer should be held accountable for regardless of whether it is a civilian or police vehicle.
http://www.aboutautomobile.com/Complaint/2008/Chevrolet/Impala/Rear+Suspension

l. *March 8, 2010, 2008 Chevrolet Impala*: On 2008 chevy impala, the insides of all four tires were worn to the cord. The tires had been rotated regularly. The car was returned to the dealer who claimed the tires had not been rotated and that he had never heard of any defect.. We printed information from this website showing that this problem had been reported several times. The dealer still denied any defect even though one of the workers said he had replaced tires with the same problem.

http://www.aboutautomobile.com/Complaint/2008/Chevrolet/Impala/Rear+Suspension

m. *October 10, 2009, 2008 Chevrolet Impala*: 2008 chevy impala was shipped from the factory unaligned causing premature tire wear. There may be a camber related issue causing premature wear on the inner edge of the rear tires. Problems start at about 10,000 miles. I replaced the rear tires twice in one year.
http://www.aboutautomobile.com/Complaint/2008/Chevrolet/Impala/Rear+Suspension

n. *June 8, 2009, 2008 Chevrolet Impala SS*: My 08 impala sshas been going through tires excessively. I replaced the back tires almost 4 months ago and new tires are needed again. The rear tires are wearing on the insides of the tires. I brought this to the attention of my local GM dealer who "assured" me that nothing is wrong with the rear suspension and that I need to rotate the tires every 6000 miles that was what was wrong that I wasn't following the owners manual. So I thought it really was my fault so I spent the $500 to buy two new tires and now almost 4 months later the same thing is happening. I have only put about 6000 miles on the new tires and the cords are already showing on the insides of the rear tires.
http://www.aboutautomobile.com/Complaint/2008/Chevrolet/Impala/Rear+Suspension

o. *March 22, 2011, 2007 Chevrolet Impala*: CAR PURCHASED USED WITH NEW TIRES IN MARCH OF 2009. IN APRIL OF 2010 REAR TIRES HAD SEVERE WEAR ON INSIDE TREAD THAT CAUSED BELTS TO SHOW. FOUR NEW TIRES WERE INSTALLED AND A FOUR WHEEL ALIGNMENT WAS DONE. 11 MONTHS LATER REAR TIRES SHOWED THE SAME WEAR, INSIDE OF TIRE. WAS TOLD THERE WAS A SAFETY BULLETIN FROM GM BUT DIDN'T COVER MY CAR SINCE IT WAS NOT A POLICE VERSION. WAS TOLD BY DEALERSHIP THAT GM KNOWS ABOUT THIS PROBLEM AND HAS COME OUT WITH A CAMBER KIT TO FIX PROBLEM BUT I HAD TO PURCHASE IT AND HAVE IT INSTALLED. WHEN ASKED WHY IF IT WAS A MANUFACTURE DEFECT WITH THE VEHICLE CAUSING PREMATURE TIRE WEAR I WAS HAVING TO PAY FOR IT WAS BRUSHED OFF. CALLED CHEVROLET AND FILED A FORMAL COMPLAINT REGARDING THE MATTER AND WAS TOLD THAT IT WAS A MAINTENANCE ISSUE AND I WOULD HAVE TO PAY FOR THE REPAIR. CHEVY KNOWS THAT THERE IS A PROBLEM WITH THIS VEHICLE AND REFUSES TO TAKE RESPONSIBILITY TO REPAIR/FIX PROBLEM AND IS INSTEAD PUSHING THIS OFF ON THE CONSUMER. EXCESSIVE TIRE WEAR IS A SAFETY

PROBLEM AND I GUESS PEOPLE HAVE TO DIE FOR ACTION TO BE TAKEN.*http://www-odi.nhtsa.dot.gov/complaints/results.cfm*

p. *November 1, 2010, 2007 Chevrolet Impala, 32,000 miles*: TL*THE CONTACT OWNS A 2007 CHEVROLET IMPALA LT. THE CONTACT STATED THAT WHEN SHE INSPECTED HER VEHICLE SHE NOTICED THAT ALL FOUR TIRES WERE WORN EXCESSIVELY ON THE INSIDE TO THE POINT WHERE THE TREAD WAS VISIBLE. THE VEHICLE WAS NOT INSPECTED NOR HAD IT BEEN REPAIRED. THE DEALER INFORMED HER THAT SHE SHOULD CONSIDER AN ALIGNMENT AND FOUR NEW TIRES. THE FAILURE MILEAGE WAS APPROXIMATELY 32,000. *http://www-odi.nhtsa.dot.gov/complaints/results.cfm*

q. *December 1, 2010, 2007 Chevrolet Impala*: GM 2007 CHEVROLET IMPALA LT2 - GOODYEAR INTEGRITY TIRES VEHICLE MANUFACTURING DETECT CAUSES TIRE CUPPING, UNEVEN TIRE WEAR AND PREMATURE TIRE WEAR OUT. POSSIBLE TIRE FAILURE WHILE DRIVING IF NOT DETECTED. TIRES RATED FOR 50,000 MILES FAILED AT 28,000. 30 JUNE 2007 - 205 MILES: PURCHASED NEW GM 2007 CHEVROLET IMPALA LT2 - GOODYEAR INTEGRITY TIRES 05 FEB 2008 - 7,094 MILES: DEALER ROTATED TIRES - ALL TIRES TREAD GREATER THAN 8/32. 26 DEC 2008 - 14,449 MILES: DEALER ROTATED TIRES - ALL TIRES TREAD GREATER THAN 8/32. 15 JUN 2009- 18,106 MILES: DEALER ROTATED TIRES - ALL TIRES TREAD GREATER THAN 8/32. 25 MAY 2010 - 23,812 MILES: DEALER ROTATED TIRES - ALL TIRES TREAD GREATER THAN 6/32. 01 DEC 2010 - 28,517 MILES: LUBE SHOP ROTATED TIRES - ALL TIRES BADLY CUPPED ON INSIDE TREAD. TIRES WORN OUT AND UNSAFE, MUST BE REPLACED ASAP.STEEL BELTS WILL START TO SHOW.ALL TIRES TREAD LESS THAN 2/32. 23 DEC 2010 - 28,788 MILES: DEALER - AFTER ESCALATION TO SERVICE MANAGER. REAR STRUT BOLT HOLE REQUIRES ELONGATION TO ALLOW PROPER WHEEL ALIGNMENT. UNDER WARRANTY, ELONGATED REAR STRUT BOLT HOLE, REPLACED WITH 4 NEW TIRES, COMPLETE 4 WHEEL ALIGNMENT. *TR *http://www-odi.nhtsa.dot.gov/complaints/results.cfm*

r. *September 15, 2009, 2007 Chevrolet Impala*: EXCESSIVE TIRE WARE ON REAR TIRES---NOTICED THERE WAS A PROBLEM AT 22,000 MILE'S AT 27,000 MILES CAR WOULD NOT HOLD THE ROAD .IN THE DEAD OF SUMMER CAR DROVE LIKE YOU WERE ON A LAKE OF ICE(2007 CHEVY SS IMPALA)TALKED TO DEALERS THEY SAID NOT A REPORTED PROBLEM FOUND OUT LATER THAT WAS ¿!@#$%. ITS A SUSP PROBLEM .SO MUCH SO THERE

IS AN AFTER MARKET KIT TO CORRECT PROBLEM HAD TO TAKE CAR TO TIRE DEALER WHERE THEY CORRECTED PROBLEM. REPORTED PROBLEM TO G.M. AND GOT MORE ¿!@#$%. *TR
http://www-odi.nhtsa.dot.gov/complaints/results.cfm

s. *November 30, 2009, 2007 Chevrolet Impala*: I AM NOW BUYING THE 3RD SET OF REAR TIRES IN LESS THAN A YEAR. THE INSIDE TREAD WEARS DOWN TO THE WIRES EVERY 13-16,000 MILES. THE VIN ON MY CAR FALLS WITHIN THE VIN'S LISTED ON GM TSB 8032, HOWEVER THIS CAR IS NOT A POLICE CAR. GM STATES THAT I MUST BE HITTING A POTHOLE CAUSING ALIGNMENT PROBLEMS. I MUST BE HITTING THE SAME POTHOLE AT THE SAME MILEAGE ALL 3 TIMES AND IT ONLY AFFECTS THE REAR TIRES. THERE IS EXTENSIVE ANECDOTAL REFERENCES TO THIS PROBLEM ON NUMEROUS CAR COMPLAINT WEBSITES, INCLUDING NHTSA. SOMEONE IS GOING TO GET SERIOUSLY HURT IF GM IS ALLOWED TO IGNORE THIS PROBLEM. GM'S ONLY SOLUTION IS TO SELL ME ALIGNMENTS AND TIRES SINCE IT IS "MY FAULT" AND EVEN THOUGH THE PROBLEM IS IDENTICAL TO THE ISSUE NOTED BY GM IN TSB 8032, IT CAN'T POSSIBLY BE RELATED SINCE THE OTHER IDENTICAL PROBLEM ONLY HAPPENS ON POLICE AND GOVERNMENT CARS TO WHICH GM SELLS A LOT OF CARS. THE EVERYDAY INDIVIDUAL DOES NOT HAVE THE COMPLAINING POWER OF A LARGE BULK PURCHASER. *TR
http://www-odi.nhtsa.dot.gov/complaints/results.cfm

t. *March 7, 2011, 2008 Chevrolet Impala*: VEHICLE WON'T HOLD ALLIGNMENT AND WHEN IT DOES IT'S STILL WEARING OUT THE REAR TIRES AT A RATE 1/32 PER 1000 MILES, IT WORE OUT THE REAR TIRES IN 6000 MILES JUST LUCKY THAT I LOOKED AT THEM WHEN I DID. THE VEHICLE HAS 45000 MILES ON IT AND THIS IS THE SECOND SET OF TIRES IN 6000 MILES
http://www-odi.nhtsa.dot.gov/complaints/results.cfm

u. *October 15, 2010, 2008 Chevrolet Impala*: SEVERE TIRE WEAR. 2008 CHEVY IMPALA WITH GOODYEAR INTEGRITY TIRES. HAD TO HAVE ALL FOUR TIRES REPLACED AT 33,000 MILES, MIND YOU THESE ARE 50,000 MILES TIRES THAT HAVE BEEN ROTATED AND KEPT AT THE RECOMMENDED PSI. THEY ARE SEVERELY WORN ON THE INNER AND OUTER EDGES AND CAN SEE THE WEAR BARS. WAS TOLD BY THE DEALERSHIP THAT THE TIRES TO BEGIN WITH ARE JUNK! I HAD NO CHOICE BUT TO REPLACE THEM BEING THAT THIS CAR IS A LEASE AND ONLY HAVE 4 MONTHS LEFT WITH IT TILL THE TURN IN DATE. THE

UNNAMED TIRE STORE TOLD ME THAT I NEED AN ALIGNMENT BUT THE DEALERSHIP THAT MY CAR GOES TO NEVER SAID ANYTHING ABOUT NEEDING THE ALIGNMENT. *TR
http://www-odi.nhtsa.dot.gov/complaints/results.cfm

v. *May 18, 2009, 2008 Chevrolet Impala:* PURCHASED NEW 2008 CHEVY IMPALA ONLY TO HAVE EXCESSIVE TIRE WEAR FRONT AND BACK AT 13,000 MILES WHEN CAR WAS 1 1/2 YEAR OLD. I NEEDED TO PURCHASE NEW TIRES AT THAT TIME. TODAY I LEARNED I NEED TO PURCHASE ANOTHER SET OF TIRES AT 26,500 MILES. HAVE HAD TIRES ROTATED REGULARLY AND ALIGNED. I THOUGHT THE FIRST SET OF TIRES FROM THE DEALERSHIP WERE JUST "CHEAP" TIRES SO WHEN I REPLACED I REPLACED WITH GOOD TIRES. STILL NEED A SET OF TIRES A6 13,000-14,000 MILES. THIS IS A DISGRACE. I AM JUST BEGINNING THE PROCESS OF HAVING THIS PROBLEM CORRECTED (I HOPE). GM DID PUT BULLETIN # 08032 FOR POLICE CARS REGARDING THIS ISSUE. I GUESS JOHN Q PUBLIC THOUGH IS NOT AS IMPORTANT AS THE POLICE. *TR
http://www-odi.nhtsa.dot.gov/complaints/results.cfm

w. *June 28, 2010, 2008 Chevrolet Impala:* NOTICED ABNORMAL AND EXCESSIVE TIRE FEATHERING. HAD RESEARCHED AND FOUND PREVIOUS TO MY OWN EXPERIENCE THAT OTHERS HAD THE SAME PROBLEM, SO I HAD BEEN MONITORING MY OWN TIRES TO SEE IF IT WAS A DESIGN FLAW. ONE MECHANIC TOLD ME AFTER I PURCHASE 4 NEW TIRES, WHICH ONLY HAVE 34,000 MILES ON A 50,000 MILE RATING, HE WOULD TRY AN ALIGNMENT TO SEE IF IT NEED FOUR NEW STRUTS AS HE WAS ASSUMING WAS THE MAIN PROBLEM BEHIND THE TIRE WEAR. I CALLED A LOCAL GM SERVICE CENTER TO SEE IF THEY HAD SUGGESTIONS FOR ME. THE GUY TOLD ME 4 NEW TIRES AND THE FEW OTHERS WE HAVE SERVICED WITH THE SAME PROBLEM, AN ADJUSTMENT HAD TO BE MADE BY ELONGATING THE HOLES TO PULL THE TIRES INTO A GOOD ALIGNMENT, ELIMINATING THE OUTWARD CAMBER. HE FOUND THIS INFO IN A TECHNICAL SERVICE BULLETIN. GM HAS RECALLED PUBLIC SERVICE VEHICLES, IE POLICE CARS, OF THE SAME MAKE AND MODEL, BUT HAS YET TO SEE THE PUBLIC SAFETY HAZARD BEHIND THIS EASILY REMEDIED ISSUE. I WAS TOLD IT WOULD COST ME AT-LEAST $700 FOR PREMATURELY WORN TIRES AND REPAIRS AND ADJUSTMENTS. IMAGINE IF I HAD BEEN AWARE OF THIS PREVIOUS TO MY OWN INCIDENT. I WOULD ASSUME I STILL HAD 15-20000 MILES OF TREAD-LIFE LEFT AND WOULD BE DRIVING MY CAR AS IF THERE WERE NO PROBLEM AT-ALL

UNTIL MY TIRES BLEW WHILE DRIVING MY SON BACK TO HIS MOTHERS HOUSE, CAUSING AN ACCIDENT, KILLING MY SON AND I AS WELL AS TWO OTHERS IN ANOTHER VEHICLE. THERE-IN LAYS THE SAFETY ISSUE. A PROMPT AND THOROUGH INVESTIGATION WILL SHOW IT'S A DESIGN FLAW THAT IS PUTTING LIVES AT RISK. THE SOONER THE DEFECT IS CORRECTED, THE SOONER PEOPLES LIVES AND WALLETS CAN REST AT EASE. I WOULD CERTAINLY BE WILLING TO ANSWER ANY OTHER QUESTIONS REGARDING THIS ISSUE. *TR
http://www-odi.nhtsa.dot.gov/complaints/results.cfm

x. *February 6, 2010, 2008 Chevrolet Impala LTZ:* 2008 IMPALA LTZ THAT I PURCHASED FROM BILL CRAMER MOTORS IN DONALSONVILLE, GEORGIA ON 10/29/2009. ON 2/6/2010 I HAD A TIRE BLOW OUT IN BAINBRIDGE, GEORGIA NEARLY CAUSING A CRASH. AFTER CHANGING MY TIRE, AND RETURNING HOME I DISCOVERED THAT BOTH REAR TIRES WERE WORN DOWN TO THE BELT ON THE INSIDE. AFTER DOING SOME RESEARCH ON THIS ISSUE, I DISCOVERED THAT THIS IS A VERY COMMON ISSUE IN THE LATE MODEL IMPALA¿S. I CALLED THE SHOP TODAY (2/8/2010), AND THEY ADVISED ME THAT THEY ARE UNAWARE OF THIS ISSUE. I ALSO CALLED SOLOMON CHEVROLET IN DOTHAN, ALABAMA (1-866-646-6175). THEY ADVISED ME THAT THEY ARE VERY FAMILIAR WITH THIS ISSUE, AND THAT IT NEEDED A REAR CAMBER BOLT KIT AND A REALIGNMENT TO FIX THIS ISSUE. THE PARTS AND LABOR FOR THE KIT WERE ESTIMATED @ $200.00 AND THE ALIGNMENT @ $70.00. I WOULD ALSO LIKE TO NOTE THAT MY CAR IS STILL UNDER THE 12,000 MILE CERTIFIED WARRANTY. MY CAR HAD 34,861 MILE ON IT WHEN I PURCHASED IT, AND NOW IT ONLY HAS 45,690 MILES ON IT. SO I HAVE PUT A TOTAL OF 10,829 MILES ON IT. THE TIRES THAT ARE ON MY CAR WERE BRAND NEW WHEN I PURCHASED IT. THERE IS NO WAY POSSIBLE THAT I SHOULD HAVE TO BE REPLACING 2 WORN OUT TIRES WITHIN 10,829 MILES¿. THIS IS UNHEARD OF¿ *TR
http://www-odi.nhtsa.dot.gov/complaints/results.cfm

y. *September 11, 2009, 2008 Chevrolet Impala:* STARTED HAVING ISSUES WITH MY 2008 CHEVY IMPALA WITH WHAT I THOUGHT WAS A TIRE BALANCE PROBLEM. DID REQUIRED TIRE ROTATION AS RECOMMENDED AT 6000, 10,000 AND THEN AGAIN AT 13,500. DEALER SAID TIRES MAY BE OUT OF ROUND AND SUGGESTED ROAD FORCE BALANCING AT 16,500 MILES. THIS DID NOT CHANGE THE ISSUE, SO WENT TO GOODYEAR DEALER AND FOUND OUT THAT THE INSIDE 2 INCHES OF ALL

> FOUR TIRES WERE WEARING EXCESSIVELY WITH THE REAR TWO LESS THAT 2/32 INCHES OF TREAD LEFT. GOODYEAR SHOT THE ALIGNMENT AND SHOWED THAT THE ALIGNMENT WAS WAY OFF AND TIRES COULD NOT BE WARRANTED WITH AN ALIGNMENT ISSUE. TOOK BACK TO CHEVY DEALER TO INFORM THEM OF THE ALIGNMENT ISSUE. THEY SAID ALIGNMENT WAS NOT WARRANTED AFTER 7,500 MILES AND ALSO WOULD NOT REPLACE THE 4 TIRES. I DID GET THE DEALER TO GRATUITOUSLY DO A 4 WHEEL ALIGNMENT THAT ALSO SHOWED THE CAMBER AND TOE, ESPECIALLY IN THE REAR WAS "OUT OF TOLERANCE AND EXCEEDED CROSS-TOLERANCE" ON THEIR MACHINE AS WELL. THE CAMBER COULD NOT BE ADJUSTED WITHOUT EXTRA WORK (ELONGATING THE BOLT HOLES OR A CHAMBER ALIGNMENT KIT). CONTACTED GM COMPLAINT LINE FOR RESOLUTION TO NO AVAIL, SAYING I HAD TO PROVE THAT THERE IS A DEFECT ON THE VEHICLE. THIS IS AN INHERENT SAFETY PROBLEM WITH 2007 AND 2008 IMPALAS THAT HAS FOSTERED NUMEROUS COMPLAINT TO YOU INCLUDING 5 ALREADY THIS YEAR. GM ISSUED A TSB #08032 FOR POLICE IMPALAS THAT ARE ON THE SAME PLATFORM AND SUSPENSION, BUT NEVER EXTENDED THAT TO THE PUBLIC. SEEMS TO ME THAT THE REAR SUSPENSION HAS AN SEVERE DEFECT THAT CAN CAUSE TIRE BLOWOUT WITHOUT WARNING. NO TIRES SHOULD WEAR LIKE THAT WITH LESS THAN 17,000 MILES WITHOUT A REAR SUSPENSION AND ALIGNMENT PROBLEM THAT NEEDS TO BE RECALLED FOR REPAIR AND REPLACEMENT OF THE PARTS AND TIRES. I SAW AT LEAST 12 COMPLAINTS IN THE FIRST 24 PAGES OF 2007 IMPALA COMPLAINTS TO THE ODI. PLEASE INVESTIGATE THIS PROBLEM BEFORE SOMEONE IS SERIOUSLY INJURED OR KILLED AS A RESULT OF THIS CONTINUING IMPALA ISSUE. *TR
> *http://www-odi.nhtsa.dot.gov/complaints/results.cfm*

54. At all relevant times, Defendant New GM, or its predecessor, controlled the design, manufacture, marketing, lease and sale of model year 2007 & 2008 Chevrolet Impalas.

55. The Owner's Manual provided to consumers failed to disclose the defect in the 2007 & 2008 model year Chevrolet Impalas.

56. Defendant New GM has not adequately informed the Class about the defective spindle rods.

57. Defendant knew, or should have known, that the design, materials and workmanship utilized for the rear wheel spindle rods were defective, would fail during the warranty period, and would cause rear wheel misalignment resulting in lower tread depth on the inboard side of the rear tire.

58. Under the Michigan Uniform Commercial Code, MCL 440.2725, an "action for breach of any contract for sale must be commenced within 4 years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than 1 year but may not extend it." "A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warrant explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered."

59. Class members exercising due diligence were unable to discover the nonconformity of the rear wheel spindle rods resulting in premature tire wear and the injury because Defendant New GM did not disclose the premature and abnormal wear characteristics and injury when the vehicles were delivered or brought in for service.

60. Defendant New GM breached its express warranties, as the model year 2007 and 2008 Chevrolet Impalas do not have the characteristics, uses and benefits portrayed by Defendant New GM , and Defendant New GM has failed to repair the

defective rear wheel spindle rods in accordance with the express promises of their written warranties.

COUNT I – BREACH OF EXPRESS WARRANTY

61. Plaintiffs incorporate by reference all preceding paragraphs.

62. New GM has breached its express warranties to Plaintiffs and all other Class members to repair and/or replace the defective rear wheel spindle rods that were defective in workmanship and material.

63. GM's breach of warranties directly and proximately caused damages to Plaintiffs, and members of the Class.

WHEREFORE, Plaintiffs, individually and on behalf of all Class members, request judgment in their favor and against Defendant, and request the following relief:

a. certification of the Plaintiff class, the appointment of Plaintiffs as class representatives, and the appointment of Plaintiffs' counsel as class counsel;

b. compensatory damages for the Class to be determined at trial, together with interest, costs attorneys' fees;

c. exemplary damages;

d. injunctive relief enjoining the Defendant from engaging in the unlawful conduct described herein; and

e. such other relief as may be just, necessary or appropriate.

COUNT II– INJUNCTIVE AND DECLARATORY RELIEF

64. Plaintiffs incorporate by reference all preceding paragraphs.

65. New GM has jeopardized the safety and security of Plaintiffs and the Class and will put them at an increased risk of personal injury and harm.

66. Plaintiffs and the Class will suffer irreparable harm, which may soon be immediate in nature, if New GM does not provide them with repairs or replacements of the rear wheel spindle rods.

67. Plaintiffs and the Class lack an adequate remedy at law to compel New GM to continue to provide them with functional rear wheel spindle rods. Plaintiffs and the Class cannot obtain such relief from other sources.

68. Plaintiffs believe and therefore aver that New GM is the sole source of repair parts, thereby making injunctive and declaratory relief appropriate.

69. Plaintiffs and the Class are entitled to injunctive and declaratory relief to compel New GM to provide them with or repair and/or replacement of the defective rear wheel spindle rods.

WHEREFORE, Plaintiffs, individually and on behalf of all Class members, request judgment in their favor and against Defendant, and request the following relief:

a. certification of the Plaintiff class, the appointment of Plaintiffs as class representatives, and the appointment of Plaintiffs' counsel as class counsel;

b. compensatory damages for the Class to be determined at trial, together with interest, costs attorneys' fees;

c. exemplary damages;

d. injunctive relief enjoining the Defendant from engaging in the unlawful conduct described herein; and

e. such other relief as may be just, necessary or appropriate.

JURY DEMAND

Plaintiffs demand a trial by jury.

Respectfully submitted,

Dated: September 6, 2011

By: _/s/ David H. Fink_____

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Attorneys for the Plaintiff and the Class

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2011, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to all attorneys of record registered for electronic filing.

Respectfully submitted,

FINK + ASSOCIATES LAW

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Dated: September 6, 2011

EXHIBIT 1

Bulletin No.: 08032A
Date: July 2008

Program Bulletin

CUSTOMER SATISFACTION PROGRAM

SUBJECT: **Uneven Police Car Rear Tire Wear – Replace Rear Wheel Spindle Rods**

MODELS: **2007-2008 Chevrolet Impala**
Equipped with Police Package (RPO 9C1/9C3)

The Parts Information section in this bulletin has been revised for U.S. dealers. A new kit containing all the necessary parts has been released. U.S. dealers are to now order this new kit. Because this new kit is not available in Canada or export countries, Canadian and Export dealers are to continue to order the individual parts. Please discard all copies of bulletin 08032, issued June 2008.

CONDITION

On **certain** 2007-2008 model year Chevrolet Impala vehicles equipped with a police package (RPO 9C1/9C3), the rear wheel spindle rods may cause rear wheel misalignment, resulting in lower tread depth on the inboard side of the rear tire.

CORRECTION

Dealers are to replace the rear wheel spindle rods, align the rear wheels, and if necessary, replace the rear tires (only) that exhibit lower tread depth on the inboard side. If the tires have already been replaced due to this condition, the customer may request reimbursement for the replacement tires until July 31, 2009.

VEHICLES INVOLVED

Involved are **certain** 2007-2008 model year Chevrolet Impala vehicles equipped with a police package (RPO 9C1/9C3) and built within these VIN breakpoints:

Year	Division	Model	From	Through
2007	Chevrolet	Impala	79129274	79419427
2008	Chevrolet	Impala	81174923	81237574
			89100019	89283506

Important: Dealers are to confirm vehicle eligibility prior to beginning repairs by using the General Motors Inquiry System (GMVIS). Not all vehicles within the above breakpoints may be involved.

For dealers with involved vehicles, a listing with involved vehicles containing the complete vehicle identification number, customer name, and address information has been prepared and will be provided through the applicable system listed below. Dealers will not have a report available if they have no involved vehicles currently assigned.

- US dealers - GM DealerWorld Recall Information
- Canadian dealers - GMinfoNet Recall Reports
- Export dealers - sent directly to dealers

The listing may contain customer names and addresses obtained from Motor Vehicle Registration Records. The use of such motor vehicle registration data for any purpose other than follow-up necessary to complete this program is a violation of law in several states/provinces/countries. Accordingly, you are urged to limit the use of this report to the follow-up necessary to complete this program.

PARTS INFORMATION

For U.S. Dealers: Parts required to complete this program are to be obtained from General Motors Service and Parts Operations (GMSPO). Please refer to your "involved vehicles listing" before ordering parts. Normal orders should be placed on a DRO = Daily Replenishment Order. In an emergency situation, parts should be ordered on a CSO = Customer Special Order.

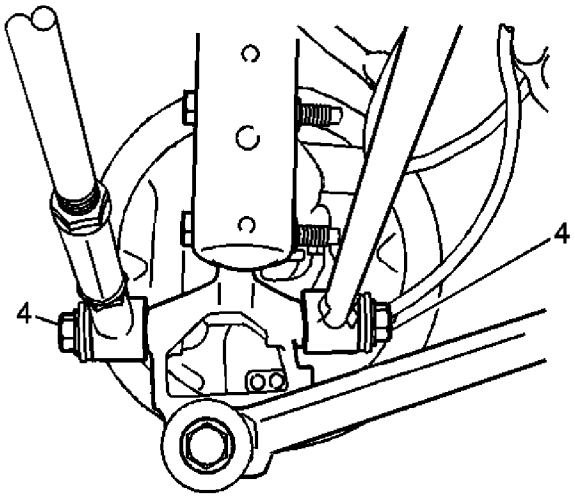
Part Number	Description	Quantity/Vehicle
19208347	Rod Kit, RR Susp Knu RR	1

For Canadian and Export Dealers: Parts required to complete this program are to be obtained from General Motors Service and Parts Operations (GMSPO). Please refer to your "involved vehicles listing" before ordering parts. Normal orders should be placed on a DRO = Daily Replenishment Order. In an emergency situation, parts should be ordered on a CSO = Customer Special Order.

Part Number	Description	Quantity/Vehicle
10329689	Rod,RR Whl Spdl (RR)	2
10329691	Rod,RR Whl Spdl (FRT)	2

SERVICE PROCEDURE

1. Raise and support the vehicle.
2. Remove the rear tires and wheels.
3. Remove the exhaust pipe/muffler assembly.
4. Remove the wiring harness clips from the spindle arms and from the connector at the body.



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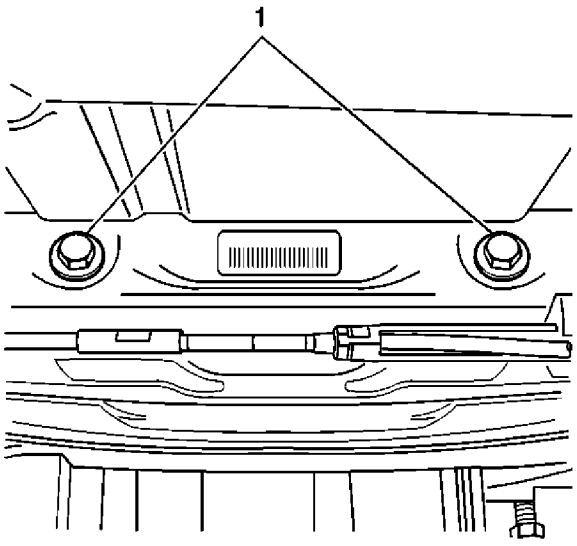
5. Remove the rear wheel spindle rod bolts (4) and nuts from the knuckles (both sides).
6. Remove the stabilizer shaft from the rear suspension support.
7. Support the rear suspension support with jack stands and remove the mounting bolts.
8. Lower the rear suspension support in order to gain access to the rear wheel spindle rod to support bolts.



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9. Remove the four rear wheels spindle rod bolts (1) and nuts from the rear suspension support.
10. Remove the rear wheel spindle rods from the vehicle.
11. Install the new rear wheel spindle rods to the vehicle.

12. Install the four rear wheel spindle rod bolts and nuts to the rear suspension support.

    Tighten
    Tighten the bolts to 135 N·m (100 lb ft).

13. Raise the rear suspension support into place.
14. Install the rear suspension support mounting bolts and remove the jack stands.

    Tighten
    Tighten the bolts to 110 N·m (85 lb ft).

15. Install the stabilizer shaft to the rear suspension support.
16. Install the rear wheel spindle rod bolts and nuts to the knuckles (both sides).

    Tighten
    Tighten the nuts to 150 N·m (110 lb ft).

17. Install the wiring harness clips to the spindle arms and to the connector at the body.
18. Install the exhaust pipe/muffler assembly.
19. Inspect the rear tires for uneven wear. Inspect the tread depth at the inboard and outboard tread blocks, and if there is more than 2.4 mm (3/32 in) difference in wear, install two new tires. If the customer has replaced the original Pirelli tires with four lower speed rated tires, install the same brand or comparable tire that was removed.
20. Install the rear tires and wheels.
21. Lower the vehicle.
22. Adjust the wheel toe angle.

CUSTOMER REIMBURSEMENT - For GM US

All customer requests for reimbursement for previous repairs for the condition will be handled by the Customer Assistance Center, not by dealers.

A General Motors Customer Reimbursement Procedure and Claim Form is included with the customer letter.

IMPORTANT: (For GM Only) Refer to the GM Service Policies and Procedures Manual, section 6.1.12, for specific procedures regarding customer reimbursement and the form.

CUSTOMER REIMBURSEMENT - For Canada and Export

Customer requests for reimbursement for previous repairs for the condition are to be submitted to the dealer by July 31, 2009.

All reasonable customer paid receipts should be considered for reimbursement. The amount to be reimbursed will be limited to the amount the repair would have cost if completed by an authorized General Motors dealer.

When a customer requests reimbursement, they must provide the following:

- Proof of ownership at time of repair.
- Original paid receipt confirming the amount of repair expense(s) that were not reimbursed, a description of the repair, and the person or entity performing the repair.

Claims for customer reimbursement on previously paid repairs are to be submitted as required by WINS.

IMPORTANT: Refer to the GM Service Policies and Procedures Manual, section 6.1.12, for specific procedures regarding customer reimbursement verification.

CLAIM INFORMATION

Submit a Product Claim with the information indicated below:

Repair Performed	Part Count	Part No.	Parts Allow	CC-FC	Labor Op	Labor Hours	Net Item
Replace Four Rear Wheel Spindle Rods (inc. alignment)	*	---	**	MA-96	V1828	1.9	N/A
Add: Mount and Balance Two Rear Tires	2					0.4	
Customer Reimbursement (Canadian & Export Dealers/US CAC)				MA-96	V1829	0.2	***

* Part count: U.S. dealers – 1; Canadian and Export dealers – 4.

** The "Parts Allowance" should be the sum total of the current GMSPO Dealer net price plus applicable Mark-Up or Landed Cost Mark-Up (for Export) for the rod kit (U.S.) or the four rear wheel spindle rods (Canada and Export) needed to complete the repair, and if required, two rear tires.

*** The amount identified in the "Net Item" column should represent the dollar amount reimbursed to the customer and will expire July 31, 2009

Refer to the General Motors WINS Claims Processing Manual for details on Product Recall Claim Submission.

CUSTOMER NOTIFICATION – For US and Canada

General Motors will notify customers of this program on their vehicle (see copy of customer letter included with this bulletin).

CUSTOMER NOTIFICATION – For Export

Letters will be sent to known owners of record located within areas covered by the US National Traffic and Motor Vehicle Safety Act. For owners outside these areas, dealers should notify customers using the attached sample letter.

DEALER PROGRAM RESPONSIBILITY

All unsold new vehicles in dealers' possession and subject to this program must be held and inspected/repaired per the service procedure of this program bulletin before customers take possession of these vehicles.

Dealers are to service all vehicles subject to this program at no charge to customers, regardless of mileage, age of vehicle, or ownership, from this time forward.

Customers who have recently purchased vehicles sold from your vehicle inventory, and for which there is no customer information indicated on the dealer listing, are to be contacted by the dealer. Arrangements are to be made to make the required correction according to the instructions contained in this bulletin. A copy of the customer letter is provided in this bulletin for

your use in contacting customers. Program follow-up cards should not be used for this purpose, since the customer may not as yet have received the notification letter.

In summary, whenever a vehicle subject to this program enters your vehicle inventory, or is in your dealership for service in the future, you must take the steps necessary to be sure the program correction has been made before selling or releasing the vehicle.

June 2008

Dear General Motors Customer:

We have learned that a condition exists on your 2007 or 2008 model year Chevrolet Impala police vehicle that may cause rear wheel misalignment, resulting in lower tread depth on the inboard side of the rear tires.

Your satisfaction with your 2007 or 2008 model year Chevrolet Impala police vehicle is very important to us, so we are announcing a program to prevent this condition or, if it has occurred, to fix it.

What We Will Do: Your Chevrolet dealer will replace the rear wheel spindle rods, align the rear wheels, and if necessary, replace the rear tires. If you have replaced the original Pirelli tires with four lower speed rated tires, your dealer will install the same brand or comparable tire that you installed. This service will be performed for you at **no charge**.

What You Should Do: If you have not inspected the rear tires for adequate depth across all of the tread in the last month, you should do so **now** or contact your Chevrolet dealer for an immediate inspection. See *When It Is Time for New Tires* in your owner manual. Driving with worn tires is dangerous.

To limit any possible inconvenience, we recommend that you contact your dealer as soon as possible to schedule an appointment for this repair. By scheduling an appointment, your dealer can ensure that the necessary parts will be available on your scheduled appointment date.

Customer Reply Form: The enclosed customer reply form identifies your vehicle. Presentation of this form to your dealer will assist in making the necessary correction in the shortest possible time. If you no longer own this vehicle, please let us know by completing the form and mailing it back to us.

Reimbursement: The enclosed form explains what reimbursement is available and how to request reimbursement if you have paid to have the rear tires replaced because of this condition. Your request for reimbursement, including the information and documents mentioned on the enclosed form, must be received by GM by July 31, 2009.

If you have any questions or need any assistance to better understand related repairs, please contact your dealer. If you have questions related to a potential reimbursement, please contact the appropriate Customer Assistance Center at the number listed below.

Division	Number	Text Telephones (TTY)
Chevrolet	1-800-630-2438	1-800-833-2438
Guam	1-671-648-8450	
Puerto Rico – English	1-800-496-9992	
Puerto Rico – Español	1-800-496-9993	
Virgin Islands	1-800-496-9994	

We sincerely regret any inconvenience or concern that this situation may cause you. We want you to know that we will do our best, throughout your ownership experience, to ensure that your Chevrolet Impala provides you many miles of enjoyable driving.

Scott Lawson
General Director,
Customer and Relationship Services

Enclosure
08032

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. TRUSKY on behalf of Herself and all others similarly situated,

Plaintiff,

vs.

GENERAL MOTORS COMPANY

Defendant.

Case No. 2:11-cv-12815-SFC-LJM

Honorable Sean F. Cox

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NOTICE OF APPEARANCE

TO: Clerk of the Court
Attorneys of Record

PLEASE ENTER the Appearance of Michael P. Cooney of Dykema Gossett PLLC as one of the counsel of record on behalf of the Defendant General Motors Company in this action.

DYKEMA GOSSETT PLLC

By: /s/ Michael P. Cooney
Benjamin W. Jeffers (P57161)
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Dated: September 9, 2011

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2011, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to the attorneys of record in this matter.

DYKEMA GOSSETT PLLC

By: /s/ Michael P. Cooney
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Dated: September 9, 2011

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. TRUSKY on behalf of herself
and all others similarly situated,

Case No. 11-12815

Plaintiff,

vs

Hon. Sean F. Cox

GENERAL MOTORS COMPANY
300 Renaissance Center
Detroit, MI 48243

Defendant.
_____/

STIPULATION AND ORDER REGARDING
FILING OF RESPONSE TO DEFENDANT'S MOTION TO DISMISS

Defendant, having filed a Motion to Dismiss, and having since been advised by Plaintiffs that Plaintiffs intend to file an amended complaint on or before September 6, 2011, which Plaintiffs believe will address, at least some of, the arguments raised in the Motion to Dismiss, the Parties agree that it would be an unnecessary expenditure of resources for Plaintiffs to respond to the pending Motion to Dismiss. Therefore, as evidenced by the signatures of undersigned counsel, the parties stipulate that Plaintiffs may file an amended complaint on or before September 6, 2011, in lieu of responding to Defendant's currently-pending Motion to Dismiss. The parties further stipulate that Defendants may file an Answer or otherwise respond to the amended complaint on or before September 27, 2011.

IT IS HEREBY ORDERED that Plaintiffs may file an amended complaint, on or before September 6, 2011 in lieu of responding to the currently-pending Motion to Dismiss, and that Defendant shall file an Answer or otherwise respond to the amended complaint on or before September 27, 2011.

SO ORDERED

Dated: September 13, 2011

s/ Sean F. Cox
Sean F. Cox
U. S. District Judge

SO STIPULATED

Fink + Associates Law

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UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. TRUSKY, AHSA JEFFRIES, GAYNELL COLE on behalf of themselves and all others similarly situated,

Plaintiff,

vs.

GENERAL MOTORS COMPANY

Defendant.

Case No. 2:11-cv-12815-SFC-LJM

Honorable Sean F. Cox

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DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT BASED ON LACK OF JURISDICTION AND FAILURE TO STATE A CLAIM

Defendant, General Motors Company ("New GM") moves for dismissal of the Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). Plaintiffs assert claims against New GM relating to vehicles manufactured and sold by Motors Liquidation Company f/k/a General Motors Corporation ("Old GM") prior to Old GM's bankruptcy. Like the initial Complaint, the Amended Complaint purports to be based on a responsibility New GM assumed from Old GM to administer certain express, limited warranties subject to their explicit terms and limitations. However, the claims asserted and the relief sought by Plaintiffs are unambiguously outside the scope of the warranty terms and are premised on conduct of Old GM. They therefore constitute a violation of the Order of the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") pursuant to which New GM acquired its assets and assumed specific liabilities only. The adjudication of that issue is within the exclusive jurisdiction of the Bankruptcy Court. The Amended Complaint did not, and cannot, fix this threshold jurisdictional problem, which was in the initial Complaint too. The Amended Complaint should be dismissed without prejudice for this reason alone.

Alternatively, if an attempt is made to reform the Amended Complaint by disregarding claims and allegations that implicate Bankruptcy Court jurisdiction (such that it is interpreted as a prayer for repairs within the scope of the assumed express warranty covering Plaintiffs' vehicles), the Amended Complaint is subject to dismissal because it fails to state a claim under that warranty.

As support for its Motion, New GM relies on Fed. R. Civ. P. 12(b) and the facts and law in the attached Brief.

Counsel for Defendant sought concurrence from Plaintiffs' counsel pursuant to L.R. 7.1 but concurrence was not forthcoming.

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Dated: September 27, 2011

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. TRUSKY, AHSA JEFFRIES, GAYNELL COLE on behalf of themselves and all others similarly situated,

Plaintiff,

vs.

GENERAL MOTORS COMPANY

Defendant.

Case No. 2:11-cv-12815-SFC-LJM

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DEFENDANT'S BRIEF IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT BASED ON LACK OF JURISDICTION AND FAILURE TO STATE A CLAIM

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

This putative class action implicates the scope of Defendant General Motors Company's ("New GM") warranty obligations for an alleged design defect in 2007 and 2008 Chevrolet Impalas.[1] New GM did not design, assemble, or sell these vehicles. New GM stands by the written warranties it assumed in connection with the sale of Motors Liquidation Company f/k/a General Motors Corporation's ("Old GM") assets in the 2009 bankruptcy. If one of the pre-transaction vehicles were to manifest a defect in materials or workmanship that is covered by the written warranty, and its owner presented the vehicle to a New GM dealer within the warranty period, then the owner would receive repairs or replacement parts. New GM and its dealers have been honoring this commitment every day since July 10, 2009 and will continue to do so.

However, Plaintiffs' lawsuit does not ask New GM to honor the specific written warranties it assumed, but instead pursues relief outside the scope of those warranties and expressly excluded by those warranties. Specifically, Plaintiffs allege that a design defect in their Impalas' rear wheel spindle rods led to increased wear and tear on their vehicles' tires and, based on Old GM's conduct, contend that New GM is obligated to replace all spindle rods in all 2007 and 2008 Impalas, regardless of whether the putative class members experienced any problems or presented their vehicles for repairs within their own warranty's duration. As set forth in greater detail below, the claims asserted are simply not within the scope of assumed liabilities. *See also In Re: OnStar Contract Litig.*, Case No. 2:07-MDL-01867, Opinion & Order Granting in Part and Denying In Part Plaintiffs' Motion For Leave To File A Third Amended

[1] Although beyond the scope of this motion, Plaintiff has named the wrong party. The entity which acquired assets from Old GM and simultaneously assumed certain responsibilities of Old GM is General Motors LLC f/k/a General Motors Company. The entity currently known as General Motors Company is the ultimate parent of General Motors LLC, but was formed later as part of a subsequent corporate reorganization. For the purposes of this motion, in accepting the allegations of the Complaint as true, New GM has disregarded this distinction.

Complaint ("OnStar Opinion")(holding that certain claims purporting to be liabilities assumed by New GM were not), a copy of which is annexed hereto as Ex. A.

Plaintiffs' Amended Complaint did not fix the jurisdictional and pleadings deficiencies of the initial Complaint, and should be dismissed. Plaintiffs' attempt in this Court to sue New GM for Old GM's liabilities violates the exclusive jurisdiction of the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") reserved in the Sale Approval Order.[2] Pursuant to the Sale Approval Order and the agreements it incorporates, New GM's warranty obligations for vehicles sold by Old GM are "subject to conditions and limitations contained in [Old GM's] express written warranties" Sale Approval Order, ¶56 The warranty requires New GM to repair a defect in "materials and workmanship" if such a defect manifested itself and if the vehicle was presented to a New GM dealer within the time and mileage limitations of the warranty. Under the Amended and Restates Master Sale and Purchase Agreement ("ARMSPA"), which is expressly incorporated in the Sale Approval Order, Old GM expressly retained liabilities arising from "allegation, statement or writing by or attributable to [Old GM]." ARMSPA, §2.3(b)(xvi)(B).

Thus, New GM did not assume responsibility for claims based on Old GM's design choices, conduct, or alleged breaches of liability under the warranty, and its terms expressly preclude money damages. Indeed, in ARMSPA §2.3(b)(xi), it was unambiguously stated that New GM would not assume liability for "Liabilities to third parties for Claims based upon Contract, tort or any other basis." But in any event, the Bankruptcy Court retained exclusive

[2] The "Sale Approval Order" is the Order (i) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (ii) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases In Connection with the Sale; and (iii) Granting Related Relief, entered on July 5, 2009, a copy of which is annexed hereto as Ex. B.

jurisdiction over any dispute regarding the scope of New GM's limited obligations assumed pursuant to the Sale Approval Order. Plaintiffs' attempt to plead a claim against New GM in this Court on a successor liability theory is, therefore, a direct violation of the terms of the Sale Approval Order (including both its substantive and jurisdictional elements).

Alternatively, assuming *arguendo* that Plaintiffs alleged only that New GM (not Old GM) failed its assumed obligations under the terms and conditions of Old GM's express warranty (an assumption that requires the Court to disregard much of the Complaint, including the prayer for monetary damages), they nonetheless fail to state claims. They have not alleged that they presented their vehicles to New GM or a New GM dealer for covered warranty repairs within the duration of the applicable bumper-to-bumper coverage period. In either case, the Court should dismiss the Amended Complaint.

II. THE BANKRUPTCY OF OLD GM

On June 1, 2009, Old GM commenced a voluntary case in the Bankruptcy Court. On July 10, 2009, New GM acquired substantially all of the assets of Old GM in a transaction executed under the jurisdiction and pursuant to approval of the Bankruptcy Court. *See generally In re General Motors Corp.*, 407 B.R. 463 (Bankr., S.D.N.Y. 2009) ("Sale Opinion") (approving sale transaction).

In acquiring these assets, New GM did not assume the liabilities of Old GM. Rather, the scope and limitations of New GM's responsibilities are defined in the Sale Approval Order, which is a final binding order and not subject to appeal. *See* Sale Approval Order, *see also, OnStar Opinion*, p. 3.

The ARMSPA, approved and incorporated in the Sale Approval Order, expressly cut off successor and derivative liability claims against New GM based on Old GM's acts or omissions. This clear finding of no successor liability is typical of bankruptcy asset sale orders and allows

the debtor's estate (here, Old GM) to benefit by having buyers (New GM) pay an enhanced premium price for the debtor's assets. The Sale Approval Order provides that, with the exceptions of certain liabilities expressly assumed under the relevant agreements, the assets acquired by New GM were transferred "free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever. . . including rights or claims based on any successor or transferee liability. . ." *Id*., ¶7. Moreover, the Sale Approval Order permanently enjoined claimants from attempting to enforce liabilities against New GM *other than Assumed Liabilities*, as follows:

> "[A]ll persons and entities … holding liens, claims and encumbrances, and other interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, against [Old GM] or the Purchased Assets (whether legal or equitable, secured or unsecured, ***matured or unmatured***, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to [Old GM], the Purchased Assets, the operation of the Purchased Assets prior to the Closing … are forever barred, estopped, and permanently enjoined … from asserting against [New GM] … such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability."

Sale Approval Order, ¶ 8 (emphasis added). Even more specifically, paragraph 46 of the Sale Approval Order provides as follows (emphasis added):

> "Except for the Assumed Liabilities expressly set forth in the [ARMSPA] … ***[New GM] … shall [not] 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 [Old GM] … prior to the Closing Date …. Without limiting the foregoing, [New GM] 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 … and products … liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated."

See also Sale Approval Order, ¶ 47 ("Effective upon the Closing … all persons and entities ***are forever prohibited and enjoined from commencing or continuing in any manner any action …***

against [New GM] … with respect to any (i) claim against [Old GM] other than Assumed Liabilities) (emphasis added).

The Bankruptcy Court retained "***exclusive jurisdiction*** to enforce and implement the terms and provisions of [the Sale Approval] Order [and] the [ARMSPA] …, in all respects, including, but not limited to, retaining jurisdiction to … (c) resolve any disputes arising under or related to the [ARMSPA], except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order [and] (e) ***protect [New GM] against any of the [liabilities that it did not expressly assume under the ARMSPA***] …." Sale Approval Order., ¶ 71 (emphasis added).

III. PLAINTIFFS' ALLEGATIONS AND CLAIMS

A. The Original Complaint and New GM's initial Motion to Dismiss

On June 29, 2011, Ms. Trusky filed this case seeking economic damages based on an alleged design defect in her Chevrolet Impala, purportedly based on Old GM's express warranties. She alleged in her original Complaint that all "model year 2007 and 2008 Impalas were sold with common defective rear spindle rods that caused and continue to cause wheel misalignment and premature tire wear." Complaint, ¶2, dkt #1. These claims were largely premised on a service campaign relating to police vehicles implemented by Old GM. Id., ¶¶ 2-3, 26-29. Referring to Old and New GM interchangeably throughout the Complaint, her theory was premised on the alleged "liabilities" of Old GM (*id*., ¶1); indeed, she did not allege that she had any interaction with New GM at all.

New GM filed a Motion to Dismiss on August 11, 2011 (dkt #13), explaining that Ms. Trusky's claims and requested relief were unambiguously outside the scope of the relevant express warranty terms, premised on conduct of Old GM and therefore constituted a violation of the Sale Order. New GM also explained that even if the Court ignored the effort in the

Complaint to enlarge New GM's obligations, Ms. Trusky's individual claim failed because she had not alleged that New GM breached the applicable warranty. *See* New GM's initial Motion to Dismiss, pp. 14-17, dkt #13.

B. The Amended Complaint

Plaintiffs filed the Amended Complaint on September 16, 2011. *See* dkt #15. It is now clear that New GM's arguments were not mooted. Plaintiffs changed very little in the Amended Complaint and, if anything, they accentuate the problems by adding new plaintiffs who seek relief despite the fact that their applicable warranty has expired and they presented their vehicles for repair of the defect alleged, if at all, only after the warranty had expired. *See* Decl. Oakley, Ex. C.

1. Plaintiffs' theory is unchanged from the initial Complaint.

The claims asserted in this case remain premised on an alleged design defect in the rear spindle rods in the 2007 and 2008 Chevrolet Impalas. The Amended Complaint proffers the same counts of Breach of Warranty and Injunctive Relief, and once again asks the Court to award damages and to order New GM to provide Plaintiffs and every other purchaser for "repair and/or replacement of the defective rear wheel spindle rod." Amended Complaint, ¶69. They seek this expansive relief even though it is not provided for in the warranties and regardless of whether a given vehicle owner has ever manifested a defect or presented their vehicle for repair to a New GM dealer under that warranty.

Plaintiffs continue to rely on a successor liability theory. They again assert that "New GM assumed the express warranty **liabilities** of Old GM . . ." Amended Complaint, ¶1 (emphasis added). This assertion is wrong, or at least so imprecise as to be an irrelevant statement for current purposes. New GM's assumed "warranty liabilities" were limited to certain defined obligations set by specific terms and conditions that do not encompass the claim asserted by

Plaintiffs here. New GM did not assume responsibility for Old GM's conduct or design choices. New GM did not assume liability for purported damage claims. New GM agreed only to provide warranty repairs on pre-transaction vehicles "subject to the terms and conditions" contained in the express warranties as written. *See* Sale Approval Order, ¶56.

Many other paragraphs in the Amended Complaint further demonstrate that Plaintiffs rely on alleged conduct of Old GM to establish their claims against New GM. In paragraph 29 they allege that "Defendant New GM, or its predecessor in interest," sold model year 2007 and 2008 Chevrolet Impalas." Amended Complaint, ¶29; *see also, id*., at ¶¶42, 54. Yet New GM did not exist until late Summer of 2009 and did not sell Plaintiffs their vehicles. Plaintiffs' imprecision continues in paragraphs 34 and 35 where Ms. Trusky alleges that she informed "New GM and/or its predecessor's dealer of the defect" long before New GM was created.

But perhaps the best example of Plaintiffs' continued effort to advance a liability theory premised on Old GM's conduct is their reliance on a Program Bulletin concerning Impala police vehicles issued by Old GM. They allege that in 2008, Old GM issued bulletins to dealers advising them to replace the spindle rods in 2007 and 2008 Impalas equipped with the police package. Amended Complaint, ¶30. They claim that the bulletins acknowledge a problem with the spindle rods and that it was improper to have replaced them only on police vehicles because there is no functional difference between those vehicles and all other Impalas. *Id*. at ¶33. Even accepting their characterization of the bulletins as true, the problem is that Plaintiffs use Old GM's conduct to support their claim for relief against New GM. Once again mixing Old with New, Plaintiffs allege that the "fact that New GM moved to fix certain Impalas shows that it knew of the defect," knowing full well that this statement depends upon the legally insupportable proposition that New GM and Old GM are the same. Amended Complaint, ¶3.

2. Plaintiffs' Warranty Claim

Plaintiffs again assert a claim for "Breach of Express Warranty." *See* Count I. Their claim purports to be based on the written warranty that they and each member of the putative class received at the time of purchase. Complaint, ¶33. Attached as Ex. D is copy of the 2008 Chevrolet Warranty ("Warranty") that Plaintiffs received.[3] There are a number of important features to this Warranty. *First*, the Warranty is limited in duration. *Id*., p. 2. (the "Bumper-to-Bumper" coverage is for the first 3 years or 36,000 miles, whichever comes first). Tire defects and repairs are within the 3 year/36,000 mile coverage. *Id.* Spindle rods are part of the suspension, which would be covered only under the 3 year/36,000 mile coverage and not within the longer "powertrain" coverage period. *Id*. *Second*, the Warranty covers defects in materials and workmanship, not design. *Id*., p. 4. *Third*, an owner must present their vehicle to a New GM dealer in order to trigger New GM's warranty obligations. *Id*., p. 4 ("To obtain warranty repairs, take the vehicle to a Chevrolet dealer facility within the warranty period and request the needed repairs"); *see also id.*, p. 22 ("You are responsible for presenting your vehicle to a GM dealer selling your vehicle line as soon as a problem exists"). *Fourth*, New GM's obligations are limited to repair and replacement under the Warranty. The document expressly disclaims claims for damages like those that Plaintiffs seek in this case. *Id*., p. 9.

Plaintiffs contend that New GM breached the Warranty by concealing the alleged defect (only possible if they are talking about a latent design defect) and failing to repair the rear spindle rods. Amended Complaint, ¶¶48-52. They also present a count for Injunctive and

[3] Plaintiffs did not attach the Warranty to their Complaint, but they quote from it and it is obviously integral to their claims so the Court properly may evaluate it on a Motion to Dismiss. *See Commercial Money Center, Inc. v. Illinois Union Ins. Co.*, 508 F.3d 327, 335-36 (6th Cir. 2007) ("[W]hen a document is referred to in the pleadings and is integral to the claims, it may be considered without converting a motion to dismiss into one for summary judgment.").

Declaratory Relief, but it is premised on this same express warranty theory. *See* Amended Complaint, Count II. Plaintiffs seek this relief on behalf of themselves and "all persons in the United States who purchased or leased a model year 2007 and 2008 Chevrolet Impala" without reference to whether putative class members can in fact allege the elements of a claim under the Warranty. Amended Complaint, ¶18.

Putting aside the problems with the certification request, Plaintiffs have not even alleged facts supporting a claim against New GM as to themselves. In paragraph 34, Ms. Trusky claims that "[w]ithin the first 6,000 miles driven and within the first year of, [ownership] the tires were unserviceable, as the tread had worn so quickly that they had become questionable to use any further." Amended Complaint, ¶34. At that time she presented her vehicle to the dealer, and received a free set of replacement tires and a free wheel alignment. Amended Complaint, ¶35. She does not allege any damages or out-of-pocket costs as a result of this service visit. This occurred some time in 2008 or early 2009, but certainly before the bankruptcy in June 2009. *Id*. Then, in November 2010, Ms. Trusky alleges she "brought her car in for its annual inspection [there is no allegations that a GM dealer performed that inspection] and was informed that the replacement rear tires were worn and would not pass inspection." *Id*. ¶32. She "paid $287.77 for a set of rear replacement tires," and at that time the "car had 24,240 miles on it." *Id*. There are no specific factual allegations that New GM – as opposed to Old GM – did anything at all in relation to Ms. Trusky's vehicle.

The two new plaintiffs fail to allege facts constituting a breach of their express warranty during the applicable "bumper-to-bumper" warranty period. Ms. Jeffries purchased a used model year 2007 Impala in June of 2009. Amended Complaint,¶37. When she bought it, New GM did not exist and, most significantly, she did not present her vehicle for service until after it

had more than 36,000 miles on it.[4] *See* Decl. Oakley, Ex. C. Similarly, Ms. Cole alleges she bought a new Impala in 2008. Amended Complaint, ¶40. The precise date that it was delivered to her and for which her warranty coverage started was June 26, 2008. *See* Decl. Oakley, Ex. C. Obviously, her 3 year/36,000 mile bumper-to-bumper coverage expired on June 26, 2011. Thus, Ms. Cole's presentment to a New GM dealer and her purchase of a new tire on July 5, 2011, were done outside of the warranty period. Amended Complaint, ¶41.

IV. ARGUMENT

Dismissal of the case is the only proper outcome. First, Plaintiffs' claim indisputably seeks to enlarge New GM's liabilities in violation of the Sale Approval Order and, more fundamentally, any dispute about this issue is within the Bankruptcy Court's exclusive jurisdiction. However, even if the Court disregards the allegations premised on Old GM's conduct and the successor liability theory, and looks instead for any actionable connection between New GM and Plaintiffs' allegations, then the Complaint fails to state a claim under the terms of the written Warranty. Either way, the case should be dismissed under Rule 12(b).

A. The Court should dismiss the case because Plaintiffs' attempt to enlarge New GM's liability is a direct violation of the Bankruptcy Court's Sale Approval Order and the Bankruptcy Court has exclusive jurisdiction to resolve the parties' dispute.

[4] Because the threshold argument in this Motion implicates the Court's jurisdiction, this Court may consider matters outside the pleadings. When presented with a factual attack on jurisdiction, the Court may weigh the relevant evidence to determine whether, by a preponderance of the evidence, it has subject matter jurisdiction. *See NLFC, Inc. v. Devcom Mid-America, Inc.*, 45 F.3d 231, 232 (7th Cir. 1995); *see also Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (opining that the burden rests on the plaintiff to establish subject matter jurisdiction); *Commodity Trend Serv.*, 149 F.3d at 685 (7th Cir. 1998) ("On a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1), the court is not bound to accept the truth of the allegations in the complaint. Rather, the plaintiff has the obligation to establish jurisdiction by competent proof"). As a practical matter, the Oakley Declaration merely provides a few objective facts that could not be disputed.

It is impossible to reconcile Plaintiffs' claims with the terms of the Sale Approval Order. But the threshold issue is that it is not permissible to litigate this dispute in this Court without infringing on the Bankruptcy Court's exclusive jurisdiction. Therefore, as explained below, the Court should dismiss the case without prejudice.[5] Plaintiffs may re-file it in the Bankruptcy Court if they wish.

1. Plaintiffs' claims violate the terms of the Sale Approval Order.

The claims asserted in this case are not cognizable under the terms and conditions of the express warranties assumed by New GM. For one, Plaintiffs affirmatively and incorrectly allege that New GM assumed Old GM's "liabilities," (*see* Amended Complaint, ¶1) and then build upon their case from there by pleading that New GM "**or**" Old GM engaged in certain conduct. Their continued reliance on Old GM's alleged conduct and alleged "liability" illustrates that this case remains built on a successor liability theory despite Plaintiffs' removal of allegations from the initial Complaint that overtly equated the two entities.[6]

[5] Alternatively, this Court would be empowered to transfer this action to the Bankruptcy Court pursuant to 28 U.S.C. § 1412 (transfer of cases arising in or related to cases under title 11) because it is a "core proceeding" or at minimum, is one "related to" the bankruptcy. *See Mendoza v. General Motors, LLC*, 2010 WL 5224136 (C.D.Cal. Dec. 15, 2010) (transferring a lawsuit against New GM to the Bankruptcy Court). But dismissal without prejudice is the appropriate result here because New GM affirmatively seeks dismissal in this Motion and the Court should respond to the particular request before it. *See e.g., Langley v. Prudential Mortgage Capital Co., LLC*, 546 F.3d 365 (6th Cir. 2008) (remanding so that the trial court could consider transfer or dismissal, depending on which motion the defendant chose to file). Dismissal is the proper result in any event. Plaintiffs had notice of the Sale Approval Order, which clearly bars the claim and relief they seek but nevertheless sought to evade Bankruptcy Court jurisdiction. It should be Plaintiffs, not this Court, that make the decision to put this matter on the Bankruptcy Court's docket.

[6] The use of "and/or" pleading is not acceptable in any event. *See Gregory v. Dillard's Inc*., 565 F.3d 464, 473 n.9 (8th Cir. 2009) (the "'and/or' formulation, it does not connect any particular [party] to any particular allegation."); *Lacey v. Maricopa County, Nos. 09-15703, 09-15806*, ___ F.3d __, 2011 WL 2276198 at *13 (9th Cir., June 9, 2011) (dismissing claims because the use of the "and/or formulations" as "confusing and misleading" and Plaintiffs' use of the term "forced the district court and [the Ninth Circuit] to try to figure out who did what. . . . [S]uch bare assertions do not meet our minimal pleading standards." (emphasis added)).

Moreover, adding Ms. Jeffries and Ms. Cole to the case only highlights that the claims asserted are not cognizable under the relevant express warranties. The warranty coverage, if any, for repairs and replacement of spindle rods and tires would be under the 3 year/36,000 mile bumper-to-bumper warranty. Tires and spindles rods are not part of the "powertrain" coverage, which has a longer duration. But, both Ms. Cole and Ms. Jeffries allegedly presented their vehicles to New GM dealers for tire repairs ***after*** their "bumper-to-bumper" coverage ran. *See* Decl. Oakley, Ex. C. Thus, for either to recover, the Court would need to enlarge the scope of New GM's assumed warranty liabilities. *See Abraham v. Volkswagen of America, Inc.*, 795 F.2d 238, 250 (2d Cir.1986) ("an express warranty does not cover repairs made after the applicable time or mileage periods have elapsed").

Indeed, if there were any question about this point, Plaintiffs' request to represent a class of all purchasers (and not only vehicle owners which experienced a failure) resolves any doubt. *See* Amended Complaint, ¶22. A vehicle owner cannot state a claim under the Warranty where an alleged defect did not manifest itself during the Warranty period and the owner did not present the vehicle for repairs to New GM. *See* Section IV(B), *supra*. Certifying a class of "all purchasers" necessarily would mean including class members who never experienced the "tire wear" issue that Plaintiffs identifies or who never presented their vehicles *to New GM* for repairs during their Warranty period.[7]

Consequently, Plaintiffs' Amended Complaint amounts to a direct challenge to the Bankruptcy Court's Sale Approval Order and related opinions under § 363 of the Bankruptcy

[7] This case could never be certified as a class action for many other reasons under Rule 23 in any event.

Code. New GM is responsible only to continue providing warranty repairs on pre-transaction vehicles "subject to the terms and conditions" contained in the Warranty. *See* Sale Approval Order, ¶56. Holding New GM responsible for Old GM's "liabilities" as pled in the Amended Complaint is directly at odds with the Sale Approval Order, which provides that New GM acquired Old GM's assets "free and clear," (¶7), and that except for the limited Assumed Liabilities, New GM shall not have liabilities "for any claim that arose prior the Closing Date, relates to the production of vehicles prior to the Closing Date, or otherwise is assertable against [Old GM] . . . prior to the Closing Date." Sale Approval Order, ¶47, Ex. B.

This Court addressed a similar effort to expand New GM's warranty liabilities in the *OnStar* litigation. *See* OnStar Opinion, p. 3. There, plaintiffs sought leave to add New GM to the lawsuit under an express warranty theory. Plaintiffs asserted in their proposed amended complaint that New GM was liable to plaintiff *due to* Old GM's breaches of the warranties. *Id*., p. 3. The Court denied the Motion in part because the "express warranty claims that Plaintiffs seek to assert against New GM appear to be barred by the plain language of the Bankruptcy Court's Sale Approval Order," and expressly rejected plaintiffs' effort to hold New GM liable for Old GM's alleged breaches of the warranties. *Id*., at p. 6.

2. Dismissal of this case is appropriate given the Bankruptcy Court's exclusive jurisdiction to resolve any questions regarding the scope of New GM's assumed liabilities.

Just as it is obvious that a dispute exists concerning the scope of New GM's liabilities under the Sale Approval Order, it is equally clear that this Court may not resolve it. The Sale Approval Order explicitly states the Bankruptcy Court has "exclusive jurisdiction to enforce and implement the terms and provision of [the] Order" ***including to "protect [New GM] against any of the [liabilities that it did not expressly assume under the ARMSPA***]." *See* Sale Approval Order at ¶71. Only the Bankruptcy Court is empowered to consider Plaintiff's argument that

New GM assumed Old GM's warranty "liabilities." *Id*; *Travelers Indemnity Co. v. Bailey*, 129 S.Ct. 2195, 2205 (March 20, 2009) (A bankruptcy court retains continuing jurisdiction to interpret and enforce its own orders).

This Court need not, and in fact should not, resolve the merits of the parties' respective positions. When there is any question about whether a bankruptcy court has exclusive jurisdiction over a matter that concerns a bankruptcy order or the automatic stay, imposed by the Bankruptcy Code, courts hold that a motion should be made first in the bankruptcy court to resolve the jurisdictional issue. *Cf. In re Crysen/Montenay Energy Co.*, 902 F.2d 1098, 1104 (2d Cir. 1990) (even though creditor had a good faith belief that the stay did not apply, it still should have "sought the advice of the bankruptcy court as to the applicability of the automatic stay . . ."); *In re Nakash*, 190 B.R. 763, 769 (Bankr. S.D.N.Y. 1996) ("If the Receiver had doubts about the applicability of the stay he should have sought this court's opinion prior to taking unilateral action.") *In re Equivest St. Thomas, Inc.*, No. 07-30011 (JFK), 2008 WL 3108941 (D. V.I. August 4, 2008) ("Although not explicitly stated in any statute, the weight of authority suggests that motions for relief from an automatic stay should be filed in the bankruptcy court in the first instances."). The jurisdictional question here is analogous to seeking relief from the automatic stay, as the bankruptcy court arguably has the exclusive jurisdiction to grant relief from the automatic stay.[8]

[8] Having the Bankruptcy Court decide the jurisdictional issue in the first instance also promotes judicial economy because actions taken by courts without jurisdiction over the dispute will be invalid and void, and the Bankruptcy Court is required to protect its exclusive jurisdiction. *See In re McGhan*, 288 F.3d 1172 (9th Cir. 2002) ("A bankruptcy court may not decline to invoke this power in the face of a clearly invalid state court action infringing upon the bankruptcy court's exclusive jurisdiction. The bankruptcy court was required to reopen the proceeding to protect its exclusive jurisdiction over the enforcement of its own orders."); *see also In re Eidison*, 6 B.R. 613, 615 (Bankr. N.D. Ga. 1980) ("Since the property which was the subject matter of the garnishment action was in the exclusive jurisdiction of the Bankruptcy Court, the State Court judgment was void.").

The Court should dismiss the case without prejudice to Plaintiffs' right to re-file in the Bankruptcy Court. If they desire, they can then seek a ruling as to the scope of the Sale Approval Order. *See In Re: OnStar Contract Litig.*, Case No. 2:07-MDL-01867, p. 7, Ex. A ("the Bankruptcy Court has jurisdiction to resolve any disputes as to the liabilities that were assumed by New GM" and holding that "to the extent that Plaintiffs wish to pursue warranty claims against New GM, the forum in which to seek to do so is the bankruptcy court"). The Court's authority to dismiss this case is implicit given the Bankruptcy Court's exclusive jurisdiction, is consistent with the result in *In re Onstar Litigation*, and is supported by the rule that dismissal of a lawsuit is appropriate where a forum selection clause dictates that litigation shall proceed in a different federal court. *See Security Watch, Inc. v. Sentinel Systems, Inc*., 176 F.3d 369 (6th Cir. 1999). [9]

B. Additionally, Plaintiffs have failed to state a claim against New GM under the terms of the express written Warranty.

Because there were 2007 and 2008 Impalas with unexpired express Warranties as of July 10, 2009, it would be theoretically possible for individual claims to exist against New GM arising from those Warranties. But, even if the Court disregards Plaintiffs' allegations in violation of the Sale Approval Order, this case would still be subject to dismissal because the individual Plaintiffs have not alleged New GM breached its obligations under their Warranty and

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[9] In *Security Watch*, the Sixth Circuit affirmed the district court's decision to grant a motion to dismiss under Rule 12(b) due to a forum selection clause in the contract at issue in the case. *See also, Langley v. Prudential Mortgage Capital Co., LLC*, 546 F.3d 365, 369 (6th Cir. 2008) (citing *Security Watch* as support for proposition that a trial court may dismiss an action under Rule 12(b) due to a forum selection clause and remanding to the trial court to permit defendants to move to enforce a forum selection clause either through a motion to dismiss under Rule 12(b)(6) or a motion to transfer under 28 U.S.C. § 1404(a)). The Court should dismiss this case pursuant to Rule 12(b), leaving Plaintiffs to re-file in the appropriate forum if they so choose.

because they seek relief to which they never could recover. *See In Re: OnStar Contract Litigation*, Opinion & Order January 25, 2011, pp. 6-7 (holding that plaintiff may not assert express warranty claim against new GM premised on Old GM's alleged breach of the same warranty). In other words, even if the Court disregarded the issues implicating the Sale Approval Order and the Bankruptcy Court's exclusive jurisdiction, any remaining issues are subject to dismissal under Fed. R. Civ. P. 12(b)(6).

On this point, the Court's analysis should begin and end with (i) the allegations specific to New GM and (ii) the terms of the Warranty. It is settled law that a party's liability for breach of an express warranty derives from, and is measured by, the terms of the warranty itself. *See Abraham*, 795 F.2d at 250; *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 525-26 (1992); *Moeller v. Danek Medical, Inc.*, 1997 WL 1039333, *4 (W.D. Pa. 1997) ("An action based upon breach of an express warranty is premised 'solely upon the express affirmation of fact made by the manufacturer' to the intended recipient of the product."), *quoting Rosci v. Acromed, Inc.*, 447 Pa.Super. 403, 669 A.2d 959, 969 (1995); *see Woolums v. National RV*, 530 F. Supp. 2d 691, 698-99 (M.D. Pa. 2008) (plaintiff may maintain a breach of warranty claim only to the extent that the warranty imposed an obligation upon defendant). Obviously, given that New GM agreed only to continue providing warranty repairs on pre-transaction vehicles "subject to the terms and conditions" contained in the warranties issues by Old GM (Sale Approval Order, ¶56), this basic point of law is even more salient here.

The Warranty is a typical limited "repair and replacement" warranty. To establish a breach, Plaintiffs must at a minimum allege and prove that their vehicles exhibited a defect that was covered (*see* Warranty, p. 2, Ex. D), that they presented it to a New GM dealer for repairs (*id*, p. 4), that New GM did not repair the covered defect as required by the Warranty, and that

they seek relief permitted by the Warranty. *See id*, p. 9 (excluding claims for damages and confirming that "[p]erformance of repairs and needed adjustments is the exclusive remedy"); *see also, Bailey v. Monaco Coach Corp*., 350 F. Supp. 2d 1036, 1043 (N.D. Ga. 2004) (in an express warranty case, a plaintiff must prove that (a) a covered defect existed, (b) notice of the defect was given within a reasonable time after the defect was or should have been discovered; and (c) the warrantor was unable to repair the defect after a reasonable time or a reasonable number of attempts).

Plaintiffs do not allege all of these elements. ***First***, they do not allege the *facts* proving the existence of a covered "defect." The Warranty only covers defects in "materials and workmanship," (*see* Warranty, p. 4), whereas the theory of this case is that the vehicle contains a *design* flaw in the rear wheel spindles that can in turn lead to premature tire wear and tear. *Lombard Corp. v. Quality Aluminum Products Co.* 261 F.2d 336, 338 (6th Cir. 1958) (holding that a design defect was not covered under an express warranty for defects in materials and workmanship). Although Plaintiffs allege a defect in "materials and workmanship" in conclusory fashion (*see* Amended Complaint, ¶2), the reality is that the allegation is not supported by the facts plead. To the contrary, the thrust of the Amended Complaint is based on the premise that the spindles constitute a latent defect regardless of whether there has been a manifestation in the vehicle. Defects in design are not covered by the Warranty. And, even, where an actionable design defect is alleged, "[i]t is well established that purchasers of an allegedly defective product have no legally recognizable claim where the alleged defect has not manifested itself in the product they own." *O'Neil v. Simplicity, Inc.*, 574 F.3d 501, 503-04

(8th Cir. 2009), quoting *Briehl v. General Motors Corp.*, 172 F.3d 623, 628 (8th Cir. 1999). [10]

Second, even if the "defect" was covered, its mere existence is not a breach of the Warranty. *See Bailey v. Monaco Coach Corp.*, 350 F. Supp. 2d 1036, 1044 (N.D. Ga. 2004) ("a [w]arranty itself is not breached simply because a defect occurs"). Rather, Plaintiffs must allege that they gave notice and presented their vehicles to a New GM dealer for repairs within the warranty period. Warranty, 4, Ex. D; *see Woolums v. National RV*, 530 F. Supp. 2d 691, 700 (M.D. Pa. 2008) ("Because these repairs were either successful or never presented to National, they cannot provide grounds for a breach of warranty claim").

Each of their individual claims fails for this reason.

- ***Ms. Trusky***: She contends that (i) she bought her vehicle in February 2008 [obviously from Old GM], Amended Complaint, ¶34; (ii) "[w]ithin the first year," her tires were worn and she took the vehicle for service to her dealer [to an Old GM dealer], ¶¶34, 35; and (iii) on November 30, 2010, she "brought her car in for its annual inspection" and was informed that the tires were worn and so she paid $289.77 for a set of new tires. *Id.*, ¶36. But she never alleges that she brought her vehicle to a New GM dealer at any time, including for the November 2010 "inspection."

- ***Ms. Jeffries***: She bought a used vehicle in June 2009 and does not even allege that the vehicle was within the *3 year/36*,000 *mile bumper-to-bumper coverage* when she bought it, let alone on the date she took her vehicle in for new tires.

[10] *See also In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012, 1014-15, 1017 (7th Cir. 2002)("most states would not entertain the sort of theory that plaintiffs press"), *cert. den sub nom, Gustafson v. Bridgestone/Firestone, Inc.*, 537 U.S. 1105 (2003); *O'Neil v. Simplicity, Inc.*, 574 F.3d 501, 503-04 (8th Cir. 2009); *Carlson v. General Motors Corp.*, 883 F.2d 287, 297 (4th Cir. 1989)(no breach of warranty because "so far as these plaintiffs are concerned, GM's [allegedly defective vehicles] have served the traditionally recognized 'purpose' for which automobiles are used");(*Lee v. General Motors Corp.*, 950 F.Supp. 170, 175 (S.D. Miss., 1996)("The only person that would benefit by permitting cases such as this to forward would be the lawyers handling the case. . ."); *Feinstein v. Firestone Tire & Rubber Co.*, 535 F.Supp. 595 (S.D.N.Y. 1982); *American Suzuki Motors Corp. v. Superior Court*, 37 Cal. App. 4th 1291, 1298-99, 44 Cal. Rptr. 526, 531 (1995)(no claim because the "vast majority of the Saurais sold to the putative class 'did what they were supposed to do for as long as they were supposed to do it");*Tietsworth v. Harley Davidson, Inc.*, 270 Wis.2d 146, 160, 677 N.W.2d 233, 240 (Wis. 2004)("an allegation that a product is diminished in value because of an event or circumstance that might—or might no—occur is inherently conjectural"); *Ziegelmann v. DaimlerChrysler Corp.*, 649 N.W.2d 556, 565 (ND 2002)

Alleging that her vehicle was within "durational and mileage limitations" (*see* Amended Complaint, ¶39) is intentionally imprecise in that this statement might be true for the inapplicable "powertrain" coverage, but it is not true for the type of coverage that is relevant. In fact, the relevant warranty coverage on Ms. Jeffries' vehicle had expired prior to her purchase. *See* Decl. Oakley, Ex. C.

- ***Ms. Cole***: Her allegations suffer from the same flaw as Ms. Jeffries'. Ms. Cole bought a new vehicle in 2008 and does not (and cannot) allege that she presented her vehicle to a New GM dealer for repair within three years. Her imprecise allegations about warranty coverage likewise are an effort to obscure the fact that she too did not present her vehicle until after her bumper-to-bumper coverage ran out.

Finally, Plaintiffs seeks relief that they may not get under the Warranty. They request compensatory damages, attorneys' fees, exemplary damages, injunctive and declaratory relief. *See* Amended Complaint and prayer for relief on pages 24-25. None of this is recoverable by them, let alone by any putative class members. New GM only agreed to adhere to the terms of the Warranty, which expressly disclaims such relief:

> Performance of repairs and needed adjustments is the exclusive remedy under this written warranty or any implied warranty. GM shall not be liable for incidental or consequential damages, such as, but not limited to, lost wage or vehicle rental expenses, resulting from breach of this written warranty or any implied warranty.

See 2008 Chevrolet Limited Warranty, p. 9, Ex. D.[11] Plaintiffs cannot reconcile their prayer for relief with the actual terms of the Warranty that form the basis for the request in the first place.

In sum, even conducting a filtered analysis of the Amended Complaint reveals a complete disconnect between (i) Plaintiffs and what they want; and (ii) New GM and its responsibilities

[11] Plaintiffs could never obtain declaratory "relief" in the form of a court-ordered recall in any event. Their request that New GM replace the spindle rods on every 2007 and 2008 vehicle is pre-empted by the National Traffic and Motor Vehicle Safety Act ("Act"). The Act gives NHTSA exclusive jurisdiction to order safety notifications and recall campaigns. *See In re Bridgestone/Firestone, Inc. Tires Prods. Liab. Litig.*, 153 F.Supp.2d 935, 945 (S.D. Ind. 2001). Moreover, there is nothing in the Warranty that supports a claim for such relief.

assumed pursuant to the Sale Approval Order. The allegations in the Amended Complaint fail to state a plausible theory of relief and the Court should therefore dismiss the Amended Complaint on these grounds as well.

V. CONCLUSION

Like the version before it, Plaintiffs' Amended Complaint presents the Court with two options. The Court may either dismiss the Amended Complaint without prejudice on the grounds that Plaintiffs' liability theory implicates the scope of New GM's liabilities and the Bankruptcy Court has exclusive jurisdiction to resolve that issue, or the Court may evaluate only those allegations that relate to New GM and dismiss the case on the merits given Plaintiffs' obvious failure to state a claim.

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Dated: September 27, 2011

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2011, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to the attorneys of record in this matter.

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UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. TRUSKY, AHSA JEFFRIES, GAYNELL COLE on behalf of themselves and all others similarly situated,

Plaintiff,

vs.

GENERAL MOTORS COMPANY

Defendant.

Case No. 2:11-cv-12815-SFC-LJM

Honorable Sean F. Cox

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INDEX OF EXHIBITS TO DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT BASED ON LACK OF JURISDICTION AND FAILURE TO STATE A CLAIM

A. *In Re: OnStar Contract Litig.*, Case No. 2:07-MDL-01867, Opinion & Order Granting in Part and Denying In Part Plaintiffs' Motion For Leave To File A Third Amended Complaint.

B. New York Bankruptcy Court Sale Approval Order.

C. Declaration of Steven D. Oakley

D. 2008 Chevrolet Warranty.

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EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re: OnStar Contract Litigation

Case No. 2:07-MDL-01867

Honorable Sean F. Cox

_____/

OPINION & ORDER
GRANTING IN PART AND DENYING IN PART
PLAINTIFFS' MOTION FOR LEAVE TO FILE A THIRD AMENDED COMPLAINT

This matter is currently before the Court on Plaintiffs' Motion for Leave to File a Third Master Amended Complaint. Plaintiffs seek to file an amended complaint in order to: 1) add two additional plaintiffs as proposed class representatives; and 2) add NewGM as a Defendant and assert express warranty claims against NewGM, based on warranties that it allegedly assumed in bankruptcy proceedings. The parties have briefed the issues and the Court heard oral argument on January 6, 2011.

As explained below, the Court shall DENY THE MOTION IN PART AND GRANT THE MOTION IN PART. The Court shall DENY Plaintiffs' request for leave to assert warranty claims against NewGM. The Court shall GRANT the motion to the extent that the Court shall allow Plaintiffs to add two additional Plaintiffs as proposed class representatives.

BACKGROUND

Buyers and lessees of automobiles equipped with OnStar telematics equipment filed prospective class action complaints against four automobile manufacturers and OnStar Corporation ("OnStar"), asserting consumer protection act and warranty claims. Starting with a

Transfer Order issued on August 22, 2007, the Judicial Panel on Multidistrict Litigation consolidated the various actions before this Court for pretrial proceedings.

Plaintiffs filed their "Master Amended Class Action Complaint" ("MAC") on February 25, 2008, asserting claims against the following Defendants: 1) General Motors Corporation ("GM"); 2) Volkswagen of America ("VW"); 3) American Honda Motor Company ("Honda"); 4) Subaru of America ("Subaru"); and 5) OnStar.

In response to the MAC, Defendants filed motions to dismiss. On February 19, 2009, this Court issued an "Opinion & Order Granting In Part And Denying In Part Defendants' Motions To Dismiss." (D.E. No. 100). Following that Opinion & Order, Plaintiffs obtained leave to file a Second Master Amended Class Action Complaint ("SMAC"), which was filed on April 30, 2009.

After the SMAC was filed, OnStar filed a Motion to Compel Arbitration, asking the Court to compel Plaintiffs to arbitrate Counts I-A, VI and VII of the SMAC. Those counts involve "lost pre-paid minutes" purchased by Plaintiffs. OnStar asserted, and this Court agreed, that the OnStar T&C's arbitration provision requires arbitration of the pre-paid minutes claims. (*See* D.E. No. 156). Accordingly, the lost pre-paid minutes claims were dismissed.

On or about June 1, 2009, GM filed for bankruptcy. All claims against GM ("Old GM") in this action have been stayed since that time.

The bankruptcy proceedings have been taking place in the United States Bankruptcy Court for the Southern District of New York. In the bankruptcy proceedings, NewGM acquired substantially all of the assets of Old GM. The Bankruptcy Court approved the sale and defined the scope and limitations of New GM's responsibilities for Old GM's liabilities in an "Order (I)

Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (III) Granting Related Relief" ("the Sale Approval Order") which was entered in July 2009.

More than a year later, on August 2, 2010, Plaintiffs filed the instant motion seeking to file a Third Master Amended Complaint in order to add New GM as a Defendant and assert express warranty claims against it. Plaintiffs' proposed Third Master Amended Complaint alleges:

> 270. **GM breached its express warranties** to Plaintiff and all other Class members to repair and/or replace OnStar equipment so that it is in good operational condition and repair and suitable for its use in providing OnStar telematics services.
> 271. GM's breach of these express warranties proximately caused damages to Plaintiffs and members of the class.
> 272. **Pursuant to Section 10(b) of the Purchase Agreement and the Bankruptcy Court's Order, plaintiff's claims against GM are "Assumed Liabilities."**
> 273. By reason of the aforesaid, **NewGM is liable to plaintiffs and the Class for GM's breach of its express warranties** to Plaintiffs and the Class.

(Pls.' Proposed TMAC at ¶¶ 261-273) (emphasis added).

ANALYSIS

Plaintiffs filed their motion seeking leave to file a Third Master Amended Complaint ("TMAC") on August 2, 2010. Plaintiffs seek leave to file a TMAC in order to do two things: 1) include two additional proposed class representatives; and 2) assert claims against NewGM.

A. The Court Shall Grant Plaintiffs' Request To Include Two Additional Named Plaintiffs As Proposed Class Representatives.

Plaintiffs seek to file an amended complaint in order to include two additional proposed class representatives: 1) Jason Smith (a New York resident who purchased a Subaru with OnStar); and 2) Armand Pepper (a Florida resident who purchased a vehicle made by Honda with OnStar).

Smith was the sole named Plaintiff in the action transferred here from New York. Through oversight, Plaintiffs neglected to include him as a named plaintiff in the SMAC. Nevertheless, the parties understood him to be a plaintiff, and proposed class representative, and discovery was conducted as to Smith during the class certification discovery. Thus, adding Smith is essentially a "house-keeping matter." Subaru did not file a brief opposing Plaintiffs' motion. Plaintiffs state that Subaru does not oppose the TMAC. (*See* Pls.' Reply Br. at 3 n.3).

Although Honda does not believe that adding Pepper as a named Plaintiff warrants the filing of new complaint, Honda does not oppose adding him as a named Plaintiff, providing that it is able to take discovery from Pepper, which Plaintiffs agree it may do.

OnStar also does not oppose the addition of Pepper and Smith as named Plaintiffs, but asserts that could be done with a supplement that would simply add the allegations as to these two individuals to the SMAC. (*See* OnStar's Br. at 2 n.2).

The Court finds that Plaintiffs should be permitted to add Smith and Pepper as named Plaintiffs and proposed class representatives. Given that an automatic stay is currently in place as to one of the named Defendants in the SMAC, and the fact that Plaintiffs do not seek to add or materially change the allegations as to Defendants, the Court agrees that the filing of a Third Master Amended Complaint is not the best course of action. The Court directs the parties to meet and confer in order to submit to the Court a stipulated order to accomplish Plaintiffs' goal of adding Smith and Pepper as named Plaintiffs and proposed class representatives.

B. The Court Shall Deny Plaintiffs' Request To Assert Warranty Claims Against NewGM In This Action.

Plaintiffs also seek to assert class action claims against NewGM. Specifically, they seek to assert one claim against NewGM – a breach of express warranty claim. (*See* Count VIII of proposed TMAC) They state the following as to the proposed claim against NewGM: "The addition of a new Defendant – New GM – is proper because NewGM has assumed, through a purchase agreement and by order of a 2nd Circuit Bankruptcy Court, GM's express warranty obligations. Plaintiffs' allegations against GM for breach of express warranty are now properly attributable to NewGM." (Pls.' Br. at 2).

OnStar, Honda and VW oppose Plaintiffs' motion seeking to assert claims against NewGM at this late stage of the litigation.

OnStar notes that NewGM is an entirely new and distinct entity from GM and NewGM did not manufacture, market or sell any of the vehicles at issue in this litigation. Defendants assert that, in essence Plaintiffs are seeking "to assert successor liability against NewGM with respect to claims they purport to possess against Old GM, which remains in an ongoing Chapter

11 proceeding in the Bankruptcy Court in the South District of New York." (OnStar's Br. at 2). OnStar further states that "NewGM (which is separately represented with respect to the issues in this case), maintains that it did not assume and is not the successor to any asserted liabilities of Old GM, and has so informed Plaintiffs' counsel. To the extent Plaintiffs dispute New GM's position, that issue is within the exclusive jurisdiction of the Bankruptcy Court to interpret its Sale Approval Order." (*Id.*). OnStar and the other Defendants also oppose the motion because "the late addition of New GM and the ensuing litigation in the Bankruptcy Court would unjustifiably delay this case to the prejudice of all parties." (*Id.* at 2).

This Court shall deny Plaintiffs leave to file a TMAC to assert express warranty claims against NewGM for numerous reasons, which include: 1) the express warranty claims Plaintiffs seek to add against NewGM appear to be barred under the plain language of the Bankruptcy Court's Order; 2) the Bankruptcy Court has jurisdiction to resolve any disputes as to the liabilities that were assumed by NewGM; and 3) Plaintiffs' undue delay in attempting to assert such claims would prejudice Defendants.

First, the express warranty claims that Plaintiffs seek to assert against NewGM appear to be barred by the plain language of the Bankruptcy Court's Sale Approval Order. Notably, Plaintiffs's proposed TMAC seeks to hold NewGM liable for Old GM's alleged breaches of its express warranties:

> 273. By reason of the aforesaid, **NewGM is liable to plaintiffs and the Class for GM's breach of its express warranties** to Plaintiffs and the Class.

(Pls.' Proposed TMAC at ¶¶ 261-273). Paragraph 7 of the Sale Approval Order, however, provides that the assets acquired by NewGm were transferred "free and clear of all liens, claims,

encumbrances, and other interests of any kind or nature whatsoever . . . including rights or claims based on any successor or transferee liability, and all such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability" (Docket Entry No. 255-2 at ¶ 7). Moreover, the Sale Approval Order also provides:

> Except for the Assumed Liabilities expressly set forth in the MPA, **none** of the Purchaser, its present or contemplated members or shareholders, it successors or assigns . . . **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.**

(Sale Approval Order at ¶ 46) (emphasis added).

Second, any dispute over whether the express warranty claims Plaintiffs seek to assert against NewGM are "assumed liabilities" under the Bankruptcy Court's Orders is a dispute that should be resolved in the Bankruptcy Court. The Sale Approval Order expressly provides that the Bankruptcy Court has "exclusive jurisdiction" to enforce and implement there terms and provisions of the Sale Approval Order and the Master Purchase Agreement. That jurisdiction includes resolving any disputes arising under or related to the Master Purchase Agreement and interpreting and enforcing the provisions of the Sale Approval Order. Thus, to the extent that Plaintiffs wish to pursue warranty claims against NewGM, the forum in which to seek to do so is the bankruptcy court.

Third, Plaintiffs waited more than a year after the Sale Approval Order was entered before they sought leave to assert claims against NewGM in this action. During that year, Plaintiffs could have sought authorization from the Bankruptcy Court to pursue the claims at issue, or pursued the claims in bankruptcy court, but chose not to do so. In addition, during that

year significant class certification discovery and motion practice was conducted in this case. If the Court were to allow Plaintiffs to bring in a new Defendant at this late date, the Court would need to reopen class certification discovery, delay rulings on class certification, allow the new Defendant the opportunity to file its own motion to dismiss, and make a conflicts of law determination as to the new defendant. All of those actions would considerably delay this case – which has already been pending more than 3 years. The other Defendants would also be prejudiced as they would incur attorney fees and costs associated with the above actions.

CONCLUSION & ORDER

For the reasons above, IT IS ORDERED that Plaintiffs' Motion for Leave to File a Third Master Amended Complaint is GRANTED IN PART AND DENIED IN PART.

The motion is GRANTED to the extent that Plaintiffs shall be permitted to add Smith and Pepper as named Plaintiffs and proposed class representatives. As stated in this Opinion & Order, the Court directs the parties to meet and confer in order to submit to the Court a stipulated order to accomplish Plaintiffs' goal of adding Smith and Pepper as named Plaintiffs and proposed class representatives.

The motion is DENIED to the extent that the Court DENIES Plaintiffs' request for leave to assert claims against NewGM.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: January 25, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on January 25, 2011, by electronic and/or ordinary mail.

S/Jennifer Hernandez
Case Manager

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11 Case No.
GENERAL MOTORS CORP., *et al.*,	:	09-50026 (REG)
Debtors.	:	(Jointly Administered)

ORDER (I) AUTHORIZING SALE OF ASSETS PURSUANT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT WITH NGMCO, INC., A U.S. TREASURY-SPONSORED PURCHASER; (II) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE; AND (III) GRANTING RELATED RELIEF

Upon the motion, dated June 1, 2009 (the "**Motion**"), of General Motors Corporation ("**GM**") and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**"), pursuant to sections 105, 363, and 365 of title 11, United States Code (the "**Bankruptcy Code**") and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") for, among other things, entry of an order authorizing and approving (A) that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009, by and among GM and its Debtor subsidiaries (collectively, the "**Sellers**") and NGMCO, Inc., as successor in interest to Vehicle Acquisition Holdings LLC (the "**Purchaser**"), a purchaser sponsored by the United States Department of the Treasury (the "**U.S. Treasury**"), together with all related documents and agreements as well as all exhibits, schedules, and addenda thereto (as amended, the "**MPA**"), a copy of which is annexed hereto as Exhibit "A" (excluding the exhibits and schedules thereto); (B) the sale of the Purchased Assets[1] to the

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

Purchaser free and clear of liens, claims, encumbrances, and interests (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability; (C) the assumption and assignment of the Assumable Executory Contracts; (D) the establishment of certain Cure Amounts; and (E) the UAW Retiree Settlement Agreement (as defined below); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York of Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with this Court's Order, dated June 2, 2009 (the "**Sale Procedures Order**"), and it appearing that no other or further notice need be provided; and a hearing having been held on June 30 through July 2, 2009, to consider the relief requested in the Motion (the "**Sale Hearing**"); and upon the record of the Sale Hearing, including all affidavits and declarations submitted in connection therewith, and all of the proceedings had before the Court; and the Court having reviewed the Motion and all objections thereto (the "**Objections**") and found and determined that the relief sought in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003 and is in the best interests of the Debtors, their estates and creditors, and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein and in the Court's Decision dated July 5, 2009 (the "Decision") constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014.

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B. To the extent any of the following findings of fact or Findings of Fact in the Decision constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law or Conclusions of Law in the Decision constitute findings of fact, they are adopted as such.

C. This Court has jurisdiction over the Motion, the MPA, and the 363 Transaction pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief sought in the Motion are sections 105(a), 363, and 365 of the Bankruptcy Code as supplemented by Bankruptcy Rules 2002, 6004, and 6006.

E. As evidenced by the affidavits and certificates of service and Publication Notice previously filed with the Court, in light of the exigent circumstances of these chapter 11 cases and the wasting nature of the Purchased Assets and based on the representations of counsel at the Sale Procedures Hearing and the Sale Hearing, (i) proper, timely, adequate, and sufficient notice of the Motion, the Sale Procedures, the 363 Transaction, the procedures for assuming and assigning the Assumable Executory Contracts as described in the Sale Procedures Order and as modified herein (the "**Modified Assumption and Assignment Procedures**"), the UAW Retiree

Settlement Agreement, and the Sale Hearing have been provided in accordance with Bankruptcy Rules 2002(a), 6004(a), and 6006(c) and in compliance with the Sale Procedures Order; (ii) such notice was good and sufficient, reasonable, and appropriate under the particular circumstances of these chapter 11 cases, and reasonably calculated to reach and apprise all holders of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, about the Sale Procedures, the sale of the Purchased Assets, the 363 Transaction, and the assumption and assignment of the Assumable Executory Contracts, and to reach all UAW-Represented Retirees about the UAW Retiree Settlement Agreement and the terms of that certain Letter Agreement, dated May 29, 2009, between GM, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"), and Stember, Feinstein, Doyle & Payne, LLC (the "**UAW Claims Agreement**") relating thereto; and (iii) no other or further notice of the Motion, the 363 Transaction, the Sale Procedures, the Modified Assumption and Assignment Procedures, the UAW Retiree Settlement Agreement, the UAW Claims Agreement, and the Sale Hearing or any matters in connection therewith is or shall be required. With respect to parties who may have claims against the Debtors, but whose identities are not reasonably ascertainable by the Debtors (including, but not limited to, potential contingent warranty claims against the Debtors), the Publication Notice was sufficient and reasonably calculated under the circumstances to reach such parties.

F. On June 1, 2009, this Court entered the Sale Procedures Order approving the Sale Procedures for the Purchased Assets. The Sale Procedures provided a full, fair, and reasonable opportunity for any entity to make an offer to purchase the Purchased Assets. The Debtors received no bids under the Sale Procedures for the Purchased Assets. Therefore, the Purchaser's bid was designated as the Successful Bid pursuant to the Sale Procedures Order.

G. As demonstrated by (i) the Motion, (ii) the testimony and other evidence proffered or adduced at the Sale Hearing, and (iii) the representations of counsel made on the record at the Sale Hearing, in light of the exigent circumstances presented, (a) the Debtors have adequately marketed the Purchased Assets and conducted the sale process in compliance with the Sale Procedures Order; (b) a reasonable opportunity has been given to any interested party to make a higher or better offer for the Purchased Assets; (c) the consideration provided for in the MPA constitutes the highest or otherwise best offer for the Purchased Assets and provides fair and reasonable consideration for the Purchased Assets; (d) the 363 Transaction is a sale of deteriorating assets and the only alternative to liquidation available for the Debtors; (e) if the 363 Transaction is not approved, the Debtors will be forced to cease operations altogether; (f) the failure to approve the 363 Transaction promptly will lead to systemic failure and dire consequences, including the loss of hundreds of thousands of auto-related jobs; (g) prompt approval of the 363 Transaction is the only means to preserve and maximize the value of the Debtors' assets; (h) the 363 Transaction maximizes fair value for the Debtors' parties in interest; (i) the Debtors are receiving fair value for the assets being sold; (j) the 363 Transaction will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, including liquidation under chapters 7 or 11 of the Bankruptcy Code; (k) no other entity has offered to purchase the Purchased Assets for greater economic value to the Debtors or their estates; (l) the consideration to be paid by the Purchaser under the MPA exceeds the liquidation value of the Purchased Assets; and (m) the Debtors' determination that the MPA constitutes the highest or best offer for the Purchased Assets and that the 363 Transaction represents a better alternative for the Debtors' parties in interest than an immediate liquidation constitute valid and sound exercises of the Debtors' business judgment.

H. The actions represented to be taken by the Sellers and the Purchaser are appropriate under the circumstances of these chapter 11 cases and are in the best interests of the Debtors, their estates and creditors, and other parties in interest.

I. Approval of the MPA and consummation of the 363 Transaction at this time is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest.

J. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the sale of the Purchased Assets pursuant to the 363 Transaction prior to, and outside of, a plan of reorganization and for the immediate approval of the MPA and the 363 Transaction because, among other things, the Debtors' estates will suffer immediate and irreparable harm if the relief requested in the Motion is not granted on an expedited basis. In light of the exigent circumstances of these chapter 11 cases and the risk of deterioration in the going concern value of the Purchased Assets pending the 363 Transaction, time is of the essence in (i) consummating the 363 Transaction, (ii) preserving the viability of the Debtors' businesses as going concerns, and (iii) minimizing the widespread and adverse economic consequences for the Debtors, their estates, their creditors, employees, the automotive industry, and the national economy that would be threatened by protracted proceedings in these chapter 11 cases.

K. The consideration provided by the Purchaser pursuant to the MPA (i) is fair and reasonable, (ii) is the highest and best offer for the Purchased Assets, (iii) will provide a greater recovery to the Debtors' estates than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

L. The 363 Transaction must be approved and consummated as promptly as practicable in order to preserve the viability of the business to which the Purchased Assets relate as a going concern.

M. The MPA was not entered into and none of the Debtors, the Purchaser, or the Purchasers' present or contemplated owners have entered into the MPA or propose to consummate the 363 Transaction for the purpose of hindering, delaying, or defrauding the Debtors' present or future creditors. None of the Debtors, the Purchaser, nor the Purchaser's present or contemplated owners is entering into the MPA or proposing to consummate the 363 Transaction fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, or any other applicable jurisdiction with laws substantially similar to any of the foregoing.

N. In light of the extensive prepetition negotiations culminating in the MPA, the Purchaser's commitment to consummate the 363 Transaction is clear without the need to provide a good faith deposit.

O. Each Debtor (i) has full corporate power and authority to execute the MPA and all other documents contemplated thereby, and the sale of the Purchased Assets has been duly and validly authorized by all necessary corporate action of each of the Debtors, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the MPA, (iii) has taken all corporate action necessary to authorize and approve the MPA and the consummation by the Debtors of the transactions contemplated thereby, and (iv) subject to entry of this Order, needs no consents or approvals, other than those expressly provided for in the MPA which may be waived by the Purchaser, to consummate such transactions.

P. The consummation of the 363 Transaction outside of a plan of reorganization pursuant to the MPA neither impermissibly restructures the rights of the Debtors' creditors, allocates or distributes any of the sale proceeds, nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The 363 Transaction does not constitute a *sub rosa* plan of reorganization. The 363 Transaction in no way dictates distribution of the Debtors' property to creditors and does not impinge upon any chapter 11 plan that may be confirmed.

Q. The MPA and the 363 Transaction were negotiated, proposed, and entered into by the Sellers and the Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Sellers, the Purchaser, the U.S. Treasury, nor their respective agents, officials, personnel, representatives, and advisors, has engaged in any conduct that would cause or permit the MPA to be avoided under 11 U.S.C. § 363(n).

R. The Purchaser is a newly-formed Delaware corporation that, as of the date of the Sale Hearing, is wholly-owned by the U.S. Treasury. The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby.

S. Neither the Purchaser, the U.S. Treasury, nor their respective agents, officials, personnel, representatives, or advisors is an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

T. Upon the Closing of the 363 Transaction, the Debtors will transfer to the Purchaser substantially all of its assets. In exchange, the Purchaser will provide the Debtors with (i) cancellation of billions of dollars in secured debt; (ii) assumption by the Purchaser of a portion of the Debtors' business obligations and liabilities that the Purchaser will satisfy; and (iii) no less than 10% of the Common Stock of the Purchaser as of the Closing (100% of which the

Debtors' retained financial advisor values at between $38 billion and $48 billion) and warrants to purchase an additional 15% of the Common Stock of the Purchaser as of the Closing, the combination of which the Debtors' retained financial advisor values at between $7.4 billion and $9.8 billion (which amount, for the avoidance of doubt, does not include any amount for the Adjustment Shares).

U. The Purchaser, not the Debtors, has determined its ownership composition and capital structure. The Purchaser will assign ownership interests to certain parties based on the Purchaser's belief that the transfer is necessary to conduct its business going forward, that the transfer is to attain goodwill and consumer confidence for the Purchaser and to increase the Purchaser's sales after completion of the 363 Transaction. The assignment by the Purchaser of ownership interests is neither a distribution of estate assets, discrimination by the Debtors on account of prepetition claims, nor the assignment of proceeds from the sale of the Debtors' assets. The assignment of equity to the New VEBA (as defined in the UAW Retiree Settlement Agreement) and 7176384 Canada Inc. is the product of separately negotiated arm's-length agreements between the Purchaser and its equity holders and their respective representatives and advisors. Likewise, the value that the Debtors will receive on consummation of the 363 Transaction is the product of arm's-length negotiations between the Debtors, the Purchaser, the U.S. Treasury, and their respective representatives and advisors.

V. The U.S. Treasury and Export Development Canada ("EDC"), on behalf of the Governments of Canada and Ontario, have extended credit to, and acquired a security interest in, the assets of the Debtors as set forth in the DIP Facility and as authorized by the interim and final orders approving the DIP Facility (Docket Nos. 292 and 2529, respectively). Before entering into the DIP Facility and the Loan and Security Agreement, dated as of December 31, 2008 (the "**Existing UST Loan Agreement**"), the Secretary of the Treasury, in

consultation with the Chairman of the Board of Governors of the Federal Reserve System and as communicated to the appropriate committees of Congress, found that the extension of credit to the Debtors is "necessary to promote financial market stability," and is a valid use of funds pursuant to the statutory authority granted to the Secretary of the Treasury under the Emergency Economic Stabilization Act of 2008, 12 U.S.C. §§ 5201 et seq. ("EESA"). The U.S. Treasury's extension of credit to, and resulting security interest in, the Debtors, as set forth in the DIP Facility and the Existing UST Loan Agreement and as authorized in the interim and final orders approving the DIP Facility, is a valid use of funds pursuant to EESA.

W. The DIP Facility and the Existing UST Loan Agreement are loans and shall not be recharacterized. The Court has already approved the DIP Facility. The Existing UST Loan Agreement bears the undisputed hallmarks of a loan, not an equity investment. Among other things:

(i) The U.S. Treasury structured its prepetition transactions with GM as (a) a loan, made pursuant to and governed by the Existing UST Loan Agreement, in addition to (b) a separate, and separately documented, equity component in the form of warrants;

(ii) The Existing UST Loan Agreement has customary terms and covenants of a loan rather than an equity investment. For example, the Existing UST Loan Agreement contains provisions for repayment and pre-payment, and provides for remedies in the event of a default;

(iii) The Existing UST Loan Agreement is secured by first liens (subject to certain permitted encumbrances) on GM's and the guarantors' equity interests in most of their domestic subsidiaries and certain of their foreign subsidiaries (limited in most cases to 65% of the equity interests of the pledged foreign subsidiaries), intellectual property, domestic real estate (other than manufacturing plants or facilities) inventory that was not pledged to other lenders, and cash and cash equivalents in the United States;

(iv) The U.S. Treasury also received junior liens on certain additional collateral, and thus, its claim for recovery on such collateral under the Existing UST Loan Agreement is, in part, junior to the claims of other creditors;

(v) the Existing UST Loan Agreement requires the grant of security by its terms, as well as by separate collateral documents, including: (a) a guaranty and

security agreement, (b) an equity pledge agreement, (c) mortgages and deeds of trust, and (d) an intellectual property pledge agreement;

(vi) Loans under the Existing UST Loan Agreement are interest-bearing with a rate of 3.00% over the 3-month LIBOR with a LIBOR floor of 2.00%. The Default Rate on this loan is 5.00% above the non-default rate.

(vii) The U.S. Treasury always treated the loans under the Existing UST Loan Agreement as debt, and advances to GM under the Existing Loan Agreement were conditioned upon GM's demonstration to the United States Government of a viable plan to regain competitiveness and repay the loans.

(viii) The U.S. Treasury has acted as a prudent lender seeking to protect its investment and thus expressly conditioned its financial commitment upon GM's meaningful progress toward long-term viability.

Other secured creditors of the Debtors also clearly recognized the loans under the Existing UST Loan Agreement as debt by entering into intercreditor agreements with the U.S. Treasury in order to set forth the secured lenders' respective prepetition priority.

X. This Court has previously authorized the Purchaser to credit bid the amounts owed under both the DIP Facility and the Existing UST Loan Agreement and held the Purchaser's credit bid to be, for all purposes, a "Qualified Bid" under the Sale Procedures Order.

Y. The Debtors, the Purchaser, and the UAW, as the exclusive collective bargaining representative of the Debtors' UAW-represented employees and the authorized representative of the persons in the Class and the Covered Group (as described in the UAW Retiree Settlement Agreement) (the "**UAW-Represented Retirees**") under section 1114(c) of the Bankruptcy Code, engaged in good faith negotiations in conjunction with the 363 Transaction regarding the funding of "retiree benefits" within the meaning of section 1114(a) of the Bankruptcy Code and related matters. Conditioned upon the consummation of the 363 Transaction and the approval of the Bankruptcy Court granted in this Order, the Purchaser and the UAW will enter into that certain Retiree Settlement Agreement, dated as of the Closing Date (the "**UAW Retiree Settlement Agreement**"), which is Exhibit D to the MPA, which resolves

issues with respect to the provision of certain retiree benefits to UAW-Represented Retirees as described in the UAW Retiree Settlement Agreement. As set forth in the UAW Retiree Settlement Agreement, the Purchaser has agreed to make contributions of cash, stock, and warrants of the Purchaser to the New VEBA (as defined in the UAW Retiree Settlement Agreement), which will have the obligation to fund certain health and welfare benefits for the UAW-Represented Retirees. The New VEBA will also be funded by the transfer of assets from the Existing External VEBA and the assets in the UAW Related Account of the Existing Internal VEBA (each as defined in the UAW Retiree Settlement Agreement). GM and the UAW, as the authorized representative of the UAW-Represented Retirees, as well as the representatives for the class of plaintiffs in a certain class action against GM (the "**Class Representatives**"), through class counsel, Stemper, Feinstein, Doyle and Payne LLC ("**Class Counsel**"), negotiated in good faith the UAW Claims Agreement, which requires the UAW and the Class Representatives to take actions to effectuate the withdrawal of certain claims against the Debtors, among others, relating to retiree benefits in the event the 363 Transaction is consummated and the Bankruptcy Court approves, and the Purchaser becomes fully bound by, the UAW Retiree Settlement Agreement, subject to reinstatement of such claims to the extent of any adverse impact to the rights or benefits of UAW-Represented Retirees under the UAW Retiree Settlement Agreement resulting from any reversal or modification of the 363 Transaction, the UAW Retiree Settlement Agreement, or the approval of the Bankruptcy Court thereof, the foregoing as subject to the terms of, and as set forth in, the UAW Claims Agreement.

Z. Effective as of the Closing of the 363 Transaction, the Debtors will assume and assign to the Purchaser the UAW Collective Bargaining Agreement and all liabilities thereunder. The Debtors, the Purchaser, the UAW and Class Representatives intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings

incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2).

AA. The transfer of the Purchased Assets to the Purchaser will be a legal, valid, and effective transfer of the Purchased Assets and, except for the Assumed Liabilities, will vest the Purchaser with all right, title, and interest of the Sellers to the Purchased Assets free and clear of liens, claims, encumbrances, and other interests (other than Permitted Encumbrances), including rights or claims (for purposes of this Order, the term "claim" shall have the meaning ascribed to such term in section 101(5) of the Bankruptcy Code) based on any successor or transferee liability, including, but not limited to (i) those that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Sellers' or the Purchaser's interest in the Purchased Assets, or any similar rights and (ii) (a) those arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income, or other exercise of any attributes of ownership and (b) all claims arising in any way in connection with any agreements, acts, or failures to act, of any of the Sellers or any of the Sellers' predecessors or affiliates, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including, but not limited to, claims otherwise arising under doctrines of successor or transferee liability.

BB. The Sellers may sell the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the

Bankruptcy Code has been satisfied. Those (i) holders of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, and (ii) non-Debtor parties to the Assumable Executory Contracts who did not object, or who withdrew their Objections, to the 363 Transaction or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those (i) holders of liens, claims, and encumbrances, and (ii) non-Debtor parties to the Assumable Executory Contracts who did object, fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and, to the extent they have valid and enforceable liens or encumbrances, are adequately protected by having such liens or encumbrances, if any, attach to the proceeds of the 363 Transaction ultimately attributable to the property against or in which they assert a lien or encumbrance. To the extent liens or encumbrances secure liabilities that are Assumed Liabilities under this Order and the MPA, no such liens or encumbrances shall attach to the proceeds of the 363 Transaction.

CC. Under the MPA, GM is transferring all of its right, title, and interest in the Memphis, TN SPO Warehouse and the White Marsh, MD Allison Transmission Plant (the "**TPC Property**") to the Purchaser pursuant to section 363(f) of the Bankruptcy Code free and clear of all liens (including, without limitation, the TPC Liens (as hereinafter defined)), claims, interests, and encumbrances (other than Permitted Encumbrances). For purposes of this Order, "**TPC Liens**" shall mean and refer to any liens on the TPC Property granted or extended pursuant to the TPC Participation Agreement and any claims relating to that certain Second Amended and Restated Participation Agreement and Amendment of Other Operative Documents (the "**TPC Participation Agreement**"), dated as of June 30, 2004, among GM, as Lessee, Wilmington Trust Company, a Delaware corporation, not in its individual capacity except as expressly stated herein but solely as Owner Trustee (the "**TPC Trustee**") under GM Facilities Trust No. 1999-1 (the "**TPC Trust**"), as Lessor, GM, as Certificate Holder, Hannover Funding Company LLC, as

CP Lender, Wells Fargo Bank Northwest, N.A., as Agent, Norddeutsche Landesbank Girozentrale (New York Branch), as Administrator, and Deutsche Bank, AG, New York Branch, HSBC Bank USA, ABN AMRO Bank N.V., Royal Bank of Canada, Bank of America, N.A., Citicorp USA, Inc., Merrill Lynch Bank USA, Morgan Stanley Bank, collectively, as Purchasers (collectively, with CP Lender, Agent and Administrator, the "**TPC Lenders**"), together with the Operative Documents (as defined in the TPC Participation Agreements (the "**TPC Operative Documents**").

DD. The Purchaser would not have entered into the MPA and would not consummate the 363 Transaction (i) if the sale of the Purchased Assets was not free and clear of all liens, claims, encumbrances, and other interests (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability or (ii) if the Purchaser would, or in the future could, be liable for any such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability (collectively, the "**Retained Liabilities**"), other than, in each case, the Assumed Liabilities. The Purchaser will not consummate the 363 Transaction unless this Court expressly orders that none of the Purchaser, its affiliates, their present or contemplated members or shareholders (other than the Debtors as the holder of equity in the Purchaser), or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability or Retained Liabilities, other than as expressly provided herein or in agreements made by the Debtors and/or the Purchaser on the record at the Sale Hearing or in the MPA.

EE. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Purchased Contracts to the Purchaser in connection

with the consummation of the 363 Transaction, and the assumption and assignment of the Purchased Contracts is in the best interests of the Debtors, their estates and creditors, and other parties in interest. The Purchased Contracts being assigned to, and the liabilities being assumed by, the Purchaser are an integral part of the Purchased Assets being purchased by the Purchaser, and, accordingly, such assumption and assignment of the Purchased Contracts and liabilities are reasonable, enhance the value of the Debtors' estates, and do not constitute unfair discrimination.

FF. For the avoidance of doubt, and notwithstanding anything else in this Order to the contrary:

- The Debtors are neither assuming nor assigning to the Purchaser the agreement to provide certain retiree medical benefits specified in (i) the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between the Company and the UAW, and (ii) the Settlement Agreement, dated February 21, 2008, between the Company and the UAW (together, the "**VEBA Settlement Agreement**");

- at the Closing, and in accordance with the MPA, the UAW Collective Bargaining Agreement, and all liabilities thereunder, shall be assumed by the Debtors and assigned to the Purchaser pursuant to section 365 of the Bankruptcy Code. Assumption and assignment of the UAW Collective Bargaining Agreement is integral to the 363 Transaction and the MPA, are in the best interests of the Debtors and their estates, creditors, employees, and retirees, and represent the exercise of the Debtors' sound business judgment, enhances the value of the Debtors' estates, and does not constitute unfair discrimination;

- the UAW, as the exclusive collective bargaining representative of employees of the Purchaser and the "authorized representative" of the UAW-Represented Retirees under section 1114(c) of the Bankruptcy Code, GM, and the Purchaser engaged in good faith negotiations in conjunction with the 363 Transaction regarding the funding of retiree health benefits within the meaning of section 1114(a) of the Bankruptcy Code. Conditioned upon the consummation of the 363 Transaction, the UAW and the Purchaser have entered into the UAW Retiree Settlement Agreement, which, among other things, provides for the financing by the Purchaser of modified retiree health care obligations for the Class and Covered Group (as defined in the UAW Retiree Settlement Agreement) through contributions by the Purchaser (as referenced in paragraph Y herein). The New VEBA will also be funded by the transfer of the UAW Related Account from the Existing Internal VEBA and the assets of the Existing External VEBA to the New VEBA (each as defined in the UAW Retiree Settlement Agreement). The Debtors, the

Purchaser, and the UAW specifically intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2);

- the Debtors' sponsorship of the Existing Internal VEBA (as defined in the UAW Retiree Settlement Agreement) shall be transferred to the Purchaser under the MPA.

GG. The Debtors have (i) cured and/or provided adequate assurance of cure (through the Purchaser) of any default existing prior to the date hereof under any of the Purchased Contracts that have been designated by the Purchaser for assumption and assignment under the MPA, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided compensation or adequate assurance of compensation through the Purchaser to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Purchased Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and the Purchaser has provided adequate assurance of future performance under the Purchased Contracts, within the meaning of section 365(b)(1)(C) of the Bankruptcy Code. The Modified Assumption and Assignment Procedures are fair, appropriate, and effective and, upon the payment by the Purchaser of all Cure Amounts (as hereinafter defined) and approval of the assumption and assignment for a particular Purchased Contract thereunder, the Debtors shall be forever released from any and all liability under the Purchased Contracts.

HH. The Debtors are the sole and lawful owners of the Purchased Assets, and no other person has any ownership right, title, or interest therein. The Debtors' non-Debtor Affiliates have acknowledged and agreed to the 363 Transaction and, as required by, and in accordance with, the MPA and the Transition Services Agreement, transferred any legal, equitable, or beneficial right, title, or interest they may have in or to the Purchased Assets to the Purchaser.

II. The Debtors currently maintain certain privacy policies that govern the use of "personally identifiable information" (as defined in section 101(41A) of the Bankruptcy Code) in conducting their business operations. The 363 Transaction may contemplate the transfer of certain personally identifiable information to the Purchaser in a manner that may not be consistent with certain aspects of their existing privacy policies. Accordingly, on June 2, 2009, the Court directed the U.S. Trustee to promptly appoint a consumer privacy ombudsman in accordance with section 332 of the Bankruptcy Code, and such ombudsman was appointed on June 10, 2009. The Privacy Ombudsman is a disinterested person as required by section 332(a) of the Bankruptcy Code. The Privacy Ombudsman filed his report with the Court on July 1, 2009 (Docket No. 2873) (the "**Ombudsman Report**") and presented his report at the Sale Hearing, and the Ombudsman Report has been reviewed and considered by the Court. The Court has given due consideration to the facts, including the exigent circumstances surrounding the conditions of the sale of personally identifiable information in connection with the 363 Transaction. No showing has been made that the sale of personally identifiable information in connection with the 363 Transaction in accordance with the provisions of this Order violates applicable nonbankruptcy law, and the Court concludes that such sale is appropriate in conjunction with the 363 Transaction.

JJ. Pursuant to Section 6.7(a) of the MPA, GM offered Wind-Down Agreements and Deferred Termination Agreements (collectively, the "**Deferred Termination Agreements**") in forms prescribed by the MPA to franchised motor vehicle dealers, including dealers authorized to sell and service vehicles marketed under the Pontiac brand (which is being discontinued), dealers authorized to sell and service vehicles marketed under the Hummer, Saturn and Saab brands (which may or may not be discontinued depending on whether the brands are sold to third parties) and dealers authorized to sell and service vehicles marketed

under brands which will be continued by the Purchaser. The Deferred Termination Agreements were offered as an alternative to rejection of the existing Dealer Sales and Service Agreements of these dealers pursuant to section 365 of the Bankruptcy Code and provide substantial additional benefits to dealers which enter into such agreements. Approximately 99% of the dealers offered Deferred Termination Agreements accepted and executed those agreements and did so for good and sufficient consideration.

KK. Pursuant to Section 6.7(b) of the MPA, GM offered Participation Agreements in the form prescribed by the MPA to dealers identified as candidates for a long term relationship with the Purchaser. The Participation Agreements provide substantial benefits to accepting dealers, as they grant the opportunity for such dealers to enter into a potentially valuable relationship with the Purchaser as a component of a reduced and more efficient dealer network. Approximately 99% of the dealers offered Participation Agreements accepted and executed those agreements.

LL. This Order constitutes approval of the UAW Retiree Settlement Agreement and the compromise and settlement embodied therein.

MM. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Consistent with Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Order to the full extent to which those rules provide, but that its Order should not become effective instantaneously. Thus the Court will shorten, but not wholly eliminate, the periods set forth in Fed.R.Bankr.P. 6004(h) and 6006, and expressly directs entry of judgment as set forth in accordance with the provisions of Paragraph 70 below.

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NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

General Provisions

1. The Motion is granted as provided herein, and entry into and performance under, and in respect of, the MPA and the 363 Transaction is approved.

2. All Objections to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or resolved, and all reservation of rights included in such Objections, are overruled on the merits other than a continuing Objection (each a "**Limited Contract Objection**") that does not contest or challenge the merits of the 363 Transaction and that is limited to (a) contesting a particular Cure Amount(s) (a "**Cure Objection**"), (b) determining whether a particular Assumable Executory Contract is an executory contract that may be assumed and/or assigned under section 365 of the Bankruptcy Code, and/or (c) challenging, as to a particular Assumable Executory Contract, whether the Debtors have assumed, or are attempting to assume, such contract in its entirety or whether the Debtors are seeking to assume only part of such contract. A Limited Contract Objection shall include, until resolved, a dispute regarding any Cure Amount that is subject to resolution by the Bankruptcy Court , or pursuant to the dispute resolution procedures established by the Sale Procedures Order or pursuant to agreement of the parties, including agreements under which an objection to the Cure Amount was withdrawn in connection with a reservation of rights under such dispute resolution procedures. Limited Contract Objections shall not constitute objections to the 363 Transaction, and to the extent such Limited Contract Objections remain continuing objections to be resolved before the Court, the hearing to consider each such Limited Contract Objection shall be adjourned to August 3, 2009 at 9:00 a.m. (the "**Limited Contract Objection Hearing**"). Within two (2) business days of the entry of this Order, the Debtors shall serve upon each of the counterparties to the remaining Limited Contract Objections a notice of the Limited Contract Objection Hearing. The Debtors or any party that withdraws, or has withdrawn, a Limited

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Contract Objection without prejudice shall have the right, unless it has agreed otherwise, to schedule the hearing to consider a Limited Contract Objection on not less than fifteen (15) days notice to the Debtors, the counterparties to the subject Assumable Executory Contracts, the Purchaser, and the Creditors' Committee, or within such other time as otherwise may be agreed by the parties.

Approval of the MPA

3. The MPA, all transactions contemplated thereby, and all the terms and conditions thereof (subject to any modifications contained herein) are approved. If there is any conflict between the MPA, the Sale Procedures Order, and this Order, this Order shall govern.

4. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors are authorized to perform their obligations under, and comply with the terms of, the MPA and consummate the 363 Transaction pursuant to, and in accordance with, the terms and provisions of the MPA and this Order.

5. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement, the MPA, together with all additional instruments and documents that the Sellers or the Purchaser deem necessary or appropriate to implement the MPA and effectuate the 363 Transaction, and to take all further actions as may reasonably be required by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser or reducing to possession the Purchased Assets or as may be necessary or appropriate to the performance of the obligations as contemplated by the MPA.

6. This Order and the MPA shall be binding in all respects upon the Debtors, their affiliates, all known and unknown creditors of, and holders of equity security interests in, any Debtor, including any holders of liens, claims, encumbrances, or other interests, including

rights or claims based on any successor or transferee liability, all non-Debtor parties to the Assumable Executory Contracts, all successors and assigns of the Purchaser, each Seller and their Affiliates and subsidiaries, the Purchased Assets, all interested parties, their successors and assigns, and any trustees appointed in the Debtors' chapter 11 cases or upon a conversion of any of such cases to cases under chapter 7 of the Bankruptcy Code and shall not be subject to rejection. Nothing contained in any chapter 11 plan confirmed in any of the Debtors' chapter 11 cases or the order confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the MPA or this Order.

Transfer of Purchased Assets Free and Clear

7. Except for the Assumed Liabilities, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Purchaser in accordance with the MPA, and, upon the Closing, shall be free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, and all such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, shall attach to the net proceeds of the 363 Transaction in the order of their priority, with the same validity, force, and effect that they now have as against the Purchased Assets, subject to any claims and defenses a Seller or any other party in interest may possess with respect thereto.

8. Except as expressly permitted or otherwise specifically provided by the MPA or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, dealers, employees, litigation claimants, and other creditors, holding liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including rights or claims

based on any successor or transferee liability, against or in a Seller or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Sellers, the Purchased Assets, the operation of the Purchased Assets prior to the Closing, or the 363 Transaction, are forever barred, estopped, and permanently enjoined (with respect to future claims or demands based on exposure to asbestos, to the fullest extent constitutionally permissible) from asserting against the Purchaser, its successors or assigns, its property, or the Purchased Assets, such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability.

9. This Order (a) shall be effective as a determination that, as of the Closing, (i) no claims other than Assumed Liabilities, will be assertable against the Purchaser, its affiliates, their present or contemplated members or shareholders, successors, or assigns, or any of their respective assets (including the Purchased Assets); (ii) the Purchased Assets shall have been transferred to the Purchaser free and clear of all claims (other than Permitted Encumbrances); and (iii) the conveyances described herein have been effected; and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks, or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is directed to accept for filing any and all of the documents

and instruments necessary and appropriate to consummate the transactions contemplated by the MPA.

10. The transfer of the Purchased Assets to the Purchaser pursuant to the MPA constitutes a legal, valid, and effective transfer of the Purchased Assets and shall vest the Purchaser with all right, title, and interest of the Sellers in and to the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities.

11. On the Closing of the 363 Transaction, each of the Sellers' creditors and any other holder of a lien, claim, encumbrance, or other interest, is authorized and directed to execute such documents and take all other actions as may be necessary to release its lien, claim, encumbrance (other than Permitted Encumbrances), or other interest in the Purchased Assets, if any, as such lien, claim, encumbrance, or other interest may have been recorded or may otherwise exist.

12. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing a lien, claim, encumbrance, or other interest in the Sellers or the Purchased Assets (other than Permitted Encumbrances) shall not have delivered to the Sellers prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens, claims, encumbrances, or other interests, which the person or entity has with respect to the Sellers or the Purchased Assets or otherwise, then (a) the Sellers are authorized and directed to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Sellers or the Purchased Assets, and (b) the Purchaser is authorized to file, register, or otherwise record a certified copy of this Order, which

shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever in the Sellers or the Purchased Assets.

13. All persons or entities in possession of any of the Purchased Assets are directed to surrender possession of such Purchased Assets to the Purchaser or its respective designees at the time of Closing of the 363 Transaction.

14. Following the Closing of the 363 Transaction, no holder of any lien, claim, encumbrance, or other interest (other than Permitted Encumbrances) shall interfere with the Purchaser's title to, or use and enjoyment of, the Purchased Assets based on, or related to, any such lien, claim, encumbrance, or other interest, or based on any actions the Debtors may take in their chapter 11 cases.

15. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Purchaser in accordance with the MPA and this Order; *provided, however*, that the foregoing restriction shall not prevent any person or entity from appealing this Order or opposing any appeal of this Order.

16. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these chapter 11 cases or the consummation of the 363 Transaction contemplated by the MPA.

17. From and after the Closing, the Purchaser shall comply with the certification, reporting, and recall requirements of the National Traffic and Motor Vehicle Safety Act, as amended and recodified, including by the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety

Code, and similar Laws, in each case, to the extent applicable in respect of motor vehicles, vehicles, motor vehicle equipment, and vehicle parts manufactured or distributed by the Sellers prior to the Closing.

18. Notwithstanding anything to the contrary in this Order or the MPA, (a) any Purchased Asset that is subject to any mechanic's, materialman's, laborer's, workmen's, repairman's, carrier's liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings, or any lien for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable, or delinquent (or which may be paid without interest or penalties) shall continue to be subject to such lien after the Closing Date if and to the extent that such lien (i) is valid, perfected and enforceable as of the Commencement Date (or becomes valid, perfected and enforceable after the Commencement Date as permitted by section 546(b) or 362(b)(18) of the Bankruptcy Code), (ii) could not be avoided by any Debtor under sections 544 to 549, inclusive, of the Bankruptcy Code or otherwise, were the Closing not to occur; and (iii) the Purchased Asset subject to such lien could not be sold free and clear of such lien under applicable non-bankruptcy law, and (b) any Liability as of the Closing Date that is secured by a lien described in clause (a) above (such lien, a "**Continuing Lien**") that is not otherwise an Assumed Liability shall constitute an Assumed Liability with respect to which there shall be no recourse to the Purchaser or any property of the Purchaser other than recourse to the property subject to such Continuing Lien. The Purchased Assets are sold free and clear of any reclamation rights, *provided, however,* that nothing, in this Order or the MPA shall in any way impair the right of any claimant against the Debtors with respect to any alleged reclamation right to the extent such reclamation right is not subject to the prior rights of a holder of a security interest in

the goods or proceeds with respect to which such reclamation right is alleged, or impair the ability of a claimant to seek adequate protection against the Debtors with respect to any such alleged reclamation right. Further, nothing in this Order or the MPA shall prejudice any rights, defenses, objections or counterclaims that the Debtors, the Purchaser, the U.S. Treasury, EDC, the Creditors' Committee or any other party in interest may have with respect to the validity or priority of such asserted liens or rights, or with respect to any claim for adequate protection.

Approval of the UAW Retiree Settlement Agreement

19. The UAW Retiree Settlement Agreement, the transactions contemplated therein, and the terms and conditions thereof, are fair, reasonable, and in the best interests of the retirees, and are approved. The Debtors, the Purchaser, and the UAW are authorized and directed to perform their obligations under, or in connection with, the implementation of the UAW Retiree Settlement Agreement and to comply with the terms of the UAW Retiree Settlement Agreement, including the obligation of the Purchaser to reimburse the UAW for certain expenses relating to the 363 Transaction and the transition to the New VEBA arrangements. The amendments to the Trust Agreement (as defined in the UAW Retiree Settlement Agreement) set forth on Exhibit E to the UAW Retiree Settlement Agreement, are approved, and the Trust Agreement is reformed accordingly.

20. In accordance with the terms of the UAW Retiree Settlement Agreement, (I) as of the Closing, there shall be no requirement to amend the Pension Plan as set forth in section 15 of the Henry II Settlement (as such terms are defined in the UAW Retiree Settlement Agreement); (II) on the later of December 31, 2009, or the Closing of the 363 Transaction (the "**Implementation Date**"), (i) the committee and the trustees of the Existing External VEBA (as defined in the UAW Retiree Settlement Agreement) are directed to transfer to the New VEBA all assets and liabilities of the Existing External VEBA and to terminate the Existing External

VEBA within fifteen (15) days thereafter, as provided under Section 12.C of the UAW Retiree Settlement Agreement, (ii) the trustee of the Existing Internal VEBA is directed to transfer to the New VEBA the UAW Related Account's share of assets in the Existing Internal VEBA within ten (10) business days thereafter as provided in Section 12.B of the UAW Retiree Settlement Agreement, and, upon the completion of such transfer, the Existing Internal VEBA shall be deemed to be amended to terminate participation and coverage regarding Retiree Medical Benefits for the Class and the Covered Group, effective as of the Implementation Date (each as defined in the UAW Retiree Settlement Agreement); and (III) all obligations of the Purchaser and the Sellers to provide Retiree Medical Benefits to members of the Class and Covered Group shall be governed by the UAW Retiree Settlement Agreement, and, in accordance with section 5.D of the UAW Retiree Settlement Agreement, all provisions of the Purchaser's Plan relating to Retiree Medical Benefits for the Class and/or the Covered Group shall terminate as of the Implementation Date or otherwise be amended so as to be consistent with the UAW Retiree Settlement Agreement (as each term is defined in the UAW Retiree Settlement Agreement), and the Purchaser shall not thereafter have any such obligations as set forth in Section 5.D of the UAW Retiree Settlement Agreement.

Approval of GM's Assumption of the UAW Claims Agreement

21. Pursuant to section 365 of the Bankruptcy Code, GM's assumption of the UAW Claims Agreement is approved, and GM, the UAW, and the Class Representatives are authorized and directed to perform their obligations under, or in connection with, the implementation of the UAW Claims Agreement and comply with the terms of the UAW Claims Agreement.

Assumption and Assignment to the Purchaser of Assumable Executory Contracts

22. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code and subject to and conditioned upon (a) the Closing of the 363 Transaction, (b) the occurrence of the Assumption Effective Date, and (c) the resolution of any relevant Limited Contract Objections, other than a Cure Objection, by order of this Court overruling such objection or upon agreement of the parties, the Debtors' assumption and assignment to the Purchaser of each Assumable Executory Contract (including, without limitation, for purposes of this paragraph 22) the UAW Collective Bargaining Agreement) is approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are deemed satisfied.

23. The Debtors are authorized and directed in accordance with sections 105(a) and 365 of the Bankruptcy Code to (i) assume and assign to the Purchaser, effective as of the Assumption Effective Date, as provided by, and in accordance with, the Sale Procedures Order, the Modified Assumption and Assignment Procedures, and the MPA, those Assumable Executory Contracts that have been designated by the Purchaser for assumption pursuant to sections 6.6 and 6.31 of the MPA and that are not subject to a Limited Contract Objection other than a Cure Objection, free and clear of all liens, claims, encumbrances, or other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities, and (ii) execute and deliver to the Purchaser such documents or other instruments as the Purchaser reasonably deems may be necessary to assign and transfer such Assumable Executory Contracts and Assumed Liabilities to the Purchaser. The Purchaser shall Promptly Pay (as defined below) the following (the "**Cure Amount**"): (a) all amounts due under such Assumable Executory Contract as of the Commencement Date as reflected on the website established by the Debtors (the "**Contract Website**"), which is referenced and is accessible as set forth in the Assumption and Assignment

Notice or as otherwise agreed to in writing by an authorized officer of the parties (for this purpose only, Susanna Webber shall be deemed an authorized officer of the Debtors) (the "**Prepetition Cure Amount**"), less amounts, if any, paid after the Commencement Date on account of the Prepetition Cure Amount (such net amount, the "**Net Prepetition Cure Amount**"), plus (b) any such amount past due and owing as of the Assumption Effective Date, as required under the Modified Assumption and Assignment Procedures, exclusive of the Net Prepetition Cure Amount. For the avoidance of doubt, all of the Debtors' rights to assert credits, chargebacks, setoffs, rebates, and other claims under the Purchased Contracts are purchased by and assigned to the Purchaser as of the Assumption Effective Date. As used herein, "**Promptly Pay**" means (i) with respect to any Cure Amount (or portion thereof, if any) which is undisputed, payment as soon as reasonably practicable, but not later than five (5) business days after the Assumption Effective Date, and (ii) with respect to any Cure Amount (or portion thereof, if any) which is disputed, payment as soon as reasonably practicable, but not later than five (5) business days after such dispute is resolved or such later date upon agreement of the parties and, in the event Bankruptcy Court approval is required, upon entry of a final order of the Bankruptcy Court. On and after the Assumption Effective Date, the Purchaser shall (i) perform any nonmonetary defaults that are required under section 365(b) of the Bankruptcy Code; *provided* that such defaults are undisputed or directed by this Court and are timely asserted under the Modified Assumption and Assignment Procedures, and (ii) pay all undisputed obligations and perform all obligations that arise or come due under each Assumable Executory Contract in the ordinary course. Notwithstanding any provision in this Order to the contrary, the Purchaser shall not be obligated to pay any Cure Amount or any other amount due with respect to any Assumable Executory Contract before such amount becomes due and payable under the applicable payment terms of such Contract.

24. The Debtors shall make available a writing, acknowledged by the Purchaser, of the assumption and assignment of an Assumable Executory Contract and the effective date of such assignment (which may be a printable acknowledgment of assignment on the Contract Website). The Assumable Executory Contracts shall be transferred and assigned to, pursuant to the Sale Procedures Order and the MPA, and thereafter remain in full force and effect for the benefit of, the Purchaser, notwithstanding any provision in any such Assumable Executory Contract (including those of the type described in sections 365(b)(2), (e)(1), and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Sellers shall be relieved from any further liability with respect to the Assumable Executory Contracts after such assumption and assignment to the Purchaser. Except as may be contested in a Limited Contract Objection, each Assumable Executory Contract is an executory contract or unexpired lease under section 365 of the Bankruptcy Code and the Debtors may assume each of their respective Assumable Executory Contracts in accordance with section 365 of the Bankruptcy Code. Except as may be contested in a Limited Contract Objection other than a Cure Objection, the Debtors may assign each Assumable Executory Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Assumable Executory Contract that prohibit or condition the assignment of such Assumable Executory Contract or terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Assumable Executory Contract, constitute unenforceable antiassignment provisions which are void and of no force and effect in connection with the transactions contemplated hereunder. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser of each Assumable Executory Contract have been satisfied, and, pursuant to section 365(k) of the Bankruptcy Code, the

Debtors are hereby relieved from any further liability with respect to the Assumable Executory Contracts, including, without limitation, in connection with the payment of any Cure Amounts related thereto which shall be paid by the Purchaser. At such time as provided in the Sale Procedures Order and the MPA, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title, and interest of each Purchased Contract. With respect to leases of personal property that are true leases and not subject to recharacterization, nothing in this Order or the MPA shall transfer to the Purchaser an ownership interest in any leased property not owned by a Debtor. Any portion of any of the Debtors' unexpired leases of nonresidential real property that purport to permit the respective landlords thereunder to cancel the remaining term of any such leases if the Sellers discontinue their use or operation of the Leased Real Property are void and of no force and effect and shall not be enforceable against the Purchaser, its assignees and sublessees, and the landlords under such leases shall not have the right to cancel or otherwise modify such leases or increase the rent, assert any Claim, or impose any penalty by reason of such discontinuation, the Sellers' cessation of operations, the assignment of such leases to the Purchaser, or the interruption of business activities at any of the leased premises.

25. Except in connection with any ongoing Limited Contract Objection, each non-Debtor party to an Assumable Executory Contract is forever barred, estopped, and permanently enjoined from (a) asserting against the Debtors or the Purchaser, their successors or assigns, or their respective property, any default arising prior to, or existing as of, the Commencement Date, or, against the Purchaser, any counterclaim, defense, or setoff (other than defenses interposed in connection with, or related to, credits, chargebacks, setoffs, rebates, and other claims asserted by the Sellers or the Purchaser in its capacity as assignee), or other claim asserted or assertable against the Sellers and (b) imposing or charging against the Debtors, the

Purchaser, or its Affiliates any rent accelerations, assignment fees, increases, or any other fees as a result of the Sellers' assumption and assignment to the Purchaser of the Assumable Executory Contracts. The validity of such assumption and assignment of the Assumable Executory Contracts shall not be affected by any dispute between the Sellers and any non-Debtor party to an Assumable Executory Contract.

26. Except as expressly provided in the MPA or this Order, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Liabilities other than certain Cure Amounts as provided in the MPA, and all holders of such claims are forever barred and estopped from asserting such claims against the Debtors, their successors or assigns, and their estates.

27. The failure of the Sellers or the Purchaser to enforce at any time one or more terms or conditions of any Assumable Executory Contract shall not be a waiver of such terms or conditions, or of the Sellers' and the Purchaser's rights to enforce every term and condition of the Assumable Executory Contracts.

28. The authority hereunder for the Debtors to assume and assign an Assumable Executory Contract to the Purchaser includes the authority to assume and assign an Assumable Executory Contract, as amended.

29. Upon the assumption by a Debtor and the assignment to the Purchaser of any Assumable Executory Contract and the payment of the Cure Amount in full, all defaults under the Assumable Executory Contract shall be deemed to have been cured, and any counterparty to such Assumable Executory Contract shall be prohibited from exercising any rights or remedies against any Debtor or non-Debtor party to such Assumable Executory Contract based on an asserted default that occurred on, prior to, or as a result of, the Closing, including the type of default specified in section 365(b)(1)(A) of the Bankruptcy Code.

30. The assignments of each of the Assumable Executory Contracts are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

31. Entry by GM into the Deferred Termination Agreements with accepting dealers is hereby approved. Executed Deferred Termination Agreements represent valid and binding contracts, enforceable in accordance with their terms.

32. Entry by GM into the Participation Agreements with accepting dealers is hereby approved and the offer by GM of entry into the Participation Agreements and entry into the Participation Agreements was appropriate and not the product of coercion. The Court makes no finding as to whether any specific provision of any Participation Agreement governing the obligations of Purchaser and its dealers is enforceable under applicable provisions of state law. Any disputes that may arise under the Participation Agreements shall be adjudicated on a case by case basis in an appropriate forum other than this Court.

33. Nothing contained in the preceding two paragraphs shall impact the authority of any state or of the federal government to regulate Purchaser subsequent to the Closing.

34. Notwithstanding any other provision in the MPA or this Order, no assignment of any rights and interests of the Debtors in any federal license issued by the Federal Communications Commission ("**FCC**") shall take place prior to the issuance of FCC regulatory approval for such assignment pursuant to the Communications Act of 1934, and the rules and regulations promulgated thereunder.

TPC Property

35. The TPC Participation Agreement and the other TPC Operative Documents are financing transactions secured to the extent of the TPC Value (as hereinafter defined) and shall be Retained Liabilities.

36. As a result of the Debtors' interests in the TPC Property being transferred to the Purchaser free and clear of all liens, claims, interests, and encumbrances (other than Permitted Encumbrances), including, without limitation, the TPC Lenders' Liens and Claims, pursuant to section 363(e) of the Bankruptcy Code, the TPC Lenders shall have an allowed secured claim in a total amount equal to the fair market value of the TPC Property on the Commencement Date under section 506 of the Bankruptcy Code (the "**TPC Value**"), as determined at a valuation hearing conducted by this Court or by mutual agreement of the Debtors, the Purchaser, and the TPC Lenders (such claim, the "**TPC Secured Claim**"). Either the Debtors, the Purchaser, the TPC Lenders, or the Creditors' Committee may file a motion with this Court to determine the TPC Value on twenty (20) days notice.

37. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection for the TPC Secured Claim and for the sole benefit of the TPC Lenders, at the Closing or as soon as commercially practicable thereafter, but in any event not later than five (5) business days after the Closing, the Purchaser shall place $90,700,000 (the "**TPC Escrow Amount**") in cash into an interest-bearing escrow account (the "**TPC Escrow Account**") at a financial institution selected by the Purchaser and acceptable to the other parties (the "**Escrow Bank**"). Interest earned on the TPC Escrow Amount from the date of deposit through the date of the disposition of the proceeds of such account (the "**TPC Escrow Interest**") will follow principal, such that interest earned on the amount of cash deposited into the TPC Escrow Account equal to the TPC Value shall be paid to the TPC Lenders and interest earned on the balance of the TPC Escrow Amount shall be paid to the Purchaser.

38. Promptly after the determination of the TPC Value, an amount of cash equal to the TPC Secured Claim plus the TPC Lenders' pro rata share of the TPC Escrow Interest shall be released from the TPC Escrow Account and paid to the TPC Lenders (the "TPC

Payment") without further order of this Court. If the TPC Value is less than $90,700,000, the TPC Lenders shall have, in addition to the TPC Secured Claim, an aggregate allowed unsecured claim against GM's estate equal to the lesser of (i) $45,000,000 and (ii) the difference between $90,700,000 and the TPC Value (the "**TPC Unsecured Claim**").

39. If the TPC Value exceeds $90,700,000, the TPC Lenders shall be entitled to assert a secured claim against GM's estate to the extent the TPC Lenders would have an allowed claim for such excess under section 506 of the Bankruptcy Code (the "**TPC Excess Secured Claim**"); *provided, however*, that any TPC Excess Secured Claim shall be paid from the consideration of the 363 Transaction as a secured claim thereon and shall not be payable from the proceeds of the Wind-Down Facility; *and provided further, however*, that the Debtors, the Creditors' Committee, and all parties in interest shall have the right to contest the allowance and amount of the TPC Excess Secured Claim under section 506 of the Bankruptcy Code (other than to contest the TPC Value as previously determined by the Court). All parties' rights and arguments respecting the determination of the TPC Secured Claim are reserved; *provided, however*, that in consideration of the settlement contained in these paragraphs, the TPC Lenders waive any legal argument that the TPC Lenders are entitled to a secured claim equal to the face amount of their claim under section 363(f)(3) or any other provision of the Bankruptcy Code solely as a matter of law, including, without limitation, on the grounds that the Debtors are required to pay the full face amount of the TPC Lenders' secured claims in order to transfer, or as a result of the transfer of, the TPC Property to the Purchaser. After the TPC Payment is made, any funds remaining in the TPC Escrow Account plus the Purchasers' pro rata share of the TPC Escrow Interest shall be released and paid to the Purchaser without further order of this Court. Upon the receipt of the TPC Payment by the TPC Lenders, other than any right to payment from GM on account of the TPC Unsecured Claim and the TPC Excess Secured Claim, the TPC

Lenders' Claims relating to the TPC Property shall be deemed fully satisfied and discharged, including, without limitation, any claims the TPC Lenders might have asserted against the Purchaser relating to the TPC Property, the TPC Participation Agreement, or the TPC Operative Documents. For the avoidance of doubt, any and all claims of the TPC Lenders arising from or in connection with the TPC Property, the TPC Participation Agreement, or the TPC Operative Documents shall be payable solely from the TPC Escrow Account or GM and shall be nonrecourse to the Purchaser.

40. The TPC Lenders shall not be entitled to payment of any fees, costs, or expenses (including legal fees) except to the extent that the TPC Value results in a TPC Excess Secured Claim and is thereby oversecured under the Bankruptcy Code and such claim is allowed by the Court as a secured claim under section 506 of the Bankruptcy Code.

41. In connection with the foregoing, and pursuant to Section 11.2 of the TPC Trust Agreement, GM, as the sole Certificate Holder and Beneficiary under the TPC Trust, together with the consent of GM as the Lessee, effective as of the date of the Closing, (a) exercises its election to terminate the TPC Trust and (b) in connection therewith, assumes all of the obligations of the TPC Trust and TPC Trustee under or contemplated by the TPC Operative Documents to which the TPC Trust or TPC Trustee is a party and all other obligations of the TPC Trust or TPC Trustee incurred under the TPC Trust Agreement (other than obligations set forth in clauses (i) through (iii) of the second sentence of Section 7.1 of the TPC Trust Agreement).

42. As a condition precedent to the 363 Transaction, in connection with the termination of the TPC Trust, effective as of the date of the Closing, all of the assets of the TPC Trust (the "**TPC Trust Assets**") shall be distributed to GM, as sole Certificate Holder and beneficiary under the TPC Trust, including, without limitation, the following:

(i) Industrial Development Revenue Real Property Note (General Motors Project) Series 1999-I, dated November 18, 1999, in the principal amount of $21,700,000, made by the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, to PVV Southpoint 14, LLC, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds (the "**TPC Tennessee Ground Lease**");

(ii) Real Property Lease Agreement dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Lessor, and PVV Southpoint 14, LLC, as Lessee, recorded as JW1262 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Real Property Lease dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1267 in the records of the Shelby County Register of Deeds;

(iii) Deed of Trust dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Grantor, in favor of Mid-South Title Corporation, as Trustee, for the benefit of PVV Southpoint 14, LLC, Beneficiary, recorded as JW1263 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds;

(iv) Assignment of Rents and Lease dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Assignor, and PVV Southpoint 14, LLC, as Assignee, recorded as JW1264 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds;

(v) The Tennessee Master Lease (as defined in the TPC Participation Agreement);

(vi) A certain tract of land being known and designated as Lot 1, as shown on a Subdivision Plat entitled "Final Plat – Lot 1, Whitemarsh Associates, LLC Property," which Plat is recorded among the Land Records of Baltimore County in Plat Book SM No. 71 at folio 144, Maryland, together with a certain tract of land being known and designated as "1.1865 Acre of Highway Widening," as shown on a Subdivision Plat entitled "Final Plat – Lot 1, Whitemarsh Associates, LLC Property," which Plat is recorded among the Land Records of Baltimore County in Plat Book SM No. 71 at folio 144, Baltimore, Maryland, saving and excepting from the above described property all that land conveyed to the State of Maryland to the use of the State Highway Administration of the Department of Transportation dated November 24, 2003, and

recorded among the Land Records of Baltimore County in Liber 19569, folio 074, Maryland, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way, including, without limitation, those easements benefiting Parcel I set forth in the Declaration and Agreement Respecting Easements, Restrictions and Operations, between the TPC Trust, GM, and Whitemarsh Associates, LLC, recorded among the Land Records of Baltimore County in Liber 14019, folio 430, as amended (collectively, the "**Maryland Property**");

(vii) alternatively to the transfer of a direct interest in the Maryland Property pursuant to item (vi) above, if such documents are still extant, the following interests shall be transferred: (a) Ground Lease Agreement dated as of September 8, 1999, between the TPC Trustee of the TPC Trust, as lessor, and Maryland Economic Development Corporation, as lessee, recorded among the Land Records of Baltimore County in Liber 14019, folio 565, (b) Sublease Agreement dated as of September 8, 1999, between the Maryland Economic Development Corporation, as sublessor, and the TPC Trustee of the TPC Trust, as sublessee, recorded among the Land Records of Baltimore County in Liber 14019, folio 589, together with (c) all agreements, loan agreements, notes, rights, obligations, and interests held by the TPC Trustee of the TPC Trust and/or issued by the TPC Trustee of the TPC Trust in connection therewith; and

(viii) The Maryland Master Lease (as defined in the TPC Participation Agreement).

43. As a result of the distribution of the TPC Trust Assets, effective as of the date of the Closing, title to the leasehold interest of the TPC Trustee of the TPC Trust under the TPC Tennessee Ground Lease and the lessor's interest under the Tennessee Master Lease shall be held by GM, as are the lessor's and lessee's interests under the Tennessee Master Lease, and as permitted by the TPC Trust Agreement, the Tennessee Master Lease shall hereby be terminated, and GM shall succeed to all rights of the lessor thereunder to the property leased thereby, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way.

44. As a result of the distribution of the TPC Trust Assets, effective as of the date of the Closing, title to the Maryland Property, the lessor's and lessee's interests under the Maryland Master Lease shall be held by GM, and as permitted by the TPC Trust Agreement, the Maryland Master Lease shall hereby be terminated, and GM shall succeed to all rights of the

lessor thereunder to the property leased thereby, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way.

45. All of the TPC Trust Assets and the TPC Property are Purchased Assets under the MPA and shall be transferred by GM pursuant thereto to the Purchaser free and clear of all liens, claims, encumbrances, and interests (other than Permitted Encumbrances), including, without limitation, any liens, claims, encumbrances, and interests of the TPC Lenders. To the extent any of the TPC Trust Assets are executory contracts and unexpired leases, they shall be Assumable Executory Contracts, which shall be assumed by GM and assigned to Purchaser pursuant to section 365 of the Bankruptcy Code and the Sale Procedures Order.

Additional Provisions

46. 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.

47. Effective upon the Closing and except as may be otherwise provided by stipulation filed with or announced to the Court with respect to a specific matter or an order of the Court, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding against the Purchaser, its present or contemplated members or shareholders, its successors and assigns, or the Purchased Assets, with respect to any (i) claim against the Debtors other than Assumed Liabilities, or (ii) successor or transferee liability of the Purchaser for any of the Debtors, including, without limitation, the following actions: (a) commencing or continuing any action or other proceeding pending or threatened against the Debtors as against the Purchaser, or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Debtors as against the Purchaser, its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (c) creating, perfecting, or enforcing any lien, claim, interest, or encumbrance against the Debtors as against the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (d) asserting any setoff, right of subrogation, or recoupment of any kind for any obligation of any of the Debtors as against any obligation due the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (e) commencing or continuing any action, in any manner or place, that does not comply, or is inconsistent with, the provisions of this Order or other orders of this Court, or

the agreements or actions contemplated or taken in respect thereof; or (f) revoking, terminating, or failing or refusing to renew any license, permit, or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with such assets. Notwithstanding the foregoing, a relevant taxing authority's ability to exercise its rights of setoff and recoupment are preserved.

48. 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.

49. The Purchaser has given fair and substantial consideration under the MPA for the benefit of the holders of liens, claims, encumbrances, or other interests. The consideration provided by the Purchaser for the Purchased Assets under the MPA is greater than the liquidation value of the Purchased Assets and shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

50. The consideration provided by the Purchaser for the Purchased Assets under the MPA is fair and reasonable, and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

51. If there is an Agreed G Transaction (determined no later than the due date, with extensions, of GM's tax return for the taxable year in which the 363 Transaction occurs), (i) the MPA shall, and hereby does, constitute a "plan" of GM and the Purchaser solely for purposes of sections 368 and 354 of the Tax Code, and (ii) the 363 Transaction, as set forth in the MPA, and the subsequent liquidation of the Sellers, are intended to constitute a tax reorganization of GM pursuant to section 368(a)(1)(G) of the Tax Code.

52. This Order (a) shall be effective as a determination that, except for the Assumed Liabilities, at Closing, all liens, claims, encumbrances, and other interests of any kind or nature whatsoever existing as to the Sellers with respect to the Purchased Assets prior to the Closing (other than Permitted Encumbrances) have been unconditionally released and terminated, and that the conveyances described in this Order have been effected, and (b) shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets.

53. Each and every federal, state, and local governmental agency or department is authorized to accept any and all documents and instruments necessary or appropriate to consummate the transactions contemplated by the MPA.

54. Any amounts that become payable by the Sellers to the Purchaser pursuant to the MPA (and related agreements executed in connection therewith, including, but not limited to, any obligation arising under Section 8.2(b) of the MPA) shall (a) constitute administrative expenses of the Debtors' estates under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code and (b) be paid by the Debtors in the time and manner provided for in the MPA without further Court order.

55. The transactions contemplated by the MPA are undertaken by the Purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and were negotiated by the parties at arm's length, and, accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the 363 Transaction shall not affect the validity of the 363 Transaction (including the assumption and assignment of any of the Assumable Executory Contracts and the UAW Collective Bargaining Agreement), unless such authorization is duly stayed pending such appeal. The Purchaser is a purchaser in good faith of the Purchased Assets and the Purchaser and its agents, officials, personnel, representatives, and advisors are entitled to all the protections afforded by section 363(m) of the Bankruptcy Code.

56. The Purchaser is assuming the obligations of the Sellers pursuant to and subject to conditions and limitations contained in their express written warranties, which were delivered in connection with the sale of vehicles and vehicle components prior to the Closing of the 363 Transaction and specifically identified as a "warranty." The Purchaser is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs, and point of purchase materials. Notwithstanding the foregoing, the Purchaser has assumed the

Sellers' obligations under state "lemon law" statutes, which require a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty, as defined in the applicable statute, after a reasonable number of attempts as further defined in the statute, and other related regulatory obligations under such statutes.

57. Subject to further Court order and consistent with the terms of the MPA and the Transition Services Agreement, the Debtors and the Purchaser are authorized to, and shall, take appropriate measures to maintain and preserve, until the consummation of any chapter 11 plan for the Debtors, (a) the books, records, and any other documentation, including tapes or other audio or digital recordings and data in, or retrievable from, computers or servers relating to or reflecting the records held by the Debtors or their affiliates relating to the Debtors' business, and (b) the cash management system maintained by the Debtors prior to the Closing, as such system may be necessary to effect the orderly administration of the Debtors' estates.

58. The Debtors are authorized to take any and all actions that are contemplated by or in furtherance of the MPA, including transferring assets between subsidiaries and transferring direct and indirect subsidiaries between entities in the corporate structure, with the consent of the Purchaser.

59. Upon the Closing, the Purchaser shall assume all liabilities of the Debtors arising out of, relating to, in respect of, or in connection with workers' compensation claims against any Debtor, except for workers' compensation claims against the Debtors with respect to Employees residing in or employed in, as the case may be as defined by applicable law, the states of Alabama, Georgia, New Jersey, and Oklahoma.

60. During the week after Closing, the Purchaser shall send an e-mail to the Debtors' customers for whom the Debtors have usable e-mail addresses in their database, which will provide information about the Purchaser and procedures for consumers to opt out of being

contacted by the Purchaser for marketing purposes. For a period of ninety (90) days following the Closing Date, the Purchaser shall include on the home page of GM's consumer web site (www.gm.com) a conspicuous disclosure of information about the Purchaser, its procedures for consumers to opt out of being contacted by the Purchaser for marketing purposes, and a notice of the Purchaser's new privacy statement. The Debtors and the Purchaser shall comply with the terms of established business relationship provisions in any applicable state and federal telemarketing laws. The Dealers who are parties to Deferred Termination Agreements shall not be required to transfer personally identifying information in violation of applicable law or existing privacy policies.

61. Nothing in this Order or the MPA releases, nullifies, or enjoins the enforcement of any Liability to a governmental unit under Environmental Laws or regulations (or any associated Liabilities for penalties, damages, cost recovery, or injunctive relief) that any entity would be subject to as the owner, lessor, or operator of property after the date of entry of this Order. Notwithstanding the foregoing sentence, nothing in this Order shall be interpreted to deem the Purchaser as the successor to the Debtors under any state law successor-liability doctrine with respect to any Liabilities under Environmental Laws or regulations for penalties for days of violation prior to entry of this Order. Nothing in this paragraph should be construed to create for any governmental unit any substantive right that does not already exist under law.

62. Nothing contained in this Order or in the MPA shall in any way (i) diminish the obligation of the Purchaser to comply with Environmental Laws, or (ii) diminish the obligations of the Debtors to comply with Environmental Laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. The definition of Environmental Laws in the MPA shall be amended to delete the words "in existence on the date of the Original Agreement." For purposes of clarity, the exclusion of asbestos liabilities in

section 2.3(b)(x) of the MPA shall not be deemed to affect coverage of asbestos as a Hazardous Material with respect to the Purchaser's remedial obligations under Environmental Laws.

63. No law of any state or other jurisdiction relating to bulk sales or similar laws shall apply in any way to the transactions contemplated by the 363 Transaction, the MPA, the Motion, and this Order.

64. The Debtors shall comply with their tax obligations under 28 U.S.C. § 960, except to the extent that such obligations are Assumed Liabilities.

65. Notwithstanding anything contained in their respective organizational documents or applicable state law to the contrary, each of the Debtors is authorized and directed, upon and in connection with the Closing, to change their respective names, and any amendment to the organizational documents (including the certificate of incorporation) of any of the Debtors to effect such a change is authorized and approved, without Board or shareholder approval. Upon any such change with respect to GM, the Debtors shall file with the Court a notice of change of case caption within two (2) business days of the Closing, and the change of case caption for these chapter 11 cases shall be deemed effective as of the Closing.

66. The terms and provisions of the MPA and this Order shall inure to the benefit of the Debtors, their estates, and their creditors, the Purchaser, and their respective agents, officials, personnel, representatives, and advisors.

67. The failure to specifically include any particular provisions of the MPA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the MPA be authorized and approved in its entirety, except as modified herein.

68. The MPA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification,

amendment, or supplement does not have a material adverse effect on the Debtors' estates. Any such proposed modification, amendment, or supplement that does have a material adverse effect on the Debtors' estates shall be subject to further order of the Court, on appropriate notice.

69. The provisions of this Order are nonseverable and mutually dependent on each other.

70. As provided in Fed.R.Bankr.P. 6004(h) and 6006(d), this Order shall not be stayed for ten days after its entry, and instead shall be effective as of 12:00 noon, EDT, on Thursday, July 9, 2009. The Debtors and the Purchaser are authorized to close the 363 Transaction on or after 12:00 noon on Thursday, July 9. Any party objecting to this Order must exercise due diligence in filing any appeal and pursuing a stay or risk its appeal being foreclosed as moot in the event Purchaser and the Debtors elect to close prior to this Order becoming a Final Order.

Deleted: Pursuant to Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed for ten days after its entry and shall be effective immediately upon entry, and the Debtors and the Purchaser are authorized to close the 363 Transaction immediately upon entry of this Order.

71. This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the MPA, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, including the Deferred Termination Agreements, in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchased Assets to the Purchaser, (b) compel delivery of the purchase price or performance of other obligations owed by or to the Debtors, (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, (e) protect the Purchaser against any of the Retained Liabilities or the assertion of any lien, claim, encumbrance, or other interest, of any kind or nature whatsoever, against the Purchased Assets, and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements. The Court does not retain jurisdiction to hear disputes arising in connection with the application of the Participation

Agreements, stockholder agreements or other documents concerning the corporate governance of the Purchaser, and documents governed by foreign law, which disputes shall be adjudicated as

necessary under applicable law in any other court or administrative agency of competent jurisdiction.

Dated: New York, York
July 5, 2009

s/Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. TRUSKY, AHSA JEFFRIES, GAYNELL COLE on behalf of themselves and all others similarly situated,

Plaintiff,

vs.

GENERAL MOTORS COMPANY

Defendant.

Case No. 2:11-cv-12815-SFC-LJM

Honorable Sean F. Cox

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DECLARATION OF STEVEN D. OAKLEY
IN SUPPORT OF MOTION TO DISMISS FOR LACK JURISDICTION

I, Steven D. Oakley, declare and state:

1. I am employed by General Motors LLC ("GM") as Manager, Dealer Service and Warranty Operations. I make this declaration in support of GM's motion to dismiss this matter for lack of subject matter jurisdiction.

2. In connection with my responsibilities in the ordinary course, I have access to GM's systems and records with respect to vehicle warranties and repairs performed pursuant to those warranties ("Warranty Records"). These Warranty Records include data acquired by GM from General Motors Corporation ("Old GM") pursuant to the bankruptcy 363 sale consummated in 2009.

3. GM's Warranty Records are maintained by vehicle identification number. GM records reflect[1] that the claims asserted by individual plaintiffs pertain to the following vehicles:

a) A Chevrolet Impala LT Sedan, Vehicle Identification Number 2G1WT58N881214824 (the "Trusky Vehicle")

b) A 2008 Chevrolet Impala, 50th Anniversary Edition, Vehicle Identification Number 2G1WV58KKX81252684 (the "Cole Vehicle")

c) A 2007 Chevrolet Impala LT Sedan, Vehicle Identification Number 2G1WT58K879258098 (the "Jeffries Vehicle")

4. I have reviewed warranty records related to the Trusky Vehicle, which indicate as follows:

a) The Trusky Vehicle was initially delivered on February 18, 2008 by Allan A. Hornbeck Chevrolet in Forest City, Pennsylvania. The reported mileage at delivery was 10.

b) In consequence, the Bumper to Bumper coverage (three years/36,000 miles) on the Trusky Vehicle expired no later than February 18, 2011.

5. I have reviewed warranty records related to the Cole Vehicle, which indicate as follows:

a) The Cole Vehicle was initially delivered on June 26, 2008. The reported mileage at delivery was 254.

[1] Because Ms. Jeffries purchased her vehicle used, GM was required to inquire with the selling dealer to identify the vehicle identification number of her vehicle.

b) In consequence, the Bumper to Bumper coverage (three years/36,000 miles) on the Cole Vehicle expired no later than June 26, 2011.

c) On July 5, 2011, the vehicle was presented for service at Ramey Motors, Inc. in Princeton, West Virginia. Although the applicable warranty was then expired, the dealer performed a tire replacement on GM's expense as customer goodwill.

6. I have reviewed warranty records related to the Jeffries Vehicle, which indicate as follows:

a) The Jeffries Vehicle was initially delivered January 2, 2007. The reported mileage at delivery was 10.

b) In consequence, the Bumper to Bumper coverage (three years/36,000 miles) on the Jeffries Vehicle expired no later than January 2, 2010. However, on February 12, 2009, the Jeffries Vehicle received warranty service from Gordon Chevrolet, Inc. in Garden City, Michigan. At that time, vehicle mileage was reported as 35,979. Accordingly, unless use of the vehicle ceased immediately, the Bumper to Bumper coverage on the Jeffries expired in February or March of 2009. This is consistent with information received from Merollis Chevrolet, which indicates that the Jeffries vehicle had 39,115 miles when sold to Ms. Jeffries in June of 2009. See Odometer Statement Attached as Exhibit A.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed this 26th day of September, 2011.

Steven D. Oakley

EXHIBIT A

ASHA DUNEENA JEFFRIES — CUSTOMER'S NAME

4289 — STOCK NO.

ODOMETER DISCLOSURE STATEMENT

Federal law (and State law, if applicable) requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I, MEROLLIS CHEVROLET SALES (transferor's name, Print)

state that the odometer now reads 39115 (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

☐ (1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

☐ (2) I hereby certify that the odometer reading is NOT the actual mileage.

WARNING - ODOMETER DISCREPANCY

MAKE	MODEL	BODY TYPE
CHEVROLET	IMPALA	4 DOOR

VEHICLE IDENTIFICATION NUMBER	YEAR
2G1WT58K879258098	2007

X _____
TRANSFEROR'S SIGNATURE

MEROLLIS CHEVROLET SALES
PRINTED NAME

21800 GRATIOT AVE
TRANSFEROR'S ADDRESS (STREET)

EASTPOINTE — MI — 48021
CITY — STATE — ZIP CODE

06/04/09
DATE OF STATEMENT

X _____
TRANSFEREE'S SIGNATURE

ASHA DUNEENA JEFFRIES
PRINTED NAME

ASHA DUNEENA JEFFRIES
TRANSFEREE'S NAME

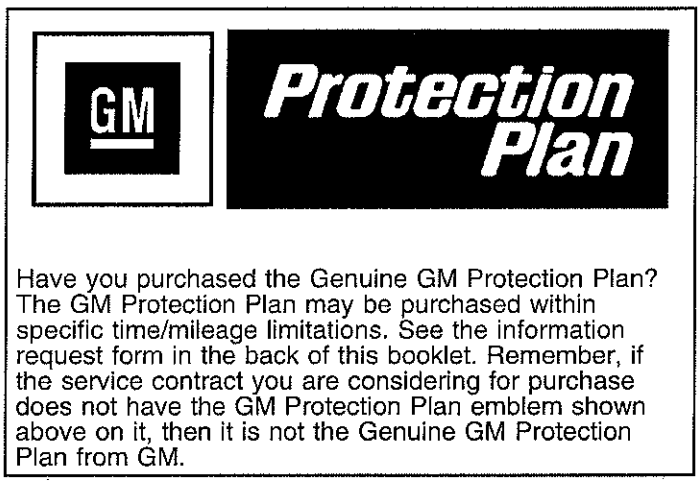
13927 CHANDLER PARK DR
TRANSFEREE'S ADDRESS (STREET)

DETROIT — MI — 48213-360
CITY — STATE — ZIP CODE

ODOM-103-N (4/89) Reynolds and Reynolds

EXHIBIT D

IMPORTANT: This booklet contains important information about the vehicle's warranty coverage. It also explains **owner assistance information and GM's participation in an Alternative Dispute Resolution Program.** Keep this booklet with your vehicle and make it available to a Chevrolet dealer if warranty work is needed. Be sure to keep it with your vehicle if you sell it so future owners will have the information.
Owner's Name:
Street Address:
City & State:
Vehicle Identification Number (VIN):
Date Vehicle First Delivered or Put In Use:
Odometer Reading on Date Vehicle First Delivered or Put In Use:



Have you purchased the Genuine GM Protection Plan? The GM Protection Plan may be purchased within specific time/mileage limitations. See the information request form in the back of this booklet. Remember, if the service contract you are considering for purchase does not have the GM Protection Plan emblem shown above on it, then it is not the Genuine GM Protection Plan from GM.

Part No. 15854844 B Second Printing

2008 Chevrolet Limited Warranty and Owner Assistance Information

2008 Chevrolet Limited Warranty and Owner Assistance Information

An Important Message to Chevrolet Owners...

Chevrolet's Commitment to You

We are committed to assuring your satisfaction with your new Chevrolet.

Your Chevrolet dealer also wants you to be completely satisfied and invites you to return for all your service needs, both during and after the warranty period.

Owner Assistance

Your Chevrolet dealer is best equipped to provide all of your service needs. Should you ever encounter a problem that is not resolved during or after the limited warranty period, talk to a member of dealer management. Under certain circumstances, GM and/or GM dealers may provide assistance after the limited warranty period has expired when the problem results from a defect in material or workmanship. These instances will be reviewed on a case-by-case basis. If your problem has not been resolved to your satisfaction, follow the "Customer Satisfaction Procedure" as outlined under *Owner Assistance on page 30*.

We thank you for choosing a Chevrolet.

GM Participation in an Alternative Dispute Resolution Program

See the "Customer Satisfaction Procedure" under *Owner Assistance on page 30* for information on the voluntary, non-binding Alternative Dispute Resolution Program in which GM participates.

Warranty Service — United States and Canada

Your selling dealership has made a large investment to ensure that they have the proper tools, training, and parts inventory to make any necessary warranty repairs should they be required during the warranty period. We ask that you return to your selling dealer for warranty repairs. In the event of an emergency repair, you may take your vehicle to any authorized GM dealer for warranty repairs. However, certain warranty repairs require special tools or training that only a dealer selling your brand may have. Therefore, not all dealers are able to perform every repair. If a particular dealership cannot assist you, then contact the Customer Assistance Center. If you have changed your residence, visit any Chevrolet dealer in the United States or Canada for warranty service.

Warranty Coverage at a Glance

The warranty coverages are summarized below.

New Vehicle Limited Warranty

Bumper-to-Bumper (Includes Tires)

- Coverage is for the first 3 years or 36,000 miles, whichever comes first.

Powertrain

- Coverage is for 5 years or 100,000 miles, whichever comes first.

Sheet Metal

- Corrosion coverage is for the first 3 years or 36,000 miles, whichever comes first.
- Rust-through coverage is for the first 6 years or 100,000 miles, whichever comes first.

6.6L DURAMAX® Diesel Engine (If Equipped)

- Coverage is for 5 years or 100,000 miles, whichever comes first.

Emission Control System Warranty

For light duty trucks, see "How to Determine the Applicable Emissions Control System Warranty" under *Emission Control Systems Warranty on page 18* for more information.

Federal

- Gasoline Engines
  - Defects and performance for cars and light duty truck emission control systems are covered for the first 2 years or 24,000 miles, whichever comes first. From the first 2 years or 24,000 miles to 3 years or 36,000 miles defects in material or workmanship continue to be covered under the New Vehicle Limited Warranty Bumper-to-Bumper coverage explained previously. Specified major components are covered for the first 8 years or 80,000 miles, whichever comes first.

- Defects and performance for heavy duty truck emission control systems are covered for the first 5 years or 50,000 miles, whichever comes first.

- 6.6L DURAMAX® Diesel Engines are covered for the first 5 years or 50,000 miles, whichever comes first.

California

- Gasoline Engines
  - Defects and performance for cars and trucks with light duty or medium duty emission control systems are covered for the first 3 years or 50,000 miles, whichever comes first.
  - Specified components for cars or light duty trucks equipped with light duty or medium duty truck emission control systems are covered for the first 7 years or 70,000 miles, whichever comes first.

- 6.6L DURAMAX® Diesel Engines
  - Defects and performance for the emission control systems are covered for the first 5 years or 50,000 miles, whichever comes first.
  - Specified components for the emission control system are covered for the first 7 years or 70,000 miles, whichever comes first.

Important: Some California emission vehicles may have special coverages longer than those listed here. See "California Emission Control System Warranty" under *Emission Control Systems Warranty on page 18.*

Noise Emissions

- Coverage is for applicable vehicles weighing over 10,000 lbs based on the Gross Vehicle Weight Rating (GVWR) only, for the entire life of the vehicle.

General Motors Corporation New Vehicle Limited Warranty

GM will provide for repairs to the vehicle during the warranty period in accordance with the following terms, conditions, and limitations.

What Is Covered

Warranty Applies

This warranty is for GM vehicles registered in the United States and normally operated in the United States or Canada, and is provided to the original and any subsequent owners of the vehicle during the warranty period.

Repairs Covered

The warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Obtaining Repairs

To obtain warranty repairs, take the vehicle to a Chevrolet dealer facility within the warranty period and request the needed repairs. A reasonable time must be allowed for the dealer to perform necessary repairs.

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first, except for other coverages listed here under "What is Covered" and those items listed under "What Is Not Covered" later in this section.

Powertrain Coverage

The powertrain is covered for 5 years or 100,000 miles, whichever comes first, except for other coverages listed here under "What is Covered" and those items listed under "What is Not Covered" later in this section.

Engine: Cylinder head, block, timing gears, timing chain, timing cover, oil pump/oil pump housing, OHC carriers, valve covers, oil pan, seals, gaskets, turbocharger, supercharger and all internal lubricated parts as well as manifolds, flywheel, water pump, harmonic balancer and engine mount. Timing belts are covered until the first scheduled maintenance interval.

Transmission/Transaxle/Transfer Case: Case, all internal lubricated parts, torque converter, transfer case, transmission/transaxle mounts, seals, and gaskets.

Drive Systems: Final drive housing, all internal lubricated parts, axle shafts and bearings, constant velocity joints, axle housing, propeller shafts, universal joints, wheel bearings, locking hubs, front differential actuator, supports, front and rear hub bearings, seals and gaskets.

Tire Coverage

The tires supplied with your vehicle are covered against defects in material or workmanship under the Bumper-to-Bumper coverage. Any tire replaced will continue to be warranted for the remaining portion of the Bumper-to-Bumper coverage period.

Following expiration of the Bumper-to-Bumper coverage, tires may continue to be covered under the tire manufacturer's warranty. Review the tire manufacturer's warranty booklet or consult the tire manufacturer distributor for specific details.

Accessory Coverages

All GM accessories and parts sold by GM and permanently installed on a GM vehicle prior to delivery will be covered under the provisions of the New Vehicle Limited Warranty. In the event GM accessories are installed after vehicle delivery, or are replaced under the new vehicle warranty, they will be covered, parts and labor, for the balance of the vehicle warranty, but in no event less than 12 months/12,000 miles. This coverage is only effective for GM accessories permanently installed by a GM dealer or an associated GM-approved Accessory Distributor/Installer (ADI).

GM accessories sold over-the-counter, or those not requiring installation, will continue to receive the standard GM Dealer Parts Warranty of 12 months from the date of purchase, parts only.

GM Licensed Accessories are covered under the accessory-specific manufacturer's warranty and are not warranted by GM or its dealers.

Notice: **This warranty excludes:**

Any communications device that becomes unusable or unable to function as intended due to unavailability of compatible wireless service from the wireless communication carrier that provides service for the OnStar® system.

Sheet Metal Coverage

Sheet metal panels are covered against corrosion and rust-through as follows:

Corrosion: Body sheet metal panels are covered against rust for 3 years or 36,000 miles, whichever comes first.

Rust-Through: Any body sheet metal panel that rusts through, an actual hole in the sheet metal, is covered for up to 6 years or 100,000 miles, whichever comes first.

Important: Cosmetic or surface corrosion, resulting from stone chips or scratches in the paint, for example, is not included in sheet metal coverage.

Towing

Towing is covered to the nearest Chevrolet dealer if your vehicle cannot be driven because of a warranted defect.

6.6L DURAMAX® Diesel Engine Coverage

For trucks equipped with a 6.6L DURAMAX® Diesel Engine, the diesel engine, except those items listed under "What Is Not Covered" later in this section is covered for 5 years or 100,000 miles, whichever comes first. For additional information, refer to *Things You Should Know About the New Vehicle Limited Warranty on page 12*. Also refer to the appropriate emission control system warranty for possible additional coverages.

What Is Not Covered

Tire Damage or Wear

Normal tire wear or wear-out is not covered. Road hazard damage such as punctures, cuts, snags, and breaks resulting from pothole impact, curb impact, or from other objects is not covered. Also, damage from improper inflation, spinning, as when stuck in mud or snow, tire chains, racing, improper mounting or dismounting, misuse, negligence, alteration, vandalism, or misapplication is not covered.

Damage Due to Bedliners

Owners of trucks with a bedliner, whether after-market or factory installed, should expect that with normal operation the bedliner will move. This movement may cause finish damage and/or squeaks and rattles. Therefore, any damage caused by the bedliner is not covered under the terms of the warranty.

Damage Due to Accident, Misuse, or Alteration

Damage caused as the result of any of the following is not covered:

- Collision, fire, theft, freezing, vandalism, riot, explosion, or objects striking the vehicle
- Misuse of the vehicle such as driving over curbs, overloading, racing, or other competition. Proper vehicle use is discussed in the owner manual.
- Alteration or modification to the vehicle including the body, chassis, or components after final assembly by GM.
- Coverages do not apply if the odometer has been disconnected, its reading has been altered, or mileage cannot be determined.

Important: This warranty is void on vehicles currently or previously titled as salvaged, scrapped, junked, or totaled.

Damage or Corrosion Due to Environment, Chemical Treatments, and/or Aftermarket Products

Damage caused by airborne fallout, salt from sea air, salt or other materials used to control road conditions, chemicals, tree sap, stones, hail, earthquake, water or flood, windstorm, lightning, the application of chemicals or sealants subsequent to manufacture, etc., is not covered. See "Chemical Paint Spotting" under *Things You Should Know About the New Vehicle Limited Warranty on page 12* for more details.

Damage Due to Insufficient or Improper Maintenance

Damage caused by failure to follow the recommended maintenance schedule intervals and/or failure to use or maintain fluids, fuel, lubricants, or refrigerants recommended in the owner manual is not covered.

Damage Due to Contaminated or Poor Quality Fuel

Poor fuel quality or incorrect fuel may cause driveability problems such as hesitation, lack of power, stall, or no start. It may also render gauges inoperable or degrade functionality for components such as spark plugs, oxygen sensors, and the catalytic converter.

Damage from poor fuel quality, water contamination, incorrect diesel fuel or gasoline may not be covered.

It is recommended that gasoline meet specifications which were developed by automobile manufacturers around the world and contained in the World-Wide Fuel Charter which is available from the Alliance of Automobile Manufacturers at www.autoalliance.org/fuel_charter.htm. Gasoline meeting these specifications could provide improved driveability and emission control system performance compared to other gasoline.

Maintenance

All vehicles require periodic maintenance. Maintenance services, such as those detailed in the owner manual are the owner's expense. Vehicle lubrication, cleaning, or polishing are not covered. Failure of or damage to components requiring replacement or repair due to vehicle use, wear, exposure, or lack of maintenance is not covered.

Items such as:

- Audio System Cleaning
- Brake Pads/Linings
- Clutch Linings
- Coolants and Fluids

- Filters
- Keyless Entry Batteries *
- Limited Slip Rear Axle Service
- Tire Rotation
- Wheel Alignment/Balance **
- Wiper Inserts

are covered only when replacement or repair is the result of a defect in material or workmanship.

* Consumable battery covered up to 12 months only.

** Maintenance items after 7,500 miles.

Extra Expenses

Economic loss or extra expense is not covered.

Examples include:

- Inconvenience
- Lodging, meals, or other travel costs
- Loss of vehicle use
- Payment for loss of time or pay
- State or local taxes required on warranty repairs
- Storage

Other Terms: This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

GM does not authorize any person to create for it any other obligation or liability in connection with these vehicles. **Any implied warranty of merchantability or fitness for a particular purpose applicable to this vehicle is limited in duration to the duration of this written warranty. Performance of repairs and needed adjustments is the exclusive remedy under this written warranty or any implied warranty. GM shall not be liable for incidental or consequential damages, such as, but not limited to, lost wages or vehicle rental expenses, resulting from breach of this written warranty or any implied warranty. ***

* Some states do not allow limitations on how long an implied warranty will last or the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

Hybrid Specific Warranty

For vehicles sold in the United States, in addition to the Bumper-to-Bumper Coverage described previously, General Motors will warrant certain Hybrid components for each 2008 Chevrolet Tahoe Two-mode Hybrid and Chevrolet Malibu Hybrid (hereafter referred to as Hybrid) for 8 years or 100,000 miles (160 000 kilometres), whichever comes first, from the original in-service date of the vehicle, against warrantable repairs to the specific Hybrid components of the vehicle.

For vehicles sold in Canada, in addition to the Base Warranty Coverage described in the GM Canadian Limited Warranty, Maintenance and Owner Assistance Booklet, General Motors of Canada Limited will warrant certain Hybrid components for each 2008 Chevrolet Tahoe Two-mode Hybrid and Chevrolet Malibu Hybrid (hereafter referred to as Hybrid) for 8 years, or 160,000 kilometres, whichever comes first, from the original in-service date of the vehicle, against warrantable repairs to the specific Hybrid components of the vehicle.

This warranty is for Hybrid vehicles registered in the United States or Canada, and normally operated in the United States or Canada. In addition to the initial owner of the vehicle, the coverage described in this Hybrid warranty is transferable at no cost to any subsequent person(s) who assumes ownership of the vehicle within the above described 8 years or 100,000 mile (160 000 kilometres) term. No deductibles are associated with this Hybrid warranty.

This Hybrid warranty is in addition to the express conditions and warranties described previously. The coverage and benefits described under "New Vehicle Limited Warranty" are not extended or altered because of this special Hybrid Component Warranty.

For 2008 Hybrid owners requiring more comprehensive coverage than that provided under this Hybrid warranty, a GM Protection Plan may be available. See your Chevrolet dealer for more details.

What is Covered

This Hybrid warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the 8 year or 100,000 mile (160 000 kilometres) term for the following:

Towing

During the 8 year or 100,000 mile (160 000 km) Hybrid warranty period, towing is covered to the nearest Chevrolet servicing dealer if your vehicle cannot be driven because of a warranted Hybrid specific defect. Contact the Chevrolet Roadside Assistance Center for towing. Refer to the owner manual for details.

Malibu Hybrid Coverage

Hybrid Components

The energy storage control module and components including the Hybrid NiMh batteries, Hybrid battery disconnect, and Hybrid battery cooling fan.

Starter Generator Unit

The starter generator unit, starter generator control module, starter generator control module coolant pump, 3-phase cable assembly, starter generator drive belt, belt tensioner and brackets, belt pulley and brackets.

Other Hybrid Components

The 42-volt cable assembly, auxiliary transmission pump, hill start valve, and cabin heater coolant pump.

Tahoe Two-mode Hybrid Coverage

Transmission

Automatic transmission components including the transmission auxiliary fluid pump, transmission auxiliary pump controller, and 3 phase transmission cables.

Brakes

Brake modulator.

Other Hybrid Components

Battery pack, 300v cables, Drive Motor/Generator Control Module (DMCM), and Accessory Power Module.

What is Not Covered

In addition to the "What is Not Covered" section previously, this Hybrid warranty does not cover the following items:

Wear Items

Wear items, such as brake linings, are not covered in this Hybrid warranty.

Maintenance

As the vehicle owner, you are responsible for the performance of the scheduled maintenance listed in your owner manual. Maintenance intervals, checks, inspections, and recommended fluids and lubricants as prescribed in the owner manual are necessary to keep your vehicle in good working condition. Any damage caused by owner/lessee failure to follow scheduled maintenance may not be covered by warranty. Scheduled maintenance includes such items as:

- Brake Pads/Linings
- Coolants and Fluids
- Filters

Things You Should Know About the New Vehicle Limited Warranty

Warranty Repairs — Component Exchanges

In the interest of customer satisfaction, GM may offer exchange service on some vehicle components. This service is intended to reduce the amount of time your vehicle is not available for use due to repairs. Components used in exchange are service replacement parts which may be new, remanufactured, reconditioned, or repaired, depending on the component involved.

All exchange components used meet GM standards and are warranted the same as new components. Examples of the types of components that might be serviced in this fashion include: engine and transmission assemblies, instrument cluster assemblies, radios, compact disc players, tape players, batteries, and powertrain control modules.

Warranty Repairs — Recycled Materials

Environmental Protection Agency (EPA) guidelines and GM support the capture, purification, and reuse of automotive air conditioning refrigerant gases and engine coolant. As a result, any repairs GM may make to your vehicle may involve the installation of purified reclaimed refrigerant and coolant.

Tire Service

Any authorized Chevrolet or tire dealer for your brand of tires can assist you with tire service. If, after contacting one of these dealers, you need further assistance or you have questions, contact Chevrolet Customer Assistance Center. The toll-free telephone numbers are listed under *Owner Assistance on page 30.*

6.6L DURAMAX® Diesel Engine Components

For trucks equipped with a 6.6L Duramax® Diesel Engine, the complete engine assembly, including turbocharger components, is covered for defects in material or workmanship for 5 years or 100,000 miles, whichever comes first.

- Cylinder block and heads and all internal parts, intake and exhaust manifolds, timing gears, timing gear chain or belt and cover, flywheel, harmonic balancer, valve covers, oil pan, oil pump, water pump, fuel pump, engine mounts, seals, and gaskets
- Diesel Fuel Metering System: injection pump, nozzles, high pressure lines, and high pressure sealing devices
- Glow Plug Control System: control/glow plug assembly, glow plugs, cold advance relay, and Engine Control Module (ECM)
- Fuel injection control module, integral oil cooler, transmission adapter plate, left and right common fuel rails, fuel filter assembly, fuel temperature sensor, and function block

Important: Some of these components may also be covered by the Emission Warranty. See the "Emission Warranty Parts List" under *Emission Control Systems Warranty on page 18* for details.

Aftermarket Engine Performance Enhancement Products and Modifications

Some aftermarket engine performance products and modifications promise a way to increase the horsepower and torque levels of your vehicle's powertrain. You should be aware that these products may have detrimental effects on the performance and life of the engine, exhaust emission system, transmission, and drivetrain. The Duramax® Diesel Engine, Allison Automatic Transmission®, and drivetrain have been designed and built to offer industry leading durability and performance in the most demanding applications. Engine power enhancement products may enable the engine to operate at horsepower and torque levels that could damage, create failure, or reduce the life of the engine, engine emission system, transmission, and drivetrain. Damage, failure, or reduced life of the engine, transmission, emission system, drivetrain or other vehicle components caused by aftermarket engine performance enhancement products or modifications may not be covered under your vehicle warranty.

After-Manufacture "Rustproofing"

Your vehicle was designed and built to resist corrosion. Application of additional rust-inhibiting materials is neither necessary nor required under the Sheet Metal Coverage. GM makes no recommendations concerning the usefulness or value of such products.

Application of after-manufacture rustproofing products may create an environment which reduces the corrosion resistance built into your vehicle. Repairs to correct damage caused by such applications are not covered under your New Vehicle Limited Warranty.

Paint, Trim, and Appearance Items

Defects in paint, trim, upholstery, or other appearance items are normally corrected during new vehicle preparation. If you find any paint or appearance concerns, advise your dealer as soon as possible. Your owner manual has instructions regarding the care of these items.

Vehicle Operation and Care

Considering the investment you have made in your Chevrolet, we know you will want to operate and maintain it properly. We urge you to follow the maintenance instructions in your owner manual.

If you have questions on how to keep your vehicle in good working condition, see your Chevrolet dealer, the place many customers choose to have their maintenance work done. You can rely on your Chevrolet dealer to use the proper parts and repair practices.

Maintenance and Warranty Service Records

Retain receipts covering performance of regular maintenance. Receipts can be very important if a question arises as to whether a malfunction is caused by lack of maintenance or a defect in material or workmanship.

A "Maintenance Record" is provided in the maintenance schedule section of the owner manual for recording services performed.

The servicing dealer can provide a copy of any warranty repairs for your records.

Chemical Paint Spotting

Some weather and atmospheric conditions can create a chemical fallout. Airborne pollutants can fall upon and adhere to painted surfaces on your vehicle. This damage can take two forms: blotchy, ring-shaped discolorations, and/or small irregular dark spots etched into the paint surface.

Although no defect in the factory applied paint causes this, Chevrolet will repair, at no charge to the owner, the painted surfaces of new vehicles damaged by this fallout condition within 12 months or 12,000 miles of purchase, whichever comes first.

Warranty Coverage — Extensions

Time Extensions: The New Vehicle Limited Warranty will be extended one day for each day beyond the first 24 hour period in which your vehicle is at an authorized dealer facility for warranty service. You may be asked to show the repair orders to verify the period of time the warranty is to be extended. Your extension rights may vary depending on state law.

Mileage Extension: Prior to delivery, some mileage is put on your vehicle during testing at the assembly plant, during shipping, and while at the dealer facility. The dealer records this mileage on the first page of this warranty booklet at delivery. For eligible vehicles, this mileage will be added to the mileage limits of the warranty ensuring that you will receive full benefit of the coverage. Mileage extension eligibility:

- Applies only to new vehicles held exclusively in new vehicle inventory.
- Does not apply to used vehicles, GM-owned vehicles, dealer owned used vehicles, or dealer demonstrator vehicles.
- Does not apply to vehicles with more than 1,000 miles on the odometer even though the vehicle may not have been registered for license plates.

Touring Owner Service — Foreign Countries

If you are touring in a foreign country and repairs are needed, take your vehicle to a GM dealer facility, preferably one which sells and services Chevrolet vehicles. Once you return to the United States provide your dealer with a statement of circumstances, the original repair order, proof of ownership, and any paid receipt indicating the work performed and parts replaced for reimbursement consideration.

Important: Repairs made necessary by the use of improper or dirty fuels and lubricants are not covered under the warranty. See your owner manual for additional information on fuel requirements when operating in foreign countries.

Warranty Service — Foreign Countries

This warranty applies to GM vehicles registered in the United States and normally operated in the United States or Canada. If you have permanently relocated and established household residency in another country, GM may authorize the performance of repairs under the warranty authorized for vehicles generally sold by GM in that country. Contact an authorized GM dealer in your country for assistance.

Important: GM warranty coverages may be void on GM vehicles that have been imported/exported for resale.

Original Equipment Alterations

This warranty does not cover any damage or failure resulting from modification or alteration to the vehicle's original equipment as manufactured or assembled by General Motors. Examples of the types of alterations that would not be covered include cutting, welding, or disconnecting of the vehicle's original equipment parts and components.

Additionally, General Motors does not warranty non-GM parts and/or calibrations. The use of parts and/or control module calibrations not issued through General Motors will void the warranty coverage for those components that are damaged or otherwise affected by the installation of the non-GM part and/or control module calibration.

The only exception is that non-GM parts labeled "Certified to EPA Standards" are covered by the Federal Emissions Performance Warranty.

Recreation Vehicle and Special Body or Equipment Alterations

Installations or alterations to the original equipment vehicle, or chassis, as manufactured and assembled by GM, are not covered by this warranty. The special body company, assembler, or equipment installer is solely responsible for warranties on the body or equipment and any alterations to any of the parts, components, systems, or assemblies installed by GM. Examples include, but are not limited to, special body installations, such as recreational vehicles, the installation of any non-GM part, cutting, welding, or the disconnecting of original equipment vehicle or chassis parts and components, extension of wheelbase, suspension and driveline modifications, and axle additions.

Pre-Delivery Service

Defects in the mechanical, electrical, sheet metal, paint, trim, and other components of your vehicle may occur at the factory or while it is being transported to the dealer facility. Normally, any defects occurring during assembly are identified and corrected at the factory during the inspection process. In addition, dealers inspect each vehicle before delivery. They repair any uncorrected factory defects and any transit damage detected before the vehicle is delivered to you.

Any defects still present at the time the vehicle is delivered to you are covered by the warranty. If you find any defects, advise your dealer without delay. For further details concerning any repairs which the dealer may have made prior to you taking delivery of your vehicle, ask your dealer.

Production Changes

GM and GM dealers reserve the right to make changes in vehicles built and/or sold by them at any time without incurring any obligation to make the same or similar changes on vehicles previously built and/or sold by them.

Noise Emissions Warranty for Light Duty Trucks Over 10,000 LBS Gross Vehicle Weight Rating (GVWR) Only

GM warrants to the first person who purchases this vehicle for purposes other than resale and to each subsequent purchaser of this vehicle, as manufactured by GM, that this vehicle was designed, built, and equipped to conform at the time it left GM's control with all applicable United States EPA Noise Control Regulations.

This warranty covers this vehicle as designed, built, and equipped by GM, and is not limited to any particular part, component, or system of the vehicle manufactured by GM. Defects in design, assembly, or in any part, component, or vehicle system as manufactured by GM, which, at the time it left GM's control, caused noise emissions to exceed Federal Standards, are covered by this warranty for the life of the vehicle.

Emission Control Systems Warranty

The emission warranty on your vehicle is issued in accordance with the U.S. Federal Clean Air Act. Defects in material or workmanship in GM emission parts may also be covered under the New Vehicle Limited Warranty Bumper-to-Bumper coverage. There may be additional coverage on GM diesel engine vehicles. In any case, the warranty with the broadest coverage applies.

What Is Covered

The parts covered under the emission warranty are listed under "Emission Warranty Parts List" later in this section.

How to Determine the Applicable Emissions Control System Warranty

State and Federal agencies may require different emission control system warranty depending on:

- Whether the vehicle conforms to regulations applicable to light duty or heavy duty emission control systems.
- Whether the vehicle conforms to or is certified for California regulations in addition to U.S. EPA Federal regulations.

All vehicles are eligible for Federal Emissions Control System Warranty Coverage. If the emissions control label contains language stating the vehicle conforms to California regulations, the vehicle is also eligible for California Emissions Control System Warranty Coverage.

Federal Emission Control System Warranty

Federal Warranty Coverage

- Car or Light Duty Truck with a Gross Vehicle Weight Rating (GVWR) of 8,500 lbs. or less
  - 2 years or 24,000 miles and 8 years or 80,000 miles for the catalytic converter and the vehicle/powertrain control module (including emission-related software), whichever comes first.
- Light Duty Truck equipped with Heavy Duty Gasoline Engine and with a Gross Vehicle Weight Rating (GVWR) greater than 8,500 lbs.
  - 5 years or 50,000 miles, whichever comes first.

- Light Duty Truck equipped with Heavy Duty Diesel Engine and with a Gross Vehicle Weight Rating (GVWR) greater than 8,500 lbs.
  - 5 years or 50,000 miles, whichever comes first.

Federal Emission Defect Warranty

GM warrants to the owner the following:

- The vehicle was designed, equipped, and built so as to conform at the time of sale with the applicable regulations of the Federal Environmental Protection Agency (EPA).
- The vehicle is free from defects in material and workmanship which cause the vehicle to fail to conform with those regulations during the emission warranty period.

Emission related defects in the genuine GM parts listed under the Emission Warranty Parts List, including related diagnostic costs, parts, and labor are covered by this warranty.

Federal Emission Performance Warranty

Some states and/or local jurisdictions have established periodic vehicle Inspection and Maintenance (I/M) programs to encourage proper maintenance of your vehicle. If an EPA-approved I/M program is enforced in your area, you may also be eligible for Emission Performance Warranty coverage when all of the following three conditions are met:

- The vehicle has been maintained and operated in accordance with the instructions for proper maintenance and use set forth in the owner manual supplied with your vehicle.
- The vehicle fails an EPA-approved I/M test during the emission warranty period.
- The failure results, or will result, in the owner of the vehicle having to bear a penalty or other sanctions, including the denial of the right to use the vehicle, under local, state, or federal law.

GM warrants that your dealer will replace, repair, or adjust to GM specifications, at no charge to you, any of the parts listed under the "Emission Warranty Parts List" later in this section which may be necessary to conform to the applicable emission standards. Non-GM parts labeled "Certified to EPA Standards" are covered by the Federal Emission Performance Warranty.

California Emission Control System Warranty

This section outlines the emission warranty that GM provides for your vehicle in accordance with the California Air Resources Board. Defects in material or workmanship in GM emission parts may also be covered under the New Vehicle Limited Warranty Bumper-to-Bumper coverage. There may be additional coverage on GM diesel engine vehicles. In any case, the warranty with the broadest coverage applies.

This warranty applies if your vehicle meets both of the following requirements:

- Your vehicle is registered in California **or other states adopting California emission and warranty regulations.***
- Your vehicle is certified for sale in California as indicated on the vehicle's emission control information label.

***Important:** Connecticut, Maine, Massachusetts, Pennsylvania, Rhode Island, and Vermont have California Emissions Warranty coverage. (New York adopted California emission standards, but not the California Emissions Warranty. The Federal Emissions Control Warranty applies to all non-PZEV vehicles in New York.)

California Partial Zero Emission Vehicles (PZEV) have extended coverage on all emission related parts.

***Important:** California, New York, Massachusetts, Vermont, Maine, Connecticut, Rhode Island, and New Jersey have PZEV Emission Warranty Coverage.

Your Rights and Obligations (For Vehicles Subject to California Exhaust Emission Standards)

In California, new motor vehicles must be designed, equipped, and built to meet the state's stringent anti-smog standards. GM must warrant your vehicle's emission control system for the periods of time and mileage listed provided there has been no abuse, neglect, or improper maintenance of your vehicle. Your vehicle's emission control system may include parts such as the fuel injection system, ignition system, catalytic converter, and engine computer. Also included are hoses, belts, connectors, and other emission related assemblies.

Where a warrantable condition exists, GM will repair your vehicle at no cost to you including diagnosis, parts, and labor.

California Emission Defect and Emission Performance Warranty Coverage

For cars and trucks with light duty or medium duty emissions:

- For 3 years or 50,000 miles, whichever comes first:
  - If your vehicle fails a smog check inspection, GM will make all necessary repairs and adjustments to ensure that your vehicle passes the inspection. This is your Emission Control System Performance Warranty.
  - If any emission related part on your vehicle is defective, GM will repair or replace it. This is your Short-term Emission Defects Warranty.
- For 7 years or 70,000 miles whichever comes first:
  - If an emission related part listed in this booklet specially noted with coverage for 7 years or 70,000 miles is defective, GM will repair or replace it. This is your Long-term Emission Control System Defects Warranty.
- For 8 years or 80,000 miles, whichever comes first:
  - If the catalytic converter, vehicle powertrain control module including emission related software is found to be defective, GM will repair or replace it under the Federal Emission Control System Warranty.
- For 8 years or 100,000 miles, whichever comes first for California Low Emission Vehicle 2 (LEV2) vehicles equipped with option code NUA:
  - If an emission related part listed in this booklet specially noted with 7 years/70,000 miles or 8 years/80,000 miles is defective, GM will repair or replace it. This is your Long-term Emission Control System Defect Warranty.
- For 15 years or 150,000 miles, whichever comes first for a Partial Zero Emission Vehicle (PZEV):
  - If any emission related part listed in this booklet is defective GM will repair or replace it. This is your (PZEV) Emission Control System Defects Warranty.

Any authorized Chevrolet dealer will, as necessary under these warranties, replace, repair, or adjust to GM specifications any genuine GM parts that affect emissions.

The applicable warranty period shall begin on the date the vehicle is delivered to the first retail purchaser or, if the vehicle is first placed in service as a demonstrator or company vehicle prior to sale at retail, on the date the vehicle is placed in such service.

Owner's Warranty Responsibilities

As the vehicle owner, you are responsible for the performance of the scheduled maintenance listed in your owner manual. GM recommends that you retain all maintenance receipts for your vehicle, but GM cannot deny warranty coverage solely for the lack of receipts or for your failure to ensure the performance of all scheduled maintenance.

You are responsible for presenting your vehicle to a GM dealer selling your vehicle line as soon as a problem exists. The warranted repairs should be completed in a reasonable amount of time, not to exceed 30 days.

As the vehicle owner, you should also be aware that GM may deny warranty coverage if your vehicle or a part has failed due to abuse, neglect, improper or insufficient maintenance, or modifications not approved by GM.

If you have any questions regarding your rights and responsibilities under these warranties, you should contact the Customer Assistance Center at 1-800-222-1020 or, in California, write to:

State of California Air Resources Board
Mobile Source Operations Division
P.O. Box 8001
El Monte, CA 91731-2990

Emission Warranty Parts List

The emission parts listed here are covered under the Emission Control System Warranty. The terms are explained previously in this section under the "Federal Emission Control System Warranty" and the "California Emission Control System Warranty".

Important: Certain parts may be covered beyond these warranties if shown with asterisk(s) as follows:

- (*) 7 years/70,000 miles, whichever comes first, California Emission Control System Warranty coverage.
- (**) 8 years/80,000 miles, whichever comes first, Federal Emission Control System Warranty coverage. (Also applies to California certified light duty and medium duty vehicles.)
- (*) and (**) are 8 years/100,000 miles, whichever comes first, for California LEV2 vehicles equipped with option code NUA.

The Emission Control System Warranty obligations do not apply to conditions resulting from tampering, abuse, neglect, or improper maintenance; or any other item listed under "What Is Not Covered" under *General Motors Corporation New Vehicle Limited Warranty on page 4.* The "Other Terms" presented under *General Motors Corporation New Vehicle Limited Warranty on page 4* also apply to the emission related warranties.

Powertrain Control System

ABS Control Module **
Camshaft Position Actuator *
Camshaft Position Actuator Valve
Coolant Level Sensor
Data Link Connector
Electronic Throttle Control (ETC) Motor
Engine Control Module (ECM) **
Engine Coolant Temperature Sensor
Fast Idle Solenoid
Flexible Fuel Sensor *
Fuel Control Module **
Intake Air Temperature Sensor
Malfunction Indicator Lamp
Manifold Absolute Pressure Sensor
Mass Air Flow Sensor
Oil Pressure Sensor (DoD™ only)
Oxygen Sensors
Powertrain Control Module (PCM) **
Programmable Read Only Memory (PROM)
Throttle Position Sensor
Throttle Position Switch
Vehicle Control Module (VCM) **
Vehicle Speed Sensor
Wheel Speed Sensor

Transmission Controls and Torque Management

GMLAN (CAN) Communications Circuit
Manual Transmission Clutch Switch
Park/Neutral Switch
Torque Converter Clutch Solenoids
Torque Converter Clutch Switch
Transmission Control Module **
Transmission Fluid Temperature Sensor
Transmission Gear Selection Switch (Diesel)
Transmission Internal Mode Switch
Transmission Pressure Control Solenoids
Transmission Pressure Switches
Transmission Shift Solenoids
Transmission Speed Sensors

Fuel Management System

Common Rail Assembly (6.6L DURAMAX® Diesel) *

Diesel Fuel Injection Pump *

Diesel Fuel Injection Pump Timing Adjust

Diesel Fuel Injector Control Module – EDU (6.6L DURAMAX® Diesel) *

Diesel Fuel Temperature Sensor

Direct Fuel Injector Assembly (6.6L DURAMAX® Diesel) *

Fuel Injector

Fuel Pressure Regulator

Fuel Rail Assembly *

Fuel Rail Pressure Sensor

Function Block (6.6L DURAMAX® Diesel)

High Pressure Fuel Pump (SIDI) *

Air Management System

Air Cleaner

Air Cleaner Diaphragm Motor

Air Cleaner Resonator

Air Cleaner Temperature Compensator Valve

Air Intake Ducts

Charge Air Control Actuator

Charge Air Control Solenoid Valve

Charge Air Control Valve

Charge Air Cooler *

Charge Air Cooler Fan

Idle Air Control Valve

Idle Speed Control Motor

Intake Manifold *

Intake Manifold Gasket (7/70 Only Uplander, Montana SV6, and DURAMAX® Diesel) *

Intake Manifold Heater

Intake Manifold Tuning Valve

Intake Manifold Tuning Valve Relay

Supercharger Assembly *

Throttle Body * (Replacement Only)

Throttle Body Heater

Throttle Closing Dashpot

Turbocharger Assembly *

Turbocharger Boost Sensor

Turbocharger Oil Separator

Turbocharger Thermo Purge Switch

Vacuum Pump (6.6L DURAMAX® Diesel)

Ignition System

Camshaft Position Sensor(s)

Crankshaft Position Sensor(s)

Distributor

Distributor Cap

Distributor Pick Up Coil

Distributor Rotor

Glow Plug(s) (Diesel)

Glow Plug Controller (Diesel)

Glow Plug Relay (Diesel)

Ignition Coil(s)

Ignition Control Module

Ignition Timing Adjustment

Knock Sensor

Spark Plug Wires

Spark Plugs

Catalytic Converter System

Catalytic Converter(s) and Muffler if attached as assembly **

Diesel Exhaust Temperature and Pressure Sensors

Diesel Particulate Filter (DPF) *

Exhaust Manifold (7/70 Only Corvette 7.0L, Equinox, Torrent, Uplander, Montana SV6, Cadillac DTS 4.6L and XLR, (Impala and Grand Prix 5.3L right side) and C/K Trucks < 14,000 GVWR 8.1L) *

Exhaust Manifold with Catalytic Converter attached as assembly **

Exhaust Manifold Gasket

Exhaust Pipes and/or Mufflers (when located between catalytic converters and exhaust manifold)

Positive Crankcase Ventilation System

Oil Filler Cap

PCV Filter

PCV Oil Separator

PCV Valve

Exhaust Gas Recirculation System

EGR Feed and Delivery Pipes or Cast-in Passages

EGR Valve

EGR Valve Cooler (6.6L DURAMAX® Diesel) *

EGR Vacuum Pump Assembly (6.6L DURAMAX® Diesel)

Secondary Air Injection System

Air Pump

Check Valves

Evaporative Emission Control System (Gasoline Engines)

Canister

Canister Purge Solenoid Valve

Canister Vent Solenoid

Fuel Feed and Return Pipes and Hoses

Fuel Filler Cap

Fuel Level Sensor

Fuel Limiter Vent Valve *

Fuel Tank(s) *

Fuel Tank Filler Pipe (with restrictor)

Fuel Tank Vacuum or Pressure Sensor

Hybrid

Auxiliary Transmission Fluid Pump

Battery Cooling Fan

Battery Pack Control Module (BPCM) *

Battery Pack Current Sensor

Brake Pedal Travel Sensor

Drive Motors A and B

Drive Motor A and B Resolvers

Drive Motor/Generator Control Module (DMCM - HCP, MCPA, MCPB) **

Electro-Hydraulic Brake Control Module (EBCM) **

Energy Storage Control Module **

Fuel Filler Pipe Adapter Seal

Hybrid Batteries

Hybrid Battery Temperature Sensors

Hybrid Battery Voltage Sensors

SGCM Coolant Circuit (fan and fan relay and pump)

Starter Generator Control Module **

Transmission Friction Elements

Transmission Substrate Temperature Sensor

Miscellaneous Items Used with Above Components are Covered

Belts

Boots

Clamps

Connectors

Ducts

Fittings

Gaskets

Grommets

Hoses

Housings

Mounting Hardware

Pipes

Pulleys

Sealing Devices

Springs

Tubes

Wiring

Parts specified in your maintenance schedule that require scheduled replacement are covered up to their first replacement interval or the applicable emission warranty coverage period, whichever comes first. If failure of one of these parts results in failure of another part, both will be covered under the Emission Control System Warranty.

Parts specified in your maintenance schedule that require scheduled replacement are covered up to their first replacement interval or the applicable emission warranty coverage period, whichever comes first. If failure of one of these parts results in failure of another part, both will be covered under the Emission Control System Warranty.

For detailed information concerning specific parts covered by these emission control systems warranties, ask your dealer.

Replacement Parts

The emission control systems of your vehicle were designed, built, and tested using genuine GM parts* and the vehicle is certified as being in conformity with applicable federal and California emission requirements. **Accordingly, it is recommended that any replacement parts used for maintenance or for the repair of emission control systems be new, genuine GM parts.**

The warranty obligations are not dependent upon the use of any particular brand of replacement parts. The owner may elect to use non-genuine GM parts for replacement purposes. Use of replacement parts which are not of equivalent quality may impair the effectiveness of emission control systems.

If other than new, genuine GM parts are used for maintenance replacements or for the repair of parts affecting emission control, the owner should assure himself/herself that such parts are warranted by their manufacturer to be equivalent to genuine GM parts in performance and durability.

* "Genuine GM parts," when used in connection with GM vehicles means parts manufactured by or for GM, designed for use on GM vehicles, and distributed by any division or subsidiary of GM.

Maintenance and Repairs

Maintenance and repairs can be performed by any qualified service outlet; however, warranty repairs must be performed by an authorized dealer except in an emergency situation when a warranted part or a warranty station is not reasonably available to the vehicle owner.

In an emergency, where an authorized dealer is not reasonably available, repairs may be performed at any available service establishment or by the owner, using any replacement part. Chevrolet will consider reimbursement for the expense incurred, including diagnosis, not to exceed the manufacturer's suggested retail price for all warranted parts replaced and labor charges based on Chevrolet's recommended time allowance for the warranty repair and the geographically appropriate labor rate. A part not being available within 10 days or a repair not being completed within 30 days constitutes an emergency. Retain receipts and failed parts in order to receive compensation for warranty repairs reimbursable due to an emergency.

If, in an emergency situation, it is necessary to have repairs performed by other than a Chevrolet dealer and you believe the repairs are covered by emission warranties, take the replaced parts and your receipt to a Chevrolet dealer for reimbursement consideration. This applies to both the Federal Emission Defect Warranty and Federal Emission Performance Warranty.

Receipts and records covering the performance of regular maintenance or emergency repairs should be retained in the event questions arise concerning maintenance. These receipts and records should be transferred to each subsequent owner. GM will not deny warranty coverage solely on the absence of maintenance records. However, GM may deny a warranty claim if a failure to perform scheduled maintenance resulted in the failure of a warranty part.

Claims Procedure

As with the other warranties covered in this booklet, take your vehicle to any authorized Chevrolet dealer facility to obtain service under the emission warranty. This should be done as soon as possible after failing an EPA-approved I/M test or a California smog check test, or at any time you suspect a defect in a part.

Those repairs qualifying under the warranty will be performed by any Chevrolet dealer at no charge. Repairs which do not qualify will be charged to you. You will be notified as to whether or not the repair qualifies under the warranty within a reasonable time, not to exceed 30 days after receipt of the vehicle by the dealer, or within the time period required by local or state law.

The only exceptions would be if you request or agree to an extension, or if a delay results from events beyond the control of your dealer or GM. If you are not so notified, GM will provide any required repairs at no charge.

In the event a warranty matter is not handled to your satisfaction, refer to the "Customer Satisfaction Procedure" under *Owner Assistance on page 30*.

For further information or to report violations of the Emission Control System Warranty, you may contact the EPA at:

Manager, Certification and Compliance
Division (6405J)
Warranty Claims
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

For a vehicle subject to the California Exhaust Emission Standards, you may contact the:

State of California Air Resources Board
Mobile Source Operations Division
P.O. Box 8001
El Monte, CA 97131-2990

Owner Assistance

Customer Satisfaction Procedure

Your satisfaction and goodwill are important to your dealer and to Chevrolet. Normally, any concerns with the sales transaction or the operation of your vehicle will be resolved by your dealer's sales or service departments. Sometimes, however, despite the best intentions of all concerned, misunderstandings can occur. If your concern has not been resolved to your satisfaction, the following steps should be taken:

STEP ONE: Discuss your concern with a member of dealer management. Normally, concerns can be quickly resolved at that level. If the matter has already been reviewed with the sales, service, or parts manager, **contact the owner of the dealer facility** or the general manager.

STEP TWO: If after contacting a member of dealer management, it appears your concern cannot be resolved by the dealer without further help **contact the Chevrolet Customer Assistance Center** by calling 1-800-222-1020. In Canada, contact GM of Canada Central Office in Oshawa by calling 1-800-263-3777: English, or 1-800-263-7854: French.

We encourage you to call the toll-free number in order to give your inquiry prompt attention. Have the following information available to give the Customer Assistance Representative:

- The Vehicle Identification Number (VIN). This is available from the vehicle registration, title, or the plate above the top of the instrument panel on the driver side, and visible through the windshield.
- The dealer name and location
- The vehicle's delivery date and present mileage

When contacting Chevrolet, remember that your concern will likely be resolved at a dealer's facility. That is why we suggest you follow Step One first if you have a concern.

STEP THREE: Both GM and your GM dealer are committed to making sure you are completely satisfied with your new vehicle. However, if you continue to remain unsatisfied after following the procedure outlined in Steps One and Two, you should file with the BBB Auto Line Program to enforce any additional rights you may have.

The BBB Auto Line Program is an out of court program administered by the Council of Better Business Bureaus to settle automotive disputes regarding vehicle repairs or the interpretation of the New Vehicle Limited Warranty.

Although you may be required to resort to this informal dispute resolution program prior to filing a court action, use of the program is free of charge and your case will generally be heard within 40 days. If you do not agree with the decision given in your case, you may reject it and proceed with any other venue for relief available to you.

You may contact the BBB Auto Line Program using the toll-free telephone number or write them at the following address:

BBB Auto Line Program
Council of Better Business Bureaus, Inc.
4200 Wilson Boulevard
Suite 800
Arlington, VA 22203-1804

www.lemonlaw.bbb.org
Telephone: 1-800-955-5100

This program is available in all 50 states and the District of Columbia. Eligibility is limited by vehicle age, mileage, and other factors. GM reserves the right to change eligibility limitations and/or to discontinue its participation in this program.

State Warranty Enforcement Laws

Laws in many states permit owners to obtain a replacement vehicle or a refund of the purchase price under certain circumstances. The provisions of these laws vary from state to state. To the extent allowed by state law, GM requires that you first provide us with written notification of any service difficulty you have experienced so that we have an opportunity to make any needed repairs before you are eligible for the remedies provided by these laws. Your written notification should be sent to the Chevrolet Customer Assistance Center.

Assistance For Text Telephone (TTY) Users

To assist customers who are deaf or hard of hearing and who use Text Telephones (TTYs), Chevrolet has TTY equipment available at its Customer Assistance Center and Roadside Assistance Center.

The TTY for the Chevrolet Customer Assistance Center is:

1-800-833-2438 in the United States
1-800-263-3830 in Canada

The TTY for the Chevrolet Roadside Assistance Center is:

1-888-889-2438 in the U.S.

Chevrolet Roadside Assistance

Chevrolet is proud to offer the response, security, and convenience of Chevrolet's 24-hour Roadside Assistance Program for a period of 5 years or 100,000 miles, whichever comes first. Consult your dealer or refer to the owner manual for details. The Chevrolet Roadside Assistance Center can be reached by calling 1-800-CHEV-USA (243-8872).

Roadside Assistance is not part of or included in the coverage provided by the New Vehicle Limited Warranty. General Motors and General Motors of Canada Limited reserve the right to make any changes or discontinue the Roadside Assistance program at any time without notification.

Chevrolet Courtesy Transportation

If your vehicle requires warranty repairs during the 5 year/100,000 mile (8 year/100,000 miles for Hybrid vehicles) warranty coverage period, alternate transportation and/or reimbursement of certain transportation expenses are available under the Courtesy Transportation Program. Several transportation options are available. Consult your dealer or refer to the owner manual for details.

Courtesy Transportation is not part of or included in the coverage provided by the New Vehicle Limited Warranty. General Motors and General Motors of Canada Limited reserve the right to make any changes or discontinue the Courtesy Transportation program at any time without notification.

Warranty Information for California Only

California Civil Code Section 1793.2(d) requires that, if GM or its representatives are unable to repair a new motor vehicle to conform to the vehicle's applicable express warranties after a reasonable number of attempts, GM shall either replace the new motor vehicle or reimburse the buyer the amount paid or payable by the buyer. California Civil Code Section 1793.22(b) creates a presumption that GM has had a reasonable number of attempts to conform the vehicle to its applicable express warranties if, within 18 months from delivery to the buyer or 18,000 miles on the vehicle's odometer, whichever occurs first, one or more of the following occurs:

- The same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven AND the nonconformity has been subject to repair two or more times by GM or its agents AND the buyer or lessee has directly notified GM of the need for the repair of the nonconformity.
- The same nonconformity has been subject to repair four or more times by GM or its agents AND the buyer has notified GM of the need for the repair of the nonconformity.

- The vehicle is out of service by reason of repair nonconformities by GM or its agents for a cumulative total of more than 30 calendar days after delivery of the vehicle to the buyer.

NOTICE TO GENERAL MOTORS AS REQUIRED ABOVE SHALL BE SENT TO THE FOLLOWING ADDRESS:

General Motors Corporation
P.O. Box 33170
Detroit, MI 48232-5170

Fax Number: 1-866-962-2868

When you make an inquiry, you will need to give the year, model, and mileage of your vehicle and your VIN.

Special Coverage Adjustment Programs Beyond the Warranty Period

Chevrolet is proud of the protection afforded by its warranty coverages. In order to achieve maximum customer satisfaction, there may be times when Chevrolet will establish a special coverage adjustment program to pay all or part of the cost of certain repairs not covered by the warranty or to reimburse certain repair expenses you may have incurred. Check with your Chevrolet dealer or call the Chevrolet Customer Assistance Center to determine whether any special coverage adjustment program is applicable to your vehicle.

When you make an inquiry, you will need to give the year, model, and mileage of your vehicle and your VIN.

Customer Assistance Offices

Chevrolet encourages customers to call the toll-free telephone number for assistance. However, if you wish to write or e-mail Chevrolet, refer to the address below.

United States

Chevrolet Customer Assistance Center
P.O. Box 33170
Detroit, MI 48232-5170

www.Chevrolet.com
1-800-222-1020
1-800-833-2438 (For Text Telephone devices (TTYs))

Roadside Assistance:
1-800-CHEV-USA (243-8872)
Fax Number: 1-866-962-2868

From Puerto Rico:
1-800-496-9992 (English)
1-800-496-9993 (Spanish)
Fax Number: 313-381-0022

From U.S. Virgin Islands:
1-800-496-9994
Fax Number: 313-381-0022

Canada

Customer Assistance Centre, CA1-163-005
General Motors of Canada Limited
1908 Colonel Sam Drive
Oshawa, Ontario L1H 8P7

1-800-263-3777 (English)
1-800-263-7854 (French)
1-800-263-3830 (For Text Telephone devices (TTYs))
Roadside Assistance: 1-800-268-6800

Mexico, Central America, and Caribbean Islands/Countries (Except Puerto Rico and U.S. Virgin Islands)

General Motors de Mexico, S. de R.L. de C.V.
Customer Assistance Center
Paseo de la Reforma # 2740
Col. Lomas de Bezares
C.P. 11910, Mexico, D.F.

01-800-508-0000
Long Distance: 011-52-53 29 0 800

Online Owner Center

The Owner Center is a resource for your GM ownership needs. Specific vehicle information can be found in one place.

The Online Owner Center allows you to:

- Get e-mail service reminders.
- Access information about your specific vehicle, including tips and videos and an electronic version of this warranty manual.
- Keep track of your vehicle's service history and maintenance schedule.
- Find GM dealers for service nationwide.
- Receive special promotions and privileges only available to members.

Refer to the web for updated information.

To register your vehicle, visit www.MyGMLink.com.

Don't Wait Until Your New Vehicle Limited Warranty – and Your Opportunity to Purchase the GM Protection Plan – Expire.

Learn how to protect yourself, with the GM Protection Plan, against costly repairs after your new vehicle limited warranty expires. A monthly payment plan makes it convenient and affordable. Just call or mail this request and you'll find out how you can get the security of knowing you're covered if something breaks down.

GM Protection Plan

No-Obligation GM Protection Information Request

☐ YES! Please send me free information about how I can protect myself from costly repair bills after my new vehicle limited warranty expires.

Name: _____

Address: _____ Apt#: _____

City: _____ State: _____ Zip: _____

Daytime Phone: ( ) _____ Evening Phone: ( ) _____

Vehicle Information

Vehicle Identification Number *(17 Digits)*

_____

Make/Model: _____ Year: _____

Purchase Date: _____ Mileage: _____

Complete and mail this request today and we'll send you FREE details about how you can add years and miles of protection.

Mail to: GM Protection Plan
P.O. Box 02968
Detroit, MI 48202

Or call 1-800-981-4677 toll-free for details today.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

DONNA M. TRUSKY, ASHA JEFFRIES, GAYNELL COLE on behalf of themselves and all others similarly situated, Plaintiffs, vs GENERAL MOTORS COMPANY 300 Renaissance Center Detroit, MI48243 Defendant.	Case No. 2:11-cv-12815 HON. SEAN F. COX

STIPULATION AND ORDER EXTENDING DEADLINE

The Court being advised that Plaintiffs and Defendant, by their undersigned counsel, have stipulated and agreed that the deadline for Plaintiffs to file a Response to Defendant's Motion to Dismiss can be extended from the current deadline of October 24, 2011 to November, 21, 2011, as evidenced by the signature of undersigned counsel:

IT IS HEREBY ORDERED that the deadline for Plaintiffs to file their Response to Defendant's Motion to Dismiss is extended to November 21, 2011.

SO ORDERED

Dated: October 24, 2011

s/ Sean F. Cox
Sean F. Cox
U. S. District Judge

SO STIPULATED

Fink + Associates Law

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Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

DONNA M. TRUSKY, ASHA JEFFRIES, GAYNELL COLE on behalf of themselves and all others similarly situated, Plaintiffs, vs GENERAL MOTORS COMPANY 300 Renaissance Center Detroit, MI48243 Defendant.	Case No. 2:11-cv-12815 HON. SEAN F. COX

STIPULATION AND ORDER TO STAY
LITIGATION PENDING RULINGS FROM THE UNITED STATES
BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

For the reasons stated below, the parties in this action stipulate to entry of an Order staying proceedings before this Court, until such time as the Bankruptcy Court for the Southern District of New York ("Bankruptcy Court) enters an Opinion or Order addressing the dispute identified below.

Plaintiffs in this putative class action have filed claims against General Motors LLC f/k/a General Motors Company ("New GM"), alleging that New GM breached express warranties with Plaintiffs and the putative class members. *See* Amended Class Action Complaint, dkt #15.

New GM filed a Motion to Dismiss arguing, in part, that the claims asserted and the relief sought by Plaintiffs are outside the scope of the warranty terms and impermissibly are premised on conduct of Motors Liquidation Company f/k/a General Motors

Corporation ("Old GM"). New GM contends that the claims and relief constitute a violation of the Order of the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") pursuant to which New GM acquired its assets and assumed specific liabilities only. *See* Motion to Dismiss, dkt #18. Additionally, New GM contends that the adjudication of the issues noted in this paragraph is within the exclusive jurisdiction of the Bankruptcy Court. Plaintiffs dispute New GM's position and believe that they properly may pursue their claims and seek relief against New GM and in this Court. The parties' disagreement constitutes an actual and pending dispute (the "Dispute").

Plaintiffs believe that it would serve judicial economy for them to file a Motion before the Bankruptcy Court, in Case No. 09-50026, requesting, *inter alia*, that the Bankruptcy Court address and resolve the Dispute in paragraph 2, above.

The parties stipulate that this proceeding should be stayed pending an Opinion or Order from the Bankruptcy Court resolving the Dispute in paragraph 2, above or expressly declining to do so.

IT IS HEREBY ORDERED that the proceedings in this action are stayed until such time as the Bankruptcy Court enters an Opinion or Order resolving the Dispute as noted above or expressly declining to do so. Although either party may notify the Court that the stay should be

lifted, it will be Plaintiffs' responsibility to ensure that the Court is properly notified of same.

SO ORDERED

Dated: November 21, 2011

s/ Sean F. Cox
Sean F. Cox
U. S. District Court Judge

SO STIPULATED

Fink + Associates Law

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Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

DONNA M. TRUSKY, ASHA JEFFRIES, GAYNELL COLE on behalf of themselves and all others similarly situated, Plaintiffs, vs. GENERAL MOTORS COMPANY 300 Renaissance Center Detroit, MI48243 Defendant.	Case No. 2:11-cv-12815 HON. SEAN F. COX

PLAINTIFFS' MOTION TO TRANSFER VENUE
TO THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK PURSUANT TO 28 U.S.C. § 1412

Plaintiffs, through their undersigned counsel, respectfully request that this Court enter an Order pursuant to 28 U.S.C. § 1412 transferring venue to the United States District Court for the Southern District of New York (the "Southern District Court"), so that this action may be referred to the United States Bankruptcy Court of the Southern District of New York (the "Bankruptcy Court") where the bankruptcy case of Motors Liquidation Company, f/k/a General Motors Corp. ("Old GM") is pending.. In support of their Motion, Plaintiffs submit and incorporate the attached Brief and state as follows:

1. Plaintiffs in this putative class action filed claims against General Motors Company ("New GM"), f/k/a General Motors Corporation ("Old GM"), alleging that (i) New GM assumed Old GM's express warranty obligations when it bought Old GM's assets in Old GM's bankruptcy case, (ii) model year 2007 and 2008 Chevrolet Impalas produced by Old GM had defective rear spindle rods which causes excessive

tire wear, and (iii) certain Chevrolet Impala owners therefore have express warranty claims against New GM. *See* Amended Class Action Complaint ("ACAC"), Dkt. #15.

2. New GM filed a Motion to Dismiss, arguing primarily that (i) the claims asserted by Plaintiffs were not express warranties assumed by New GM in Old GM's bankruptcy case, but instead were claims against Old GM, and (ii) the adjudication of these issues was within the exclusive jurisdiction of the Bankruptcy Court which had retained jurisdiction to resolve all such disputes. *See* Motion to Dismiss, Dkt. #18.
3. The parties agreed to stipulate to entry of an Order staying the proceedings before this Court, until the Bankruptcy Court resolved the dispute or expressly declined to do so.
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5. After further and full consultation, Plaintiffs believe that transfer of this action to the Southern District of New York for referral to the Bankruptcy Court is the proper procedural mechanism to implement the stipulation.
6. There is an overlap between the merits of Plaintiffs' claims and the coverage of the express warranties, and the issue of which claims were assumed pursuant to the purchase and sale agreement and the Sale Approval Order. All of the Plaintiffs' claims implicate assumed liability issues requiring interpretation of the Sale Approval Order. Interpretation and enforcement of the Sale Approval Order is in the exclusive jurisdiction of the Bankruptcy Court.
7. Pursuant to 28 U.S.C. § 1412, this Court has the authority to transfer venue "to a district court for another district, in the interest of justice or for the convenience of the

parties." If this case is transferred to the Southern District of New York, that Court would be empowered to refer the matter to the Bankruptcy Court, pursuant to 28 U.S.C. § 157(a). *See Mendoza v. General Motors, LLC*, 2010 WL 5224136 (C.D. Cal. Dec. 15, 2010).

8. Prior to filing this Motion, Plaintiffs sought concurrence from New GM in transferring venue to the Southern District of New York so that the case may be referred to the Bankruptcy Court. New GM declined to give its concurrence.

WHEREFORE, Plaintiffs respectfully request entry of an Order Transferring these Proceedings to the Southern District of New York pursuant to 28 U.S.C. § 1412 for referral to the Bankruptcy Court pursuant to 28 U.S.C. § 157(a).

Respectfully submitted,

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BRIEF IN SUPPORT OF PLAINTIFFS' MOTION TO TRANSFER VENUE TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK PURSUANT TO 28 U.S.C. § 1412

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This case arises from claims brought by several Plaintiffs on behalf of themselves and other individuals similarly situated. Plaintiffs allege that model year 2007 and 2008 Chevrolet Impalas were sold with common defective rear spindle rods (ACAC, ¶ 2); that the problem caused the rear spindle rods to fail and to directly damage other related components of the vehicle including the rear wheel alignment which leads to premature tire wear on the inner sections of the rear tires. (Id.). Even though recall bulletins were issued for model year 2007 and 2008 Impalas operated as police vehicles, which are alleged to be identical structurally to the non-police vehicles, New GM refused to honor its warranties with Plaintiffs and the putative class, by failing to correct this manufacturing defect in non-police vehicles. (Id.). Significantly, even though most of the vehicles in question were manufactured by GM prior to its filing for bankruptcy, Plaintiffs allege that their claims were included within those liabilities assumed by New GM. Plaintiffs' claims are based exclusively on express warranty law, which is an "assumed liability" of New GM under the Bankruptcy Court's Sale Approval Order. (Id. ¶ 1).

In lieu of filing an Answer to the Complaint, New GM filed a Motion to Dismiss. In the Motion, New GM argued:

> The Amended Complaint purports to be based on a responsibility New GM assumed from Old GM to administer certain express, limited warranties subject to their explicit terms and limitations. However, the claims asserted and the relief sought by Plaintiffs are unambiguously outside the scope of the warranty terms and are premised on conduct of Old GM. They therefore constitute a violation of the Order of the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") pursuant to which New GM acquired its assets and assumed specific liabilities only. The adjudication of that issue is within the exclusive jurisdiction of the Bankruptcy Court. The Amended Complaint did not, and cannot, fix this threshold jurisdictional problem, which was in the initial Complaint too. The Amended Complaint should be dismissed without prejudice for this reason alone.

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In essence, New GM argues that this Court should dismiss the case because Plaintiffs' "attempt to enlarge New GM's liability" violated the Bankruptcy Court's Sale Approval Order and the Bankruptcy Court has exclusive jurisdiction to resolve the parties' dispute. New GM quoted from the Sale Approval Order vesting the Bankruptcy Court with "'exclusive jurisdiction to enforce and implement the terms and provision of [the] Order' ***including to 'protect [New GM] against any of the [liabilities that it did not expressly assume under the ARMSPA***].'" (*Id*. at 13) (citing Sale Approval Order at ¶ 71) (emphasis in original).

Alternatively, New GM argues that this Court is empowered to transfer the action to the Bankruptcy Court pursuant to 28 U.S.C. § 1412 because this is a "core proceeding" "related to" the bankruptcy. (*Id*. at. 19, n. 5) (*citing Mendoza v. General Motors, LLC*, 2010 WL 5224136 (C.D. Cal. Dec. 15, 2010) (transferring a lawsuit against New GM to the Bankruptcy Court).

Although Plaintiffs did not agree with New GM's analysis, they ultimately decided that the most efficient course would be for the Bankruptcy Court to resolve the issue raised by New GM. Plaintiffs proposed that they would file a Petition or a Motion before the Bankruptcy Court, asking that Court to resolve the controversy. New GM stipulated to entry of an Order staying the proceedings before this Court "until such time as the Bankruptcy Court enters an Opinion or Order resolving the [parties' dispute] or expressly declining to do so." (Dkt. No. 20)

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ARGUMENT

It is well established that the Bankruptcy Court has jurisdiction, and perhaps exclusive jurisdiction under the Sale Approval Order to determine the scope and extent of the liabilities assumed by New GM. There is clearly an overlap between the merits of Plaintiffs' claims and the coverage of the express warranties, and the issue of which claims were assumed pursuant to the purchase and sale agreement and the Sale Approval Order. Interpretation and enforcement of the Sale Approval Order is in the exclusive jurisdiction of the Bankruptcy Court. *In re Motors Liquidation Company, f/k/a Motors Corp.*, 457 B.R. 276, 286 (Bankr. S.D.N.Y. 2011) ("The [Sale Approval Order] provided, in relevant part: 'This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the MPA, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith . . . .'").

This Court stayed proceedings in the Eastern District of Michigan in favor of the Bankruptcy Court's resolution of the threshold jurisdictional dispute. Plaintiffs concur with New GM's position that the Bankruptcy Court should decide the matter; therefore, Plaintiffs' instant Motion is not directed at avoiding the Bankruptcy Court's jurisdiction. Instead, the Motion seeks the best procedural mechanism for allowing the Bankruptcy Court to resolve the dispute.

A. The Proposed Procedure

Motions to transfer venue in cases "related" to a bankruptcy proceeding are governed by 28 U.S.C. § 1412. 28 U.S.C. § 1412 provides that "[a] district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties."[1]

[1] *See Abrams v. Gen. Nutrition Cos.*, 2006 WL 2739642 (D. N.J. Sept. 25, 2006)

This action is at least "related to" the Old GM bankruptcy case and transfer to the Southern District of New York is permitted under 28 U.S.C. § 1412. The Southern District Court would then refer the action to the Bankruptcy Court pursuant to 28 U.S.C. § 157(a).[2] In fact, in its Motion to Dismiss, New GM advocates transfer stating that "[a]lternatively, this Court would be empowered to transfer this action to the Bankruptcy Court pursuant to 28 U.S.C. § 1412 (transfer of cases arising in or related to cases under title 11) because it is a 'core proceeding" or at minimum, is one 'related to' the bankruptcy." *See* Motion to Dismiss, Dkt. #18, at 11, fn. 5. As shown below, this procedure has been followed in numerous similar situations.

B. The Procedure was used in Another Similar General Motors Action

This same procedure was used in *Mendoza v. General Motors, LLC*, 2010 WL 5224136 (C.D. Cal. Dec. 15, 2010), a case relied on by New GM in its Motion to Dismiss. *See* Motion to Dismiss, (Dkt. #18 at 11) fn. 5. The plaintiff in *Mendoza* filed a putative class action on behalf of purchasers of Chevrolet Equinoxes and Pontiac Torrents alleging that New GM violated California consumer protection laws by failing to disclose a water leak defect. *Id.*at *1. New GM argued that whether that action "may proceed against New GM … is a question which only the New York Bankruptcy Court has jurisdiction to decide." *Id.* The court agreed that "[d]etermining if Plaintiff's claims against New GM are barred requires interpreting and applying the Agreement." *Id.* at 2. Therefore, the court concluded that the matter was at least "related to"

("although Section 1412 speaks only of proceedings 'under' the Bankruptcy Code, it is also applicable for determining whether a proceeding 'related to' a bankruptcy case may be transferred.") (*citing Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194 (3d Cir. 1992)).

[2] 28 U.S.C. §157(a) provides that "[e]ach district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district."

the bankruptcy case, because it could "conceivably have an effect on the estate being administered in bankruptcy." *Id.*

Having decided this question, the *Mendoza* court determined that the appropriate procedural mechanism for transferring the action from the district court in California to the bankruptcy court in the Southern District of New York was 28 U.S.C. § 1412. *Id.* at *4.

Moreover, although courts sometimes consider several factors when determining whether a transfer of venue is appropriate, this approach is not applicable here where the Bankruptcy Court has retained exclusive jurisdiction to determine the parties' disputes. And, since New GM has specifically sought transfer and since Plaintiffs now agree with that position, a transfer clearly is appropriate.

In any event, the pertinent factors considered by some courts favor transfer. Those factors are:

> (1) the economical and efficient administration of the bankruptcy estate, (2) the presumption in favor of the forum where the bankruptcy case is pending, (3) judicial efficiency; (4) the ability to receive a fair trial, (5) the state's interest in having local controversies decided within its borders by those familiar with its laws, (6) the enforceability of any judgment rendered, and (7) the plaintiff's original choice of forum.

See Creekridge Capital, LLC v. Louisiana Hosp. Center, LLC, 410 B.R. 623, 628-29 (D. Minn. 2009); *Mendoza*, 2010 WL 5224136 at *5.

Here, as in *Mendoza* the underlying "bankruptcy case is venued in the Southern District of New York, so factors one, two, and three weigh in favor of transfer to that district." *Mendoza* at *5. As in *Mendoza*, Plaintiffs should "receive a fair trial in New York and will be able to enforce any judgment [they] might obtain, so factors four and six favor transfer." *Id.* Moreover, since the putative class action is brought on behalf of consumers residing in numerous states, no

one state has a paramount interest and, as the *Mendoza* court noted, "a bankruptcy court in New York is perfectly capable of interpreting and applying [other states'] law…." *Id.*

Transfer may also be appropriate to avoid the risk that parallel actions on the same facts may lead to "potentially inconsistent results." *O'Hopp v. Conti Financial Corp.*, 88 F. Supp. 2d 31, 37 (E.D.N.Y. 2000). As noted by the *Mendoza* court: "Identical lawsuits can, and likely will, be filed in other states. Each of these lawsuits . . . will require a determination as to whether New GM assumed the liabilities at issue when it purchased Old GM's assets. Unless such actions are transferred to the bankruptcy court, different courts will be required to interpret the same [purchase and sale agreement] and decide the same dispositive question, perhaps with different results." *Mendoza*, at *3.

C. Other Courts Have Used the Procedure

Other courts agree with the *Mendoza* court's analysis. In *Maritime Elec. Co., Inc. v. United Jersey Bank*, 959 F.2d 1194 (3d Cir. 1991) the court held that where "a civil proceeding already pending in one district court becomes 'related to' a chapter 13 case subsequently filed in another district court, the proper method for transferring the related proceeding to the bankruptcy court hearing the chapter 13 case is to seek a change of venue in the nonbankruptcy forum pursuant to 28 U.S.C. § 1412 and Bankruptcy Rule 7087." *Mar. Elec. Co.* at 1212. "After the related proceeding is transferred to the district court wherein the chapter 13 case is pending, then pursuant to 28 U.S.C. § 157(a), the related proceeding may be referred to the bankruptcy court actually hearing the chapter 13 case." *Id.; see also Res. Club, Ltd. v. Designer License Holding Co., LLC*, 2010 WL 2035830 (D.N.J. May 21, 2010) ("The Court hereby grants . . . transfer . . .

to the Southern District of New York pursuant to 28 U.S.C. 1412, which presumably will transfer the case to the Bankruptcy Court.").[3]

CONCLUSION

For the reasons stated in their Motion and accompanying brief, Plaintiffs respectfully request that the Court grant Plaintiffs' Motion to Transfer Venue to the Southern District of New York pursuant to 28 U.S.C. § 1412 for referral to the Bankruptcy Court pursuant to 28 U.S.C. § 157 (a).

Respectfully submitted,

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[3] *See also Tatum v. Chrysler Group*, 2011 WL 6303290 (D. N.J. Dec. 16, 2011); *Perno v. Chrysler Group*, 2011 WL 868899 (D. N.J. March 10, 2011).

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2012, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send such notification to all ECF attorneys of record.

FINK + ASSOCIATES LAW

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See Creekridge Capital, LLC v. Louisiana Hosp. Center, LLC, 410 B.R. 623, 628-29 (D. Minn. 2009); *Mendoza*, 2010 WL 5224136 at *5.

Here, as in *Mendoza* the underlying "bankruptcy case is venued in the Southern District of New York, so factors one, two, and three weigh in favor of transfer to that district." *Mendoza* at *5. As in *Mendoza*, Plaintiffs should "receive a fair trial in New York and will be able to enforce any judgment [they] might obtain, so factors four and six favor transfer." *Id.* Moreover, since the putative class action is brought on behalf of consumers residing in numerous states, no

one state has a paramount interest and, as the *Mendoza* court noted, "a bankruptcy court in New York is perfectly capable of interpreting and applying [other states'] law…." *Id.*

Transfer may also be appropriate to avoid the risk that parallel actions on the same facts may lead to "potentially inconsistent results." *O'Hopp v. Conti Financial Corp.*, 88 F. Supp. 2d 31, 37 (E.D.N.Y. 2000). As noted by the *Mendoza* court: "Identical lawsuits can, and likely will, be filed in other states. Each of these lawsuits . . . will require a determination as to whether New GM assumed the liabilities at issue when it purchased Old GM's assets. Unless such actions are transferred to the bankruptcy court, different courts will be required to interpret the same [purchase and sale agreement] and decide the same dispositive question, perhaps with different results." *Mendoza*, at *3.

C. Other Courts Have Used the Procedure

Other courts agree with the *Mendoza* court's analysis. In *Maritime Elec. Co., Inc. v. United Jersey Bank*, 959 F.2d 1194 (3d Cir. 1991) the court held that where "a civil proceeding already pending in one district court becomes 'related to' a chapter 13 case subsequently filed in another district court, the proper method for transferring the related proceeding to the bankruptcy court hearing the chapter 13 case is to seek a change of venue in the nonbankruptcy forum pursuant to 28 U.S.C. § 1412 and Bankruptcy Rule 7087." *Mar. Elec. Co.* at 1212. "After the related proceeding is transferred to the district court wherein the chapter 13 case is pending, then pursuant to 28 U.S.C. § 157(a), the related proceeding may be referred to the bankruptcy court actually hearing the chapter 13 case." *Id.; see also Res. Club, Ltd. v. Designer License Holding Co., LLC*, 2010 WL 2035830 (D.N.J. May 21, 2010) ("The Court hereby grants . . . transfer . . .

to the Southern District of New York pursuant to 28 U.S.C. 1412, which presumably will transfer the case to the Bankruptcy Court.").[3]

CONCLUSION

For the reasons stated in their Motion and accompanying brief, Plaintiffs respectfully request that the Court grant Plaintiffs' Motion to Transfer Venue to the Southern District of New York pursuant to 28 U.S.C. § 1412 for referral to the Bankruptcy Court pursuant to 28 U.S.C. § 157 (a).

Respectfully submitted,

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Dated: February 17, 2012

[3] *See also Tatum v. Chrysler Group*, 2011 WL 6303290 (D. N.J. Dec. 16, 2011); *Perno v. Chrysler Group*, 2011 WL 868899 (D. N.J. March 10, 2011).

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2012, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send such notification to all ECF attorneys of record.

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EXHIBIT 1

Appendix of Unpublished Opinions

2006 WL 2739642
Only the Westlaw citation is currently available.
United States District Court,
D. New Jersey.

Everett ABRAMS, Plaintiff,
v.
GENERAL NUTRITION
COMPANIES, INC., Defendant.

Civil Action No. 06-1820 (MLC). | Sept. 25, 2006.

Attorneys and Law Firms

Craig S. Hilliard, Stark & Stark, PC, Princeton, NJ, for Plaintiff.

James V. Marks, Holland & Knight LLP, New York, NY, for Defendant.

Opinion

MEMORANDUM OPINION

COOPER, District Judge.

***1** Plaintiff, Everett Abrams ("Abrams"), seeks to certify a class and obtain damages on behalf of himself and others similarly-situated who purchased certain nutritional supplements from defendant, General Nutrition Companies, Inc. ("GNC"), including supplements manufactured and distributed by MuscleTech Research and Development, Inc. and its affiliated entities ("MuscleTech"). (GNC Transfer Br., at 4.) GNC moves to transfer this action to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §§ ("Sections") 1404, 1409, and 1412. (Dkt. entry no. 2.) Abrams, however, cross-moves to remand this action to the New Jersey Superior Court (the "state court") from which it was removed. (Dkt. entry no. 7.) For the reasons stated herein, the Court will (1) grant the motion to transfer, and (2) deny the cross motion to remand.

BACKGROUND

Abrams commenced this action against GNC in the state court on December 20, 2002. (GNC Transfer Br., at 2.) Abrams alleges that GNC marketed and sold products containing one or more steroid hormones ("Steroid Hormone Products"), including products manufactured by MuscleTech, which were deceptively marketed as effective to promote muscle growth. (Marks Decl., Ex. 1, at ¶ 31.) Abrams further alleges that GNC knew the Steroid Hormone Products did not produce the desired effect of increasing muscle growth and strength, and that if they did produce such desired effect they would be illegal anabolic steroids, but continued to sell them to consumers without providing any qualifying information. (*Id.* at ¶¶ 40-42.) Abrams contends that GNC's misrepresentations, omissions and deceptive trade practices constitute violations of the New Jersey Consumer Fraud Act, and thus, Abrams and those similarly situated are entitled to actual and treble damages, as well as attorneys' fees and costs. (*Id.* at ¶¶ 61-69.) The original complaint named the manufacturers of the Steroid Hormone Products, including MuscleTech, as defendants, but the state court granted GNC's motion to sever the claims against it. (Abrams Br., at ¶ 1.)

The purchase order form GNC used to purchase MuscleTech products for sale in its stores contains an indemnity clause. (GNC Transfer Br., at 2.) The indemnity clause provides:

> The Seller agrees to indemnify the Buyer from and against all liability, loss and damage including reasonable counsel's fees resulting from the sale or use of the products or any litigation based thereon, and such indemnity shall survive acceptance of the goods and payment therefore by the Buyer.

(GNC Remand Br., Ex. A, at ¶ 12.) Accordingly, GNC asserts that MuscleTech is obligated to indemnify it for any liability it incurs in connection with this action. (GNC Transfer Br., at 2.)

MuscleTech filed a petition on January 18, 2006 under chapter 15 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York. (*Id.* at 3.) Simultaneously, MuscleTech commenced a proceeding under Canada's Companies' Creditors Arrangement Act in Canada's Superior Court of Justice (the "CCAA proceeding"). (GNC Remand Br., at ¶ 4.) The bankruptcy case was subsequently removed to the United States District Court for the Southern District of New York (the "bankruptcy case") and assigned to Judge Jed S. Rakoff (case no. 06-538(JSR)). (GNC Transfer Br., at 3.) Also, on April 18, 2006, GNC removed this action from the state court to this Court asserting that this Court has jurisdiction over the matter because it is "related to" MuscleTech's bankruptcy case. (*Id.* at 2-3.) During the four years this action was pending in the state court, no class was

certified and discovery was not completed. (GNC Remand Br., at ¶ 29.)

***2** Judge Rakoff issued an order in the bankruptcy case on January 18, 2006, staying prosecution of any products liability action against MuscleTech, GNC, and various other parties currently defendants in actions that could indirectly affect the MuscleTech bankruptcy case. (GNC Remand Br., at ¶ 15.) On March 2, 2006, Judge Rakoff issued an order clarifying the scope and extent of the stay, and directed MuscleTech's counsel to file a copy of that order in all products liability actions affected by the order, including this action. (*Id.* at ¶ 16; Marks Decl., Ex. 2.) Judge Rakoff issued several additional orders further extending the stay, most recently to November 10, 2006. (Case No. 06-538(JSR), dkt entry no. 114). Moreover, on March 3, 2006, the Canadian court in the CCAA proceeding issued an order (the "Proof of Claim Order") directing all persons holding products liability claims against "any of the Subject Parties" to file proofs of claim with the monitor appointed there. (GNC Remand Br., at ¶ 12.) The Proof of Claim Order defines "Subject Parties" as including both MuscleTech and GNC. (*Id.*, Ex. B., at 7, Sch. A and Sch. C.) [1]

GNC now moves to transfer this action to the United States District Court for the Southern District of New York arguing, *inter alia*, that because this action is "related to" the MuscleTech bankruptcy case, transfer to the district where the bankruptcy case is pending would promote the interest of justice and convenience of the parties. (Dkt. entry no. 2.) GNC also filed motions seeking to transfer similar proceedings pending in Pennsylvania, Illinois, California, and Florida to the Southern District of New York. (GNC Transfer Br., at 4) According to GNC, the plaintiffs in each of these actions (1) allege the same basic facts, (2) assert the same legal arguments, and (3) are represented by the same law firms, as Abrams. (GNC Remand Br., at ¶ 3.) Abrams, on the contrary, cross-moves to remand this action to the state court asserting that this Court cannot exercise jurisdiction. (Dkt. entry no. 7.)

DISCUSSION

Abrams argues that this Court lacks bankruptcy jurisdiction over this action because MuscleTech is not a party here and the outcome will not affect the administration of MuscleTech's bankruptcy estate. (Abrams Br., at ¶ 3.). Thus, Abrams argues that this Court should remand this action to the state court due to lack of jurisdiction, or abstain from hearing the matter. (*Id.* at 1.) GNC contends that this Court can properly exercise jurisdiction here because GNC's contractual right to be indemnified by MuscleTech is sufficient to deem this action "related to" MuscleTech's bankruptcy case. (GNC Remand Br., at ¶ 6.) GNC further contends that because this action is "related to" the bankruptcy case, it should be transferred to the Southern District of New York. (GNC Transfer Br., at 10.)

I. Mandatory Remand for Lack of Bankruptcy Jurisdiction

A. Legal Standards Governing Remand and Bankruptcy Jurisdiction

***3** Section 1447(c) provides, "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.... The State court may thereupon proceed with such case." 28 U.S.C. § 1447(c). When a motion for remand is filed, the removing party bears the burden of establishing the elements of subject matter jurisdiction. *Russ v. Unum Life Ins. Co.*, No. 06-1308, 2006 U.S. Dist. LEXIS 50191, at *6 (D.N.J. July 11, 2006); *see also Boyer v. Snap-On Tools Corp.*, 913 F.2d 108, 111 (3d Cir.1990) (noting that "a party who urges jurisdiction on a federal court bears the burden of proving that jurisdiction exists"). Further, the removal statutes "are to be strictly construed against removal and all doubts should be resolved in favor of remand." *Boyer*, 913 F.2d at 111.

A party may remove an action "to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 ." 28 U.S.C. § 1452(a). Section 1334 gives district courts (1) original and exclusive jurisdiction of all cases brought "under" a chapter of the Bankruptcy Code, (2) original but not exclusive jurisdiction of all civil proceedings "arising under" the Bankruptcy Code, and (3) original but not exclusive jurisdiction of all proceedings "arising in" or "related to" cases under the Bankruptcy Code. 28 U.S.C. § 1334(a) & (b). [2] "Arising under" refers to proceedings expressly created by the Bankruptcy Code. *Steel Workers Pension Trust v. Citigroup, Inc.*, 295 B.R. 747, 750 (E.D.Pa.2003). "Arising in" refers to proceedings involving the administration of the bankruptcy estate. *Id.* However, a "related to" proceeding is one that exists outside of the bankruptcy process and does not invoke any substantive rights created by the Bankruptcy Code, but its outcome could conceivably affect the bankruptcy estate. *Id.*

The test for determining whether a federal court can exercise jurisdiction over a proceeding that is simply "related to" a bankruptcy case was originally set forth in *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3d Cir.1984).[3] In *Pacor*, John and Louise Higgins ("Higgins") commenced a Pennsylvania state court action against a chemical supplies distributor, Pacor, Inc. ("Pacor"), for damages caused by Mr. Higgins's work-related exposure to asbestos supplied by Pacor. *Id.* at 986. Pacor impleaded the Johns-Manville Corporation ("Johns-Manville"), the original manufacturer of the asbestos. *Id.* Thereafter, Johns-Manville filed a chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Southern District of New York. *Id.* As a result, Pacor simultaneously (1) removed the state court action to the United States Bankruptcy Court for the Eastern District of Pennsylvania, and (2) moved to transfer the action to the Southern District of New York where it could be joined with the Johns-Manville bankruptcy case. *Id.*

***4** The Eastern District of Pennsylvania bankruptcy court determined that Pacor's removal petition was untimely, and thus, remanded the case to state court. *Id.* On appeal, the district court stated that Pacor's removal petition was not time-barred, but concluded that Higgins's claims against Pacor were not "related to" the Johns-Manville bankruptcy case. *Id.* Therefore, because the district court determined that the bankruptcy court did not have jurisdiction to address Higgins's claims against Pacor, it remanded that portion of the case to the state court. *Id.* Pacor appealed. *Id.* at 987.

The Third Circuit, in addressing Pacor's appeal, stated, "Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate." *Id.* at 994.[4] However, the court noted that a bankruptcy court's jurisdiction over "related to" cases is not unlimited. *Id.* The court stated that the test for determining whether "related to" jurisdiction exists is "whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Id.* The court explained that a proceeding does not necessarily have to be against the debtor or the debtor's property because "related to" jurisdiction exists if the proceeding could alter the debtor's rights or liabilities, or in any way impact the administration of the bankruptcy estate. *Id* . The court concluded that the primary action between Higgins and Pacor was not "related to" the Johns-Manville bankruptcy case, and therefore, the bankruptcy court could not exercise jurisdiction over that action. *Id.* at 995. The court emphasized that even if the Higgins/Pacor dispute was resolved in favor of Higgins, the Johns-Manville bankruptcy estate would not be affected in any way until Pacor brought a subsequent action seeking indemnification from Johns-Manville. *Id.* The court distinguished those cases where "related to" jurisdiction was founded upon the defendant having an explicit indemnification agreement automatically creating liability for the bankruptcy debtor. *Id.* Thus, because Higgins's action against Pacor was not "related to" the Johns-Manville bankruptcy case, the court affirmed the district court's order remanding the action to state court. *Id.* at 996.

The Third Circuit clarified the test it set forth in *Pacor* in *In re Federal-Mogul Global, Inc.* 300 F.3d 368. In *Federal-Mogul*, thousands of individuals commenced personal injury and wrongful death actions in state courts against various manufacturers and distributors of friction products containing asbestos, including Federal-Mogul Global, Inc. ("Federal-Mogul"), as well as companies that manufactured and sold products containing these friction products. *Id.* at 372. After Federal-Mogul and its affiliates and subsidiaries filed chapter 11 bankruptcy petitions, the plaintiffs began severing or dismissing their claims against them. *Id.* at 372-73. Many of the remaining defendants removed the actions against them to the appropriate federal district court pursuant to Section 1452(a), arguing that these actions were "related to" Federal-Mogul's bankruptcy case. *Id.* at 373. Specifically, the defendants argued that they would be entitled to seek indemnification or contribution from Federal-Mogul if they were found liable because they had purchased some of the friction products at issue in their respective actions from Federal-Mogul. *Id.* The plaintiffs moved for remand in each of these actions. *Id.* at 373. While the motions were pending, many of these cases were transferred to the District of Delaware, which concluded that it lacked jurisdiction, and thus, remanded the cases to the state courts where they were originally commenced. *Id.* at 373-76. The defendants appealed the Delaware district court's order. *Id.* at 376.

***5** The Third Circuit noted, in addressing the appeal, that "Pacor clearly remains good law in this circuit." *Id.* at 381. The court further noted that the Supreme Court had both endorsed the *Pacor* test and acknowledged that nearly all of the courts of appeals have adopted it with little or no variation with the exception of the Second and Seventh Circuits, which adopted slightly different tests. *Id.* (citing *Celotex Corp. v. Edwards*, 514 U.S. 300, 308-09 (1995)). The court then stated, "[t]he test articulated in *Pacor* for whether a lawsuit could 'conceivably' have an effect on the bankruptcy proceeding inquires whether the allegedly related

lawsuit would affect the bankruptcy proceeding without the intervention of yet another lawsuit." *Id.* at 382. Thus, the court established that a right to indemnification from a bankruptcy debtor does not necessarily create "related to" bankruptcy jurisdiction. *Id.; see also Steel Workers Pension Trust,* 295 B.R. at 750 ("An indemnification agreement between a defendant and a non-party bankrupt debtor does not automatically supply the nexus necessary for the exercise of 'related to' jurisdiction. Only when the right to indemnification is clearly established and accrues upon the filing of the civil action is the proceeding related to the bankruptcy case.") Therefore, because any indemnification claims the defendants in the personal injury and wrongful death actions might have against Federal-Mogul had not yet accrued and would require additional actions, the court concluded that it could not exercise "related to" jurisdiction over those cases. *Id.*

Pacor established that not all indemnification agreements between a defendant in a personal injury or products liability action and a non-party bankruptcy debtor create a basis for a federal district court to exercise "related to" bankruptcy jurisdiction over a matter pursuant to Section 1334(b). *Steel Workers Pension Trust,* 295 B.R. at 753. The right to indemnification must accrue upon the bringing of the civil action for it to be considered "related to" the bankruptcy case. *Id.* at 750. Thus, a proceeding is sufficiently "related to" a bankruptcy case to establish jurisdiction when a party's right to indemnification from the bankruptcy debtor is express and is not contingent on the commencement of a separate action requiring additional fact-finding. *Id.* at 753; *see also In re Combustion Engr., Inc.,* 391 F.3d 190, 232 (3d Cir.2004) (concluding that "any indemnification claims against [the debtor] resulting from a shared production facility would require the intervention of another lawsuit to affect the bankruptcy estate, and thus cannot provide a basis for 'related to' jurisdiction"); *In re Allegheny Health,* 383 F.3d at 176 n. 7 (finding that "related to" bankruptcy jurisdiction existed over action by party seeking indemnity from a bankruptcy debtor because the indemnity claim had already matured).

B. Federal Bankruptcy Jurisdiction Here

***6** This Court has "related to" bankruptcy jurisdiction over this action under the test articulated in *Pacor.* MuscleTech contractually agreed to indemnify GNC for "all liability, loss and damage including reasonable counsel's fees resulting from the sale or use of the [MuscleTech] products." (GNC Remand Br., Ex. A, at ¶ 12.) This language automatically creates liability for the MuscleTech bankruptcy estate if Abrams prevails in his claims against GNC. Unlike in Pacor, there would be no need for a subsequent action seeking indemnification against MuscleTech before the bankruptcy estate would be affected. Therefore, this action is sufficiently "related to" the MuscleTech bankruptcy case to establish jurisdiction because GNC's right to indemnification from MuscleTech is not contingent upon the filing of an additional complaint, and thus, this action will affect the MuscleTech bankruptcy case if Abrams succeeds in proving his claims.

The orders Judge Rakoff issued staying prosecution of any products liability action against MuscleTech, GNC, and various other parties also indicate that resolution of this action and the other products liability actions against GNC currently pending in other jurisdictions will directly affect the MuscleTech bankruptcy case. (See GNC Remand Br., at ¶ 15.) Because MuscleTech is not a named defendant in these actions, the only plausible basis for staying the products liability actions against GNC is that any recovery the plaintiffs obtain against GNC will automatically increase MuscleTech's liabilities and reduce the amount available for distribution to MuscleTech's creditors. If it was necessary for GNC to bring separate actions seeking indemnity from MuscleTech, then it would be appropriate only for Judge Rakoff to stay those actions rather than the initial proceedings against GNC. Further, the Proof of Claim Order issued in the CCAA proceeding directs all persons holding products liability claims against "any of the Subject Parties", which includes GNC, to file proofs of claim against MuscleTech. (GNC Remand Br., at ¶ 12.) Accordingly, the Canadian court acknowledges that all parties that succeed in their products liability claims against GNC will indirectly receive payment on their claims from the MuscleTech bankruptcy estate in the same manner as creditors holding direct claims against MuscleTech or its affiliates. Thus, Judge Rakoff's stay orders and the Proof of Claim Order reflect that resolution of this action could automatically impact MuscleTech's bankruptcy case. Accordingly, this Court has "related to" bankruptcy jurisdiction over this action.

II. Mandatory Abstention

Section 1334(c)(2) requires a district court to abstain if the action is (1) based on a state law claim or cause of action, (2) "related to" a case under the Bankruptcy Code, but does not "arise under" or "arise in" a case under the Bankruptcy Code[5], (3) one where federal courts would not have jurisdiction apart from bankruptcy jurisdiction, (4) commenced in a state forum with appropriate jurisdiction, and (5) one that can be timely adjudicated in a state forum. *Stoe*

v. Flaherty, 436 F.3d 209, 213 (3d Cir.2006). "On its face [Section 1334] mandates abstention in removed cases as well as those filed initially in federal court." *Id.*

***7** Abrams's claims against GNC arise under the New Jersey Consumer Fraud Act, and thus, are based solely on state law. Abrams commenced this action in a New Jersey state court that could appropriately exercise jurisdiction over his claims. Also, as discussed more fully above, this action is "related to" MuscleTech's bankruptcy case, but it does not "arise under" or "arise in" a case under the Bankruptcy Code. Therefore, requirements one, two and four above are met. However, the state court, by no fault of its own, was not able to timely adjudicate this action. After nearly three and a half years, no class was certified and discovery was not complete. (GNC Remand Br., at ¶ 29.) Moreover, although neither party has addressed whether any independent basis for federal jurisdiction exists, it appears diversity jurisdiction would also provide a basis. See 28 U.S.C. § 1332 (stating that district courts have jurisdiction over all actions involving citizens of different states where the amount in controversy exceeds $75,000). [6] GNC is a Pennsylvania corporation with its principal place of business in Pittsburgh (Marks Decl., Ex. 1, at ¶ 6.) Abrams, however, is a citizen of Burlington County, New Jersey. (Marks Decl., Ex. 1, at ¶ 8.) Assuming the amount in controversy exceeds $75,000, which appears likely, it is plausible that this action could have been brought in federal court under Section 1332. Therefore, the third and fifth requirements for mandatory abstention have not been met.

III. Discretionary Abstention and Equitable Remand

Section 1334(c) provides:

> [e]xcept with respect to a case under [chapter 15 of the Bankruptcy Code], nothing in this section prevents a district court in the interest of justice or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under ... or arising in or related to a case under [the Bankruptcy Code].

28 U.S.C. § 1334(c)(1). Thus, Section 1334(c)(1) gives this Court discretion to abstain from hearing an action that is "related to" a bankruptcy case. *See Jazz Photo Corp. v. Dreier LLP*, No. 05-5198, 2005 U.S. Dist. LEXIS 36396, at *19-*20 (D.N.J. Dec. 23, 2005) (discussing permissive abstention provision of Section 1334 and listing factors for deciding whether to exercise discretionary abstention). The only exception to this Court's ability to exercise discretionary abstention is that it cannot abstain from hearing a case "under" chapter 15 of the Bankruptcy Code. 28 U.S.C. § 1334(c)(1); 15 Collier on Bankruptcy ¶ 3.05[1] (15th ed. rev.2006). Although MuscleTech filed a chapter 15 bankruptcy petition, as discussed above, this action is only "related to", not "under" that bankruptcy case. Accordingly, the chapter 15 exception to the discretionary abstention doctrine does not apply here.

A court to which a claim or cause of action is removed on the basis of bankruptcy jurisdiction "may remand such claim or cause of action on any equitable ground." 28 U.S.C. § 1452(b). Essentially the same considerations and standards are relevant in determining whether discretionary abstention under Section 1334(c) and equitable remand under Section 1452(b) are appropriate. *Jazz Photo Corp.*, 2005 U.S. Dist. LEXIS 36396, at *19; *Maintainco, Inc. v. Mitsubishi Caterpillar Forklift Am., Inc. (In re Mid-Atlantic Handling Sys., LLC)*, 304 B.R. 111, 126 (Bankr.D.N.J.2003) (noting that the doctrines of discretionary abstention and equitable remand require a similar conclusion). There are a number of factors in deciding whether to exercise discretionary abstention and equitable remand, including (1) the effect on the administration of the bankruptcy estate, (2) the extent to which state law issues predominate the action, (3) the difficulty or unsettled nature of applicable state law, (4) comity with state courts, (5) the action's degree of relatedness to the main bankruptcy case, (6) the existence of a right to a jury trial, and (7) prejudice to the involuntarily removed parties. *Jazz Photo Corp.*, 2005 U.S. Dist. LEXIS 36396, at *20; *In re Mid-Atlantic Handling Sys., LLC*, 304 B.R. at 126. Both discretionary abstention and equitable remand are only appropriate to "a narrow sphere of cases." *Balcor/Morristown LP*, 181 B.R. at 793. The court will look to the "reality of the controversy, rather than base [a] decision on superficial features that appear to place it in one category or another." *Id.* at 794.

***8** This action has a direct relation to the bankruptcy case. If Abrams prevails against GNC, the judgment in his favor will create automatic liability for MuscleTech's bankruptcy estate. As previously discussed, GNC has an express contractual right to indemnification from MuscleTech for all liability arising from its sale of the MuscleTech products, which is not contingent and does not require proof of any additional facts. Thus, resolution of this action is directly related to MuscleTech's bankruptcy case and could directly affect administration of the bankruptcy estate.

Although state law issues clearly predominate this action, it does not involve any novel or difficult questions of state law that would be inappropriate for a federal court to address. *See Jazz Photo Corp.*, 2005 U.S. Dist. LEXIS 36396, at *20 (noting that state law issues dominated the malpractice action but the action did not involve any novel issues of state law); *see also Balcor/Morristown LP*, 181 B.R. at 793 (stating that "[t]he fact that a matter turns on state law cannot always control [because] [b]ankruptcy courts routinely hear matters of state law"). Moreover, this action was pending in state court for nearly three and a half years, yet no class was certified and discovery was not completed. (GNC Remand Br., at ¶ 29.) Thus, there is no indication that remand to state court would lead to a more efficient and expeditious conclusion to this matter, or that Abrams will be prejudiced if this action were to remain in federal court. Therefore, discretionary abstention or equitable remand is not appropriate in this case. [7]

IV. Transfer

A. Transfer Standard

A "proceeding arising under [the Bankruptcy Code] or arising in or related to a case under [the Bankruptcy Code] may be commenced in the district court in which such case is pending." 28 U.S.C. § 1409(a). A district court may "transfer a case or proceeding under [the Bankruptcy Code] to a district court for another district, in the interest of justice or for the convenience of the parties." 28 U.S.C. § 1412. Although Section 1412 speaks only of proceedings "under" the Bankruptcy Code, it is also applicable for determining whether a proceeding "related to" a bankruptcy case may be transferred. *Mar. Elec. Co., Inc. v. United Jersey Bank*, No. 90-6057, 1992 U.S.App. LEXIS 5144, at *11-*12 (3d Cir. Mar. 24, 1992) (explaining that where a proceeding becomes "related to" a subsequently filed bankruptcy case, the proper method for transfer to the bankruptcy court is to seek a change of venue in the nonbankruptcy forum pursuant to Section 1412 first); *A.B. Real Estate, Inc. v. Bruno's, Inc. (In re Bruno's Inc.)*, 227 B.R. 311, 323 (Bankr.N.D.Ala.1998) (concluding that Section 1412 governs transfer of "related to" bankruptcy proceedings because its language refers to the Bankruptcy Code while Section 1404 refers only to a "civil action"); *see also Howard Brown Co. v. Reliance Ins. Co.*, 66 B.R. 480, 482 (E.D.Pa.1986) (transferring proceeding "related to" a bankruptcy case pursuant to Section 1412). More generally, Section 1404(a) permits a district court "[f]or the convenience of parties and witnesses, in the interest of justice" to transfer an action to another district "where it might have been brought." 28 U.S.C. § 1404(a). An action might have been brought in another district, if (1) venue is proper in the transferee district, and (2) the transferee district can exercise jurisdiction over all the parties. *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 24 (3d Cir.1970). The movant bears the burden under Section 1412 or Section 1404 of demonstrating that transfer is warranted. *HLI Creditor Trust v. Keller Rigging Constr., Inc. (In re Hayes Lemmerz Int'l, Inc.)*, 312 B.R. 44, 46 (Bankr.D.Del.2004). However, the final decision on whether to transfer is committed to the district court's discretion. *Larimi Ltd. v. Yes! Entm't Corp.*, 244 B.R. 56, 61 (D.N.J.2000).

***9** The determination of whether to transfer venue under Section 1412 or Section 1404 requires the same analysis. *In re Emerson Radio Corp.*, 52 F.3d 50, 55 (3d Cir.1995) ("[S]ection 1412 largely include[s] the same criteria for transfer of cases as section 1404(a), i.e., 'the interest of justice' or the 'convenience of the parties,' yet [it does] not include the limitation that a transfer may be made only to a district where the action might have been brought."); *Hechinger Liquidation Trust v. Fox (In re Hechinger Inv. Co. of Del., Inc.)*, 296 B.R. 323, 325 (Bankr.D.Del.2003) ("A determination of whether to transfer venue under § 1412 turns on the same issues as a determination under § 1404(a)."). Additional factors to be considered when addressing a motion to transfer are: (1) the plaintiff's choice of forum; (2) the defendant's forum preference; (3) whether the underlying claim arose elsewhere; (4) the convenience of the parties based on their relative physical and financial condition; (5) the convenience of witnesses; (6) the location of books and records; (7) the enforceability of any judgment obtained by the plaintiff; (8) practical considerations that could make trial easy, expeditious, or inexpensive; (9) administrative difficulty resulting from court congestion; (10) local interest in deciding local controversies; (11) the public policies of each forum; and (12) the familiarity of the trial judge with applicable law. *Larami Ltd.*, 244 B.R. at 61 (citing *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879-880 (3d Cir.1995)); *In re Hechinger Inv. Co. of Del., Inc.*, 296 B.R. at 325. Generally, the district where the bankruptcy case is pending is the proper venue for all proceedings "related to" that bankruptcy case. *Howard Brown Co.*, 66 B.R. at 482.

B. Transfer as Applied to this Case

Transfer of this action to the Southern District of New York is appropriate. Venue is proper there because: (1) that is the district where the MuscleTech bankruptcy case is pending;

and (2) this action is "related to" that bankruptcy case. See 28 U.S.C. § 1409(a); Howard Brown Co., 66 B.R. at 482. Moreover, transfer of this action to the Southern District of New York would be in the interest of justice. GNC's right to indemnification from MuscleTech is express and in no way contingent upon the commencement of an additional action. Thus, any recovery Abrams obtains against GNC will automatically increase MuscleTech's liabilities and reduce the amount available for distribution to MuscleTech's creditors. The Proof of Claim Order issued in the CCAA proceeding, which directs all persons holding products liability claims against GNC to file proofs of claim in MuscleTech's bankruptcy case, supports the conclusion that this action will impact MuscleTech's bankruptcy estate. (GNC Remand Br., at ¶ 12.) Allowing the court in the Southern District of New York to handle all matters affecting the MuscleTech bankruptcy estate would ultimately promote the efficient administration of the bankruptcy estate, and thus, the interest of justice.

***10** This Court also has already determined that this case will not be remanded to the state court, Abrams's chosen forum, and GNC seeks transfer to the Southern District of New York. Further, although Abrams's claims against GNC originated from GNC's marketing and sale of Steroid Hormone Products in New Jersey, GNC was engaging in the same allegedly unlawful acts and omissions across the United States; similar proceedings are currently pending in Pennsylvania, Illinois, California, and Florida. (GNC Remand Br., at ¶ 3.) Accordingly, the claims underlying this action did not arise exclusively in New Jersey.

Neither party has addressed whether court congestion in the Southern District of New York, strong local interest in deciding this matter, or any public policies of this district or the Southern District of New York weigh in favor of keeping this action in this district or transferring it. The familiarity of the trial judge with applicable law also does not weigh heavily for or against transfer, as district courts often interpret and apply state law and this case does not involve any novel or difficult applications of state law. Further, the close proximity of this Court to the Southern District of New York makes the location-of-books-and-records factor neutral, particularly because most of GNC's books and records will be located at its principal office in Pittsburgh, Pennsylvania. *See Larami Ltd.*, 244 B.R. at 62 (noting that due to the close proximity of the District of New Jersey to the Bankruptcy Court for the District of Delaware, factors four, five and six do not suggest a preference for either district). Similarly, Abrams, a New Jersey resident, will not be significantly inconvenienced by transfer of this action to the Manhattan location of the Southern District of New York.

Practical considerations, however, indicate that transfer would make the resolution of this action more expeditious by eliminating any delays that would be caused by this Court needing to familiarize itself with the relevant facts and circumstances surrounding the sale of Steroid Hormone Products. Transfer of this case to the district where MuscleTech's bankruptcy case is pending would promote judicial efficiency by establishing one forum where all claims arising from the sale of MuscleTech products can be addressed. It will also enable the same court overseeing the MuscleTech bankruptcy case, which may already be familiar with the facts and circumstances surrounding its Steroid Hormone Products, to determine this action. Also, although no potential witnesses have been specifically identified by either party, it is likely that officers and employees of MuscleTech, the manufacturer of one of the steroid hormone products underlying Abrams's claims, could be called to testify in this matter. It would be more convenient for such potential witnesses if this action were pending in the same district where the MuscleTech bankruptcy case is currently pending. Therefore, balancing the various factors, this Court finds that the Southern District of New York is a more appropriate forum.

CONCLUSION

***11** The Court, for the reasons stated *supra*, will (1) grant GNC's motion to transfer this action to the United States District Court for the Southern District of New York, and (2) deny Abrams's cross motion to remand this action to New Jersey Superior Court. The Court will issue an appropriate order and judgment.

Footnotes

1 Although the terms of the Proof of Claim Order permitted Abrams to do so, this Court is not aware of whether he filed a proof of claim in the CCAA proceeding.

2 District courts may provide that all cases "under" the Bankruptcy Code and all proceedings "arising under", "arising in" or "related to" cases under the Bankruptcy Code must be referred to the bankruptcy judges for that district. 28 U.S.C. § 157(a). Proceedings "arising under" the Bankruptcy Code or "arising in" a Bankruptcy Code case are considered core proceedings because they invoke

a substantive right provided by the Bankruptcy Code, or by their nature could arise only in the context of a bankruptcy case. *Copelin v. Spirco, Inc.*, 182 F.3d 174, 180 (3d Cir.1999); *see also* 28 U.S.C. § 157(b)(1). Section 157 provides a non-exhaustive list of core proceedings. 28 U.S.C. § 157(b)(2). Proceedings that are only "related to" a bankruptcy case are considered noncore proceedings. *Copelin*, 182 F.3d at 180. Bankruptcy courts can enter final judgments in core proceedings, subject to the district court's appellate review. *In re Allegheny Health, Educ. & Research Found.*, 383 F.3d 169, 175 (3d Cir.2004); *Copelin*, 182 F.3d at 179. On the contrary, in a noncore proceeding a bankruptcy court can only issue proposed findings of fact and conclusions of law to the district court unless the parties consent to the case being referred to the bankruptcy court. *In re Allegheny Health*, 383 F.3d at 175; *Copelin*, 182 F.3d at 179. The issue here is whether a district court can properly exercise bankruptcy jurisdiction over this action. Thus, the core/noncore distinction set forth in Section 157 and the case law interpreting Section 157 is not relevant. *See In re Allegheny Health*, 383 F.3d at 175 (explaining that whether a proceeding is core or noncore represents an entirely separate question from that of subject-matter jurisdiction).

3 This case appears to be overruled in part on other grounds. *See, e.g., In re Velocita Corp.*, 169 Fed.Appx. 712, 715 (3d Cir .2005) (noting that *Pacor* was overruled on other grounds by *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 134-35 (1995)). *But see In re Federal-Mogul, Inc.*, 300 F.3d 368, 381 (3d Cir.2002) (stating that "Pacor clearly remains good law in this circuit").

4 The *Pacor* court examined the predecessor to Section 1334(b), former Section 1471(b). *Id.* Former Section 1471(b) contained nearly identical language to Section 1334(b), except that it granted jurisdiction to bankruptcy courts rather than district courts over civil proceedings "arising under", or "arising in or related to" the Bankruptcy Code. Thus, the *Pacor* analysis is applicable to jurisdictional questions under Section 1334(b).

5 "Congress, by virtue of its use of the 'arising under' and 'arising in' language in section 1334(c)(2), incorporated the core/non-core distinction into the mandatory abstention test." *Balcor/Morristown LP v. Vector Whippany Assoc.*, 181 B.R. 781, 790 (D.N.J.1995).

6 This Court acknowledges that notice of removal of an action must be filed within thirty days of either service of the summons or the defendant's receipt of the complaint. *See* 28 U.S.C. § 1446(a). Thus, the time period for asserting removal of this action on the basis of Section 1332 has expired. Nevertheless, this Court will still consider whether jurisdiction under Section 1332 could have existed for purposes of determining whether mandatory abstention is appropriate.

7 This Court acknowledges that Abrams's request for a jury trial is one factor supporting remand. However, this Court concludes upon balancing the remaining factors, that permissive abstention and equitable remand are not appropriate here.

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Only the Westlaw citation is currently available.
United States District Court,
C.D. California.

Rodolfo Fidel MENDOZA
v.
GENERAL MOTORS, LLC.

No. CV 10-2683 AHM (VBKx). | Dec. 15, 2010.

Attorneys and Law Firms

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Gregory R. Oxford, Issacs Clouse Crose & Oxford LLP, Torrance, CA, for Defendant.

Opinion

A. HOWARD MATZ, District Judge.

***1** Stephen Montes Deputy Clerk

This case is before the court on defendant General Motors, LLC's ("New GM") motion to dismiss plaintiff Rodolfo Fidel Mendoza's ("Plaintiff") First Amended Complaint ("FAC") for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) or, in the alternative, to transfer this case under 28 U.S .C. section 1412 to the Southern District of New York for referral to the bankruptcy court. For the reasons set forth below, the Court GRANTS New GM's motion to transfer. [1]

I. INTRODUCTION

In July 2009, New GM acquired certain assets of General Motors Corporation ("Old GM") through an Amended and Restated Master Sale and Purchase Agreement ("Agreement") as part of Old GM's bankruptcy proceedings, attached as Exhibit 1 to Plaintiff's Request for Judicial Notice ("RJN"). [2] FAC ¶ 2. The United States Bankruptcy Court for the Southern District of New York approved the Agreement in an order issued on July 5, 2009 ("Order"), attached as Exhibit 2 to Plaintiff's RJN. Per the terms of the Agreement and Order, New GM did not assume Old GM's liabilities, other than as specified in the "Assumed Liabilities" section of the Agreement. Agreement § 2.3.

On April 13, 2010, Plaintiff filed a putative class action in this Court naming New GM as a defendant. On July 15, 2010, Plaintiff filed the FAC, alleging one cause of action under the California Consumer Legal Remedies Act and two causes of action under the California Unfair Business Practices Act. Plaintiff's claims are based on New GM's alleged failure to disclose a water leak defect in Chevrolet Equinox and Pontiac Torrent sport utility vehicles manufactured by or for Old GM from 2005 through 2009. FAC ¶¶ 1, 3, 42. New GM asserts Plaintiffs claims are barred because the Agreement, as enforced by the Order, specifically excluded its assumption of the statutory liabilities asserted by Plaintiff. Memorandum of Points and Authorities in Support of Motion ("MPA in Support"). Not surprisingly, Plaintiff interprets its claims differently and contends that New GM did indeed assume the liabilities at issue. Plaintiff's Opposition ("Opp.") p. 4.

The bankruptcy court's Order approving the Agreement states:

> This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, [and] the [Agreement] ... in all respects, including, but not limited to, retaining jurisdiction to ... (c) resolve any disputes arising under or related to the [Agreement] ... (d) interpret, implement, and enforce the provisions of this Order, (e) protect the Purchaser against any of the Retained Liabilities or the assertion of any lien, claim, encumbrance, or other interest, of any kind or nature whatsoever, against the Purchased Assets ....

Order ¶ 71.

Based on this language in the Order, New GM argues that "[w]hether this action may proceed against New GM based on the claims plaintiff has attempted to plead in the First Amended Complaint therefore is a question which only the New York Bankruptcy Court has jurisdiction to decide." MPA in Support p. 13. According to New GM, this Court must either dismiss the case entirely for lack of subject matter jurisdiction or transfer it to the Southern District of New York for referral to the Bankruptcy Court. Plaintiff disputes this, arguing "[t]hat [New] GM may interpret provisions of its agreement to assume liabilities differently that [sic] Plaintiff does not invoke the bankruptcy court's jurisdiction." Opp. p. 4.

***2** Determining if Plaintiff's claims against New GM are barred requires interpreting and applying the Agreement. The question before this Court is whether that determination is properly within the scope of the bankruptcy court's subject matter jurisdiction.

II. ANALYSIS

A. Scope of Bankruptcy Jurisdiction

"Federal district courts have exclusive jurisdiction over all cases under Title 11 of the United States Code, and concurrent jurisdiction over all civil proceedings arising under Title 11, or arising in or related to cases under Title 11." *Maitland v. Mitchell (In re Harris Pine Mills*), 44 F.3d 1431, 1434 (9th Cir.1995). The district court may refer to the bankruptcy court "all proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 157(a); *Montana v. Goldin (In re Pegasus Gold Corp.),* 394 F.3d 1189, 1193 (9th Cir.2005) (bankruptcy court has jurisdiction over these proceedings).

Cases "arising under Title 11" are "those proceedings that involve a cause of action created or determined by a statutory provision of title 11 .... " *In re Harris,* 44 F.3d at 1435 (quoting *Wood v. Wood (In re Wood*), 825 F.2d 90, 96-97 (5th Cir.1987)). In contrast, " '[a]rising in' proceedings are those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy." *Id.* Finally, a proceeding is "related to" a bankruptcy case if "*the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy.* Thus, the proceeding need not necessarily be against the debtor or against the debtor's property." *In re Pegasus,* 394 F.3d at 1193 (quoting *Fietz v. Great Western Savings (In re Fietz),* 852 F.2d 455, 457 (9th Cir.1988) (adopting the "*Pacor* test")).

Proceedings that "arise under" Title 11 or "arise in" cases under Title 11 are "core" bankruptcy matters, and a bankruptcy judge may hear such proceedings and enter final orders and judgments, which may be appealed to the district court. 28 U.S.C. § 157(b)(1). "Related to" proceedings are "non-core" matters, and a bankruptcy judge "may not enter final judgments without the consent of the parties, and its findings of fact and conclusions of law in noncore [sic] matters are subject to de novo review by the district court ...." *In re Harris,* 44 F.3d at 1436 (quoting *Taxel v. Electronic Sports Research (In re Cinematronics*), 916 F.2d 1444, 1449 (9th Cir.1990)); 28 U.S.C. § 157(c)(1).

Plaintiff misunderstands this distinction between "core" and "non-core" matters. He claims that if his case is a proceeding merely "related to" a bankruptcy case, *i.e.*, a "non-core" matter, then the bankruptcy court lacks jurisdiction because Plaintiff demands a jury trial and does not consent to the bankruptcy court entering a final judgment. Opp. p. 21 n. 18. To the contrary, even if Plaintiff's case is a "non-core" matter, the bankruptcy court has jurisdiction over pretrial proceedings and may enter interlocutory orders regardless of whether the parties consent. *Sigma Micro Corp. v. Healthcentral.com (In re Healthcentral.com*), 504 F.3d 775, 787-88 (9th Cir.2007) ("A valid right to a Seventh Amendment jury trial in the district court does not mean the bankruptcy court must instantly give up jurisdiction and that the action must be transferred to the district court. Instead, we hold, the bankruptcy court may retain jurisdiction over the action for pre-trial matters.").

***3** Here, the Court need only determine whether Plaintiff's case is at least "related to" a case under Title 11:

> For the purpose of determining whether a particular matter falls within bankruptcy jurisdiction, it is not necessary to distinguish between proceedings 'arising under', 'arising in a case under', or 'related to a case under', title 11. These references operate conjunctively to define the scope of jurisdiction. Therefore, it is necessary only to determine whether a matter is at least 'related to' the bankruptcy.

In re Wood, 825 F.2d at 93 (finding matter was not "core" proceeding, but was "related to" pending bankruptcy case).

B. Plaintiff's Case Is "Related To" the Old GM Bankruptcy Case [3]

The core of the parties' disagreement is whether New GM assumed liability for Plaintiff's claims under the terms of the Agreement to purchase assets and assume certain liabilities of Old GM. By its very nature, Plaintiff's case could at least "conceivably" have an effect on the estate being administered in bankruptcy. If Plaintiff prevails on the issue of whether New GM assumed liability for his claims (and those of the putative class), then the Agreement will have been interpreted so as to expand New GM's liability. In the alternative, if New GM prevails, then Old GM would remain liable for Plaintiff's claims. Thus, Plaintiff's case is at least "related to" the Old GM bankruptcy case and the bankruptcy court has subject matter jurisdiction. This finding is consistent with the bankruptcy court's express retention of jurisdiction to enforce and implement the terms and provisions of the Order and the

Agreement, to interpret, implement, and enforce the Order, and to protect New GM against retained liabilities or claims against the purchased assets. Order ¶ 71.

There are also sound policy reasons-including judicial economy, consistency, and fairness to litigants-for finding that Plaintiff's case falls within the bankruptcy court's subject matter jurisdiction. Plaintiff's proposed class is limited to citizens of California, but the GM cars at issue were sold throughout the United States. Identical lawsuits can, and likely will, be filed in other states. Each of these lawsuits, and other lawsuits raising similar claims, will require a determination as to whether New GM assumed the liabilities at issue when it purchased Old GM's assets. Unless such actions are transferred to the bankruptcy court, different district courts will be required to interpret the same Agreement, and decide the same dispositive question, perhaps with different results. That would be an inefficient and, more importantly, unjust outcome.

The bulk of Plaintiff's opposition is devoted to arguing this case is not a "core" proceeding because it neither arises under Title 11 nor arises in a case under Title 11. This "core" proceeding argument is irrelevant because Plaintiff's case is at least "related to" the Old GM bankruptcy. Therefore, the bankruptcy court has subject matter jurisdiction.[4] *In re Marcus Hook Dev. Park, Inc.*, 943 F.2d 261, 266 (3rd Cir.1991) ("Whether a particular proceeding is core represents a question wholly separate from that of subject-matter jurisdiction.").

***4** Having established that the bankruptcy court has subject matter jurisdiction, the bankruptcy court itself can enter an interlocutory order regarding whether the proceeding is core or non-core. 28 U.S.C. § 157(b)(3).

C. Plaintiff's Case Should Be Transferred to the Southern District of New York For Referral to the Bankruptcy Court

New GM moves the Court to dismiss Plaintiff's case entirely (presumably to allow Plaintiff to refile in bankruptcy court) or, in the alternative, to transfer the case under 28 U.S.C. section 1412 to the Southern District of New York for referral to the bankruptcy court. Dismissing the case entirely will entail unnecessary work and consumption of time by the parties that would be avoided by transferring the case.

Under 28 U.S.C. section 1412, a district court "may transfer a case or proceeding under Title 11 to a district court for another district in the interest of justice or for the convenience of the parties." In the preceding section this Court held that Plaintiff's action is a "related to" proceeding but did not reach the issue of whether it "arises under" Title 11 or "arises in" a case under Title 11. Courts are split on the issue of whether a "related to" proceeding may be transferred under 28 U.S.C. § 1412 or whether it must be transferred under 28 U.S.C. § 1404. Section 1404 provides, "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." It appears that the Ninth Circuit Court of Appeals has not ruled on the issue, and district courts in the Ninth Circuit have transferred "related to" proceedings under both statutes. *Compare Doss v. Chrysler*, 2009 WL 4730932, *5 (D.Ariz. December 7, 2009) ("[T]he present case is 'related to' a Title 11 proceeding, but the Court has not held it arises under Title 11.... [T]he Court has found no authority indicating how the Ninth Circuit would interpret 28 U.S.C. § 1412, [and] the Court will not transfer the case under that statute. The Court will, however, transfer this matter *sua sponte* under 28 U.S.C. § 1404."), *with Senorx, Inc. v. Coudert Bros., LLP*, 2007 WL 2470125, * 1 (N.D.Cal. August 27, 2007) (Citing to a Northern District of Alabama bankruptcy case for the proposition that "28 U.S.C. § 1412 is used to analyze the request for a change of venue in a proceeding related to a bankruptcy case.").

The Court will analyze the transfer under section 1412 because that statute refers specifically to bankruptcy cases, and applying section 1412 appears to be the sounder approach.[5] *See Creekridge Capital, LLC v. Louisiana Hosp. Center, LLC*, 410 B.R. 623, 628-29 (D.Minn.2009) (engaging in extensive analysis and review of authorities from various circuits and concluding that section 1412 applies to transfers of "related to" proceedings). "The party moving for a transfer has the burden to show by a preponderance of the evidence that transfer is warranted." *Id.* at 629. The factors to be considered in analyzing whether a transfer would be in the interest of justice include:

> ***5** (1) the economical and efficient administration of the bankruptcy estate, (2) the presumption in favor of the forum where the bankruptcy case is pending, (3) judicial efficiency; (4) the ability to receive a fair trial, (5) the state's interest in having local controversies decided within its borders by those familiar with its laws, (6) the enforceability of any judgment rendered, and (7) the plaintiff's original choice of forum.
>
> *Id.* (citing *A.B. Real Estate, Inc. v. Bruno's Inc. (In re Bruno's, Inc.)*, 227 B.R. 311, 324 nn. 45-51

(Bkrtcy.N.D.Ala.1998) (collecting cases in support of each factor)).

The underlying bankruptcy case is venued in the Southern District of New York, so factors one, two, and three weigh in favor of transfer to that district. There is no question that Plaintiff will receive a fair trial in New York and will be able to enforce any judgment he might obtain, so factors four and six favor transfer. Remaining are the state's interest in having local controversies decided within its borders by those familiar with its laws and the plaintiff's original choice of forum. Plaintiff seeks to apply California law and chose California as his forum, but a bankruptcy court in New York is perfectly capable of interpreting and applying California law, and Plaintiff's choice of forum is heavily outweighed by the other factors. To hold otherwise would be to invite similar litigation throughout the country, with possibly inconsistent outcomes depending on how a particular court interprets the terms of the Agreement and Order as they relate to New GM's assumed liabilities.

III. CONCLUSION

Based on the foregoing, the Court GRANTS New GM's motion to transfer this action to the Southern District of New York for referral to the bankruptcy court.

No hearing is necessary. Fed.R.Civ.P. 78; L.R. 7-15.

Footnotes

1 Docket No. 15.

2 The Court takes judicial notice of the Amended and Restated Master Sale and Purchase Agreement and the Bankruptcy Court's Sale Approval Order.

3 Plaintiff hardly addresses the issue of whether his case is "related to" a case under Title 11, stating only that "it is not ...." Opp. p. 21.

4 Although the Court need not reach the issue, "core" proceedings include "orders approving the sale of property" (28 U.S.C. § 157(b)(2)(N)) such as the Order entered by the bankruptcy court in the Old GM case, and a number of courts have held that cases requiring the interpretation or application of a bankruptcy court's orders are also "core" proceedings. *E.g., Beneficial Trust Deeds v. Franklin (In re Franklin)*, 802 F.2d 324, 326 (9th Cir.1986) (The bankruptcy court had jurisdiction to determine the validity of a foreclosure sale because, "[s]imply put, bankruptcy courts must retain jurisdiction to construe their own orders if they are to be capable of monitoring whether those orders are ultimately executed in the intended manner.")

5 Given the substantial overlap of analysis under the two statutes, the question is largely academic, and the Court would reach the same conclusion under section 1404.

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NOT FOR PUBLICATION
United States District Court,
D. New Jersey.

Scott PERNO, Plaintiff,
v.
CHRYSLER GROUP, LLC, abc Corps,
1-10, John Does 1-10, Defendants.

Civil Action No. 10-5100 (WJM). | March 10, 2011.

Attorneys and Law Firms

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Mark William Skanes, The Rose Law Firm, PLLC, Albany, NY, for Defendants.

Opinion

OPINION

FALK, United States Magistrate Judge.

***1** Before the Court is a motion by Defendant, Chrysler Group LLC, to transfer venue pursuant to 28 U.S.C § 1412 to the United States District Court for the Southern District of New York ("SDNY") or the Bankruptcy Court for the SDNY. [CM/ECF No. 3.] The motion is opposed. Oral argument was not heard. Fed.R.Civ.P. 78(b). For the reasons set forth below, the motion to transfer is **granted,** and the case is transferred to the SDNY.

INTRODUCTION

This case involves Plaintiff's purchase of a Jeep Liberty automobile, a prior state court lawsuit and settlement, and the bankruptcy of Chrysler LLC and 24 related affiliates and subsidiaries.

In August 2010, Plaintiff filed the present complaint in New Jersey Superior Court for alleged violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.;* the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.;* and state law. He contends that a Jeep Liberty he purchased from the now bankrupt Chrysler LLC is covered by a Service Contract to which the Defendant is the successor in interest. Defendant, Chrysler Group LLC, the purchaser of bankrupt Chrysler's assets, counters that it has no liability under the Service Contract based upon an Order entered by the United States Bankruptcy Court in the Southern District of New York as part of the bankruptcy. The issue to be decided is whether this Court or the SDNY is the most appropriate venue.

FACTS AND PROCEDURAL HISTORY

A. ***The Prior Suit***

In November 2005, Plaintiff purchased a Jeep Liberty automobile with a warranty from DaimlerChrysler Corporation through Franklin Sussex Auto Mall in Sussex, New Jersey. (Compl.¶ 5.) At some point, the vehicle allegedly "broke down and ceased running." (Compl.¶ 7.) In April 2008, Plaintiff filed a lawsuit in New Jersey Superior Court alleging breach of the Jeep's warranty. (Compl. ¶ 9; Certification of Mark W. Skanes, Esq. ("Skanes Cert.") ¶ 3.) The case settled; as part of the settlement, Plaintiff was issued a "Chrysler Maximum Extended Service Contract" (the "Service Contract") for 100,000 miles and five years with a "zero deductible and ... a loaner car if the vehicle had to be kept overnight." (Compl.¶ 9.) The Service Contract was issued by Chrysler Service Contracts, Inc. (Skanes Cert. ¶ 3.)

B. ***The Bankruptcy Proceeding***

On April 30, 2009, Chrysler LLC, Chrysler Service Contracts, Inc., and 23 other affiliated companies (the "Debtors) filed for bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York, *see In re Old Carco LLC (f/k/a Chryler LLC),* No. 09-50002 (Bank.S.D.N.Y.). (Skanes Cert. ¶ 4.) [1]

On May 31, 2009, the Bankruptcy Court issued an opinion granting the Debtors' motion to sell substantially all of their assets. *See In re Chrysler LLC,* 405 B.R. 84 (S.D.N.Y.2009), aff'd 576 F.3d 108 (2d Cir.2009), *vacated as moot sub. nom. Ind. State Police Pension Tr. v. Chysler LLC,* --- U.S. ----, 130 S.Ct. 1015, 175 L.Ed.2d 614 (2009). On June 1, 2009, in accordance with its Opinion, the Bankruptcy Court entered an 49 page Order: "(I) Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith and Related Procedures, and (III) Granting Related Relief" ("the Sale Order"). (*See* Sale Order, attached as

Exhibit B to Def.'s Mot.; CM/ECF No. 3-3.) The Sale Order addressed whether Chrysler Group, LLC-the purchaser in bankruptcy and defendant here-would be responsible for the liabilities of the Debtors:

> ***2** Except for the assumed liabilities expressly set forth in the purchase agreement or described therein ... none of the Purchaser, its successors or assigns or any of their respective affiliates shall have any liability for any claim that (a) arose prior to the closing date, (b) relates to the production of vehicles prior to the Closing Date or (c) is otherwise assertable against the Debtors or is related to the Purchased Assets prior to the Closing Date. The Purchaser shall not be deemed ... to: (a) be a legal successor, or otherwise be deemed a successor to the Debtors ... (b) have, *de facto*, or otherwise, merged with or into the Debtors; or (c) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors.

(Sale Order ¶ 35.)

The Sale Order also addressed whether Chrysler Group would be liable for state breach of warranty claims and claims under the Magnuson-Moss Warranty Act:

> Notwithstanding anything else contained herein or in the Purchase Agreement, in connection with the purchase of the Debtor's brands and related Purchased Assets, the Purchaser, from and after the Closing, will recognize, honor and pay liabilities under Lemon Laws for additional repairs, refunds, partial refunds (monetary damages) or replacement of a defective vehicle (including reasonable attorneys' fees, if any, required to be paid under such Lemon Laws and necessarily incurred in obtaining those remedies), and for any regulatory obligations under such Lemon Laws arising now, including but not limited to cases resolved pre-petition or in the future, on vehicles manufactured by the Debtor in the five years prior to the Closing (without extending any statute of limitations provided under such Lemon Laws), but in any event not including punitive, exemplary, special, consequential or multiple damages or penalties and not including any claims for personal injury or other consequential damages that may be asserted in relationship to such vehicles under the Lemon Laws. As used herein, "Lemon Law" means a federal or state statute, including, but not limited to, claims under the Magnuson-Moss Warranty Act based on or in conjunction with a state breach of warranty claim, requiring a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty after a reasonable number of attempts as defined in the applicable statute.

(Sale Order ¶ 19.)

The Bankruptcy Court retained jurisdiction to "interpret, enforce, and implement the terms and provisions of [the] Sale Order and Purchase Agreement." (*Id.* at ¶ 43.) The Bankruptcy Court has also made a point of noting that it has "special expertise regarding the meaning of its own order," and that "its interpretation is entitled to deference." *Wolff v. Chrysler Group*, slip op. at 13 (Adv.Proc. No. 10-5007, S.D.N.Y., July 30, 2010) (attached to Def's Mot. at Ex. A; CM/ECF NO. 3-1.)

C. *Present Suit*

***3** On August 30, 2010, Plaintiff filed his complaint in New Jersey Superior Court. He alleges that in February 2010, the Jeep required additional repairs totaling forty-two days of service, and that he was charged for the repairs and denied a loaner car in violation of the 2008 Service Contract. (Compl.¶¶ 10-13.) Plaintiff named Chrysler Group, LLC as the sole defendant, taking the position that it is the "successor in interest for Chrysler LLC." (Compl. ¶ 2.)

On October 4, 2010, Defendant removed the case to this Court under 28 U.S.C. §§ 1331, 1334, 1441, and 1452. Defendant claims that outcome of the suit "depends on how the Bankruptcy Court's June 1, 2009 Sale Order is construed," (Notice of Removal, ¶ 9), and therefore, federal jurisdiction is proper under Sections 1334 and 1452, which provide for removal of state court actions that "arise in," "arise[ ] under" or "relate to" a Title 11 bankruptcy proceeding. *See* 28 U.S.C. §§ 1334(b), 1452(a).

D. *Parties' Arguments on Transfer*

Defendant contends that Chrysler Group LLC did not manufacture Plaintiff's Jeep; did not issue the Service Contract at issue; is not liable under the Service Contract; was not party to the 2008 settlement agreement; and, in fact, did not even *exist* at the time the Service Contract was issued. (Skanes Cert. ¶ ¶ 8-9.) Defendant contends that the threshold issue to be decided is whether it has somehow "assumed" liability for the bankrupt Chrysler entities, which necessarily requires an interpretation of the Sale Order. (Def.'s Br. 5-6; Reply Br. 5-6.) In short, Defendant contends that it could not be a successor in interest to Chrysler without the bankruptcy, and that, in fact, absent the Sale Order, there would be nothing upon which Plaintiff could support his claim. (Def.'s Reply

Br. 5-6, 10.) Thus, Defendant contends the interests of justice require transfer to the Southern District of New York to ensure that Bankruptcy Judge that issued the Sale Order and retained jurisdiction to enforce it is the Judge that determines liability in this case. (Def.'s Reply Br. 5-6, 10.) Defendant cites at least eight cases that have been transferred to the SDNY for precisely this reason. [2]

Plaintiff argues that this is a localized dispute. The Jeep was purchased in New Jersey by a New Jersey resident and was repaired in New Jersey. Plaintiff further claims that the Sale Order is not implicated because the alleged breach occurred in 2010, which is after the Bankruptcy Court's Order was issued. (Pl.'s Br. 4-5.) Finally, Plaintiff claims that transfer is not proper because this complaint pleads state law claims that do not implicate bankruptcy or Title 11. (*Id.*)

DISCUSSION

A. *Legal Standard*

28 U.S.C § 1412 provides that "[a] district court may transfer a case or proceeding under title 11 to a district court for another district, in the interests of justice or for the convenience of the parties." *Id.* This provision allows for transfer in the interests of justice *or* for the convenience of the parties. *See, e.g., Clark v. Chysler Group, LLC,* No. 10-3030, 2010 WL 4486927, at *5 (E.D.Pa. Nov.5, 2010); *In re Dunmore Homes, Inc.*, 380 B.R. 663, 670 (S.D.N.Y.2008) ("Section 1412 is worded in the disjunctive allowing a case to be transferred under either the interest of rationale or the convenience of parties rationale."). Transfer under Section 1412 is similar to transfer under 1404(a), and courts generally consider similar factors. *See, e.g., In re Emerson Radio Corp.*, 52 F.3d 50, 55 (3d Cir.1995) ("[S]ection 1412 largely includes the same criteria for transfer of cases as section 1404(a) ...").

***4** Defendant moves to transfer under the interests of justice prong. The interests of justice prong is "broad and flexible" and applied on a case-by-case basis. *See Gulf States Exploration Co. v. Manville Forest Prod. Corp.*, 896 F.2d 1384, 1391 (2d Cir.1990). A non-exhaustive list of factors that are may be considered when determining whether transfer in the interests of justice is appropriate under Section 1412 include: (1) the economics of estate administration; (2) a presumption in favor of the home court; (3) judicial efficiency; (4) the ability to receive a fair trial; (5) the state's interest in having local controversies decided within its borders; (6) the enforceability of any judgment; and (7) plaintiff's choice of forum. *See, e.g., id; Cooper v. Daimler AG*, No. 09-2507, 2009 WL 4730306, at *4 (N.D.Ga. Dec.3, 2009); *In re Bruno's Inc.*, 227 B.R. 311, 324-25 (N.D.Ala.1998).

Generally, courts have concluded that when civil actions are related to a pending bankruptcy proceeding, there is a presumption that the district where the bankruptcy case is pending is the proper venue. *See, e.g., Clark*, 2010 WL 4486927, at *6 (transferring Magnuson-Moss claim against Chrysler Group to Southern District of New York, noting "[w]hen a case in which transfer is sought is one related to a bankruptcy proceeding, the district where the bankruptcy action is pending is generally the appropriate venue."); *Toth v. Bodyonics, Ltd.*, No. 06-1617, 2007 WL 792172, at *2 (E.D.Pa. Mar.15, 2007); *Abrams v. General Nutrition Co.*, No. 06-1820, 2006 WL 2739642, at *9 (D.N.J. Sept.25, 2006); *Krystal Cadillac v. General Motors Corp.*, 232 B.R. 622, 627 (E.D.Pa.1999).

B. *Application*

Transfer is appropriate because it is necessary to interpret the Sale Order to determine whether Defendant has assumed any liability in this case. Plaintiff's complaint specifically alleges that Defendant is a successor in interest to Chrysler LLC, (Compl., ¶ 2), and thus has assumed liability for the Service Contract issued as part of the 2008 settlement. Defendant disagrees. Although Plaintiff argues that the bankruptcy order is not implicated, Chrysler Group has been named as a Defendant solely because Plaintiff alleges it now stands in bankrupt Chrysler's shoes. Thus, the scope of the bankruptcy order is clearly an issue. Moreover, the bankruptcy court has expressly retained jurisdiction over the Sale Order to interpret its terms. (Sale Order ¶ 43.) Allowing for different courts in different jurisdictions to interpret the terms of the Sale Order creates the possibility for inconsistent determinations, inconsistent liability to the Defendant, and needless confusion.

Moreover, Defendant cites to eight (8) decisions transferring cases against Chrysler Group to the Southern District of New York for referral to the bankruptcy court. These cases all present similar issues relating to the interpretation and applicability of the Sale Order. These cases demonstrate that uniform interpretation of the Sale Order by the issuing court is of paramount importance.

***5** Finally, there will be no inconvenience to the Plaintiff or to any witnesses due to transfer. Defendant has specifically agreed that "to the extent the Bankruptcy Court finds that

certain claims asserted by Plaintiff in the Complaint were assumed from Chrysler Group," Defendant will "consent to remand those remaining claims to the state court of origin for resolution." (Def.'s Reply Br. 8.) Based on similar representations, other courts have transferred Chrysler cases to the Southern District. *See, e.g., Clark,* 2010 WL 4486927, at *9 ("In addition, the Court recognizes that allowing the Bankruptcy Court to interpret its Sale Order to determine the threshold issue regarding Defendant's liability on Plaintiff's claims does not preclude the case from ultimately being returned to a Pennsylvania court for disposition. If the Bankruptcy Court determines that ... Defendant assumed liability for breach of a service contract under the [Magnuson-Moss Act], then the Bankruptcy Court may remand the case back to the Court of Common Pleas of Philadelphia County for resolution of Defendant's liability, if any, to Plaintiff."). Thus, Plaintiff's argument relating to the convenience of the parties and witnesses is not persuasive. [3]

Transfer to the SDNY is appropriate in this case. Rather than transferring directly to the Bankruptcy Court, the Court will adhere to the general rule that transfer should be to the District Court for referral to the Bankruptcy Court in that district. *See Maritime Elec. Co. v. United Jersey Bank,* 959 F.2d 1194, 1212 (3d Cir.1991); *Resource Club, Ltd. v. Designer License Holding Co., LLC,* No. 10-412, 2010 WL 2035830, at *4 (D.N.J. May 21, 2010) ("The Court hereby grants ... transfer ... to the Southern District of New York pursuant to 28 U.S.C. § 1412, which presumably will transfer the case to the Bankruptcy Court."); *Meyers v. Heffernan,* No. 10-862, 2010 WL 1009976, at *1 (D.N.J. Mar.15, 2010) (proper procedure is to transfer to coordinate district court for referral to bankruptcy court).

CONCLUSION

For the above stated reasons, Defendant's motion to transfer is **granted.** An appropriate Order will be entered.

Footnotes

1 Plaintiff's Jeep Liberty was purchased from was DaimlerChrysler Corporation. DamilerChrysler Corporation became DaimlerChrysler Company LLC and then eventually Chrysler LLC. (Skanes Cert. ¶ 3 n. 1.) Chrysler LLC is now known as "Old Carco LLC." (*Id.*) Likewise, Chrysler Service Contracts, Inc. is now known as "Old Carco Service Contracts, Inc." (Skanes Cert. ¶ 3 n. 2.)

2 These cases include: *Clark v. Chysler Group, LLC,* No. 10-3030, 2010 WL 4486927 (E.D.Pa. Nov.5, 2010); *Shatzki v. Abrams,* No. 09-2046, 2010 WL 148183 (E.D.Cal. Jan.12, 2010); *Doss v. Chrysler Group, LLC,* No. 09-2130, 2009 WL 4730932 (D.Ariz. Dec.7, 2009); *Cooper v. Daimler AG,* No. 09-2507, 2009 WL 4730306 (N.D.Ga. Dec.3, 2009); *Monk v. Daimler AG,* No. 09-2511, 2009 WL 4730314 (N.D.Ga. Dec.3, 2009); *Wolff v. Chrysler Group,* No. 10-34, Slip Op. (C.D.Cal. Feb. 22, 2010) (attached to Def.'s Mot., Ex. F); *Hunyh v. Chrysler Group, LLC,* No. 10-285, Slip Op. (C.D.Cal. May 7, 2010) (Def.'s Mot., Ex. G); *Carpenter v. Chrysler, LLC,* No. 10-289, Slip Op. (W.D.Ok. May 17, 2010) (Def.'s Mot., Ex. H).

3 Plaintiff argues that a presumption in favor of transfer is not appropriate in this case because it does not implicate Title 11. (Pl.'s Br. 5-6.) The Court need not apply a presumption in favor of transfer in order to determine it is appropriate in this case. Putting that aside, this case does implicate Title 11. A civil proceeding "arises under" Title 11 if the action involves the interpretation of a bankruptcy order. *See In re Allegheny Health, Educ. & Res. Found.,* 383 F.3d 169, 175-76 (3d Cir.2004); *In re Franklin,* 802 F.2d 324, 326 (9th Cir.1986). A civil proceeding "arises in" Title 11 if it is a proceeding that is "not based on any right expressly created by Title 11, but nonetheless, would have no existence outside of the bankruptcy." *In re Robbins Co., Inc.,* 86 F.3d 364, 372 (4th Cir.1996) (quotation omitted); *see also U.S. Tr.v. Gryphon at Stone Mason, Inc.,* 166 F.3d 552, 556 (3d Cir.1999). Finally, a civil action "relates to" a bankruptcy proceeding if, among other things, "the outcome could alter the debtors' rights, liabilities, options, or freedom of action ... and which in any way impacts upon the handling and administration of the bankrupt estate." *Pacor, Inc. v. Higgins,* 743 F.2d 984, 994 (3d Cir.1984), *overruled on other grounds by Things Remembered, Inc. v. Petrarca,* 516 U.S. 124, 116 S.Ct. 494, 133 L.Ed.2d 461 (1995). All three grounds are met in this case.

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Only the Westlaw citation is currently available.

This decision was reviewed by West editorial staff and not assigned editorial enhancements.

NOT FOR PUBLICATION
United States District Court,
D. New Jersey.

The RESOURCE CLUB, LTD., Plaintiff,
v.
DESIGNER LICENSE HOLDING CO., LLC, 99 Hook Road LLC, Defendants.

Civil Action No. 10-412 (PGS). | May 21, 2010.

Attorneys and Law Firms

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Daniel L. Schmutter, Farer & Fersko, PA, Westfield, NJ, for Defendants.

Opinion

REPORT & RECOMMENDATION

SALAS, United States Magistrate Judge.

***1** Pending before this Court is a motion by Plaintiff Resource Club, Ltd. ("Resource" or "Plaintiff") to Transfer Venue pursuant to 28 U.S.C. § 1412 to the United States District Court for the Southern District of New York or the Bankruptcy Court for the Southern District of New York. (Docket Entry No. 2.) Also pending is Defendant 99 Hook Road LLC's ("99 Hook") Cross-Motion to Remand the case to New Jersey Superior Court. (Docket Entry No. 5.) Pursuant to Local Civil Rule 72.1, the Honorable Peter G. Sheridan, United States District Judge, referred these Motions to the Undersigned for report and recommendation. For the reasons set forth below, this Court respectfully recommends GRANTING Plaintiff's Motion to transfer venue to the Southern District of New York and transferring 99 Hook's Motion for remand so it can be decided by the Southern District of New York.

I. BACKGROUND AND PROCEDURAL HISTORY

The facts and procedural history of this case are lengthy and complicated and as the parties are intimately familiar with the facts, the Court will recite only those necessary for purposes of the pending motions. [1]

Resource leased a building from Defendant, 99 Hook, located at 99 Hook Road, Bayonne, New Jersey. Subsequently, on or about February 15, 2007, Resource entered into a Consent to Sublease Agreement with 99 Hook. Resource and Designer License Holding Company, LLC ("Designer") then entered into a sublease agreement. On or about December 3, 2007, Designer allegedly complained of strong odors at the Subleased Premises causing damage to Designer's apparel inventory and creating an intolerable work environment for its employees. On or about May 16, 2008, Designer relocated its inventory and employees. Thereafter, two actions were filed in New Jersey Superior Court the "Designer Action" and the "Resource Action."

In the Designer Action, Designer filed a Complaint against Resource and 99 Hook seeking damages in connection with Resource's and 99 Hook's alleged failure to cure defects in the Subleased Premises, which resulted in Designer's alleged constructive eviction. Resource filed a motion to dismiss the complaint. Shortly thereafter, 99 Hook also moved to dismiss the complaint. On October 10, 2008, Judge Shirley A. Tolentino, J.S.C., dismissed Plaintiff's complaint and granted Defendants' motions to dismiss. Designer appealed to the Appellate Division, which upheld the Superior Court's dismissal.

In the Resource Action, Resource filed a Complaint against Designer for damages due to Designer's failure to pay rent pursuant to the Sublease Agreement. Designer has asserted a defense on the grounds of constructive eviction, making the same allegations as in the Designer Action. As a result, Resource amended its complaint to join 99 Hook as a defendant, arguing that if Designer prevails on its defenses, 99 Hook, as master landlord, should be responsible. On June 1, 2009, 99 Hook filed a motion to dismiss Resource's Amended Complaint for failure to state a claim. The Superior Court denied that motion without prejudice and ordered limited discovery on two provisions of the agreement. After the discovery was complete, 99 Hook re-filed its motion as a summary judgment motion. [2]

***2** In light of the Appellate Division's opinion in the Designer Action, Resource requested an adjournment of 99 Hook's pending summary judgment motion to allow it time

to decide how to proceed. Thereafter, Resource filed its own summary judgment motion against Designer on December 23, 2009. On December 31, 2009, before the motions could be heard by the Superior Court, Designer filed a petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. On January 22, 2010, Resource removed the Resource Action from New Jersey state court to New Jersey district court and it is now pending before this Court. On February 1, 2010, Resource filed its motion to transfer and on February 16, 2010, 99 Hook filed its cross-motion to remand. Both motions are currently before this Court.

II. Analysis

A. Subject Matter Jurisdiction

At the outset and before addressing the merits of the remand and transfer venue motions, it must be determined whether this Court has subject matter jurisdiction over the proceeding. *Thomason Auto Group v. China American Cooperative Automotive, Inc.*, No. 08-3365, 2009 WL 512195 at *2 (D.N.J. February 27, 2009) (citing *Everett v. Friedman's Inc.*, 329 B.R. 40, 41 (S.D.Miss.2005)). "A party may remove any claim or cause of action in a civil action ... to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title." 28 U.S.C. § 1452(a). Section 1334 states that "district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b).

The pending action clearly does not "arise under" or "arise in" a case under Title 11. Therefore, the Court limits its discussion to the meaning of "related to." For subject matter jurisdiction to exist ... there must be some nexus between the "related" civil proceeding and the title 11 case. *See Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir.1984), *overruled on other grounds by Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 116 S.Ct. 494, 133 L.Ed.2d 461 (1995). "The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Id.* An action is related to bankruptcy "if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Id.*

The Court finds that the pending action is "related to" the bankruptcy proceeding before the Southern District of New York Bankruptcy Court. Designer, the entity in bankruptcy, is a party to this case. If a court finds that Designer is liable to Resource for unpaid rent, the bankruptcy estate would owe Resource Club. Further, if a court finds Designer's affirmative defenses persuasive, namely that it was constructively evicted, Resource would look to collect the money owed to Designer from the other defendant, 99 Hook. Therefore, the outcome of the present case would clearly impact the handling and administration of Designer's estate as it would either owe or be owed money.

B. Transfer of Venue, Remand and Abstention

***3** Having determined that the pending action is properly within the jurisdiction of this Court pursuant to 28 U.S.C. § 1334, the Court turns to the motion to transfer venue and cross-motion to remand. 99 Hook argues that the Court should decline jurisdiction of this action and remand the action back to New Jersey Superior Court based on the principle of mandatory abstention under 28 U.S.C. § 1334(c) (2), which states that

> Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

In the alternative, 99 Hook argues that this Court should abstain from hearing this case under the theory of permissive abstention pursuant to 28 U.S.C. 1334(c)(1). Resource argues that this Court should not even reach the question of abstention/remand because the S.D.N.Y. Bankruptcy Court, as the "home court," is better equipped to make that determination.

1. "Home Court"

"Generally, courts defer to the home court of the bankruptcy to decide the issue of remand or abstention." *Thomason Auto Group*, 2009 WL 512195 at *4. In *Thomason*, the Court was faced with the same motions which are pending before this Court. *Id.* The Court relied on an Eastern District of Pennsylvania decision which found that

> [T]he weight of authority in this jurisdiction, and in several others, suggests that when a bankruptcy court is simultaneously confronted with (1) a motion to transfer venue or change venue of an action which has been removed to it pursuant to *28 U.S.C. §* 1452(a) and (2) a motion to remand or otherwise abstain from hearing the change of venue action pursuant to *28 U.S.C. §* 1334(c) the action should be transferred to the home court of the bankruptcy to decide the issue of whether to remand or abstain from hearing the action.

Thomason Auto Group, 2009 WL 512195 at *4 (quoting *George Junior Republic in Pennsylvania v. Frances Williams*, Civ. No. 07-4357, 2008 U.S. Dist. LEXIS 22682 at *14, 2008 WL 763304 (E.D.Pa. March 19, 2008)). "Transferring the case is particularly appropriate 'when the court to which the case has been removed has no interest in the proceedings ...' *Id.* at *16. (internal quotations omitted).

99 Hook relies primarily on mandatory and/or permissive abstention as its basis for remand. However, mandatory abstention only applies to non-core matters-"that is, proceedings related to a case under Title 11, but not arising under Title 11, or arising in a case under Title 11." *Thomason Auto Group*, 2009 WL 512195 at *4 (citing *In re Seven Fields Development Corp.*, 505 F.3d 237, 251 (3d Cir.2007) (internal citations omitted). As with the Court in *Thomason*, this Court has already found that while the present case is "related to" a bankruptcy proceeding for purposes of subject matter jurisdiction, this Court has not analyzed each claim to determine whether it is core or non-core. The determination as to whether a proceeding is core or non-core should be made by the bankruptcy court after transfer. *See Meyers v. Heffernan*, No. 10-862, 2010 WL 1009976, at *1 (D.N.J. March 15, 2010); *see also Certain Underwriters at Lloyd's of London v. Otlowski*, No. 08-3998, 2009 WL 234957, at *2 (D.N.J. Jan.29, 2009).

***4** 99 Hook argues that this Court should not even reach the question of transfer because the question of mandatory abstention must be addressed first and Resource fails to meet those requirements. 99 Hook cites to a 2007 District of New Jersey case as support for its position. *See Royal Indem. Co. v. Admiral Ins. Co. Inc.*, 2007 WL 4171649 (D.N.J. November 19, 2007). Having considered the *Thomason* opinion and the *Royal Indemnity* opinion, the Court finds that the analysis in the more-recently decided *Thomason* is applicable given the similarity of the facts to the instant matter. Further, as the Court said in *Thomason* and 99 Hook recognized in its supplemental briefing, "courts do not apply a *per se* home court presumption but rather apply it on a case-by-case basis." *Thomason*, 2009 WL 512195 at *4.

Therefore, based on the previous holdings by courts in this Circuit, in the interest of ensuring that a equitable and uniform determination is made and to avoid duplicative or inconsistent rulings, this Court hereby grants Resource's motion to transfer the pending case to the Southern District of New York pursuant to 28 U.S.C. § 1412, which presumably will transfer the case to the Bankruptcy Court. *See Meyers v. Heffernan*, No. 10-862, 2010 WL 1009976, at *1 (D.N.J. March 15, 2010) (finding that the proper transferee venue is the district court, which will then transfer the proceeding to bankruptcy court). In further support of this Court's presumption, in its supplemental briefing, Resource Club cites to standing order M-61 issued by the chief judge of the United States District Court for the Southern District of New York which states that "any and all proceedings in the Southern District under Title 11 are referred to the bankruptcy judges in the Southern District." (Resource's Supp. Br. 1-2.) 99 Hook's Motion for Remand is also hereby transferred to the Southern District of New York, where the Bankruptcy Court will be in the best position to determine whether the case should be remanded.

IV. CONCLUSION

For the reasons set forth above, the Court recommends GRANTING Resource's Motion to Transfer Venue to the Southern District of New York and transferring 99 Hook's Motion to Remand. Pursuant to Local Civil Rule 72. 1, the parties have fourteen days from receipt of this Report and Recommendation to file and serve any objections.

Footnotes

1 The following facts are taken from 99 Hook's Brief in Support of its Motion to Remand (Docket Entry No. 5.)

2 The Superior Court-Appellate Division's opinion in the Designer Action was issued after 99 Hook filed its summary judgment motion in the Resource Action, but before any oral argument on the motion could be heard.

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Only the Westlaw citation is currently available.
NOT FOR PUBLICATION
United States District Court,
D. New Jersey.

Gabriella TATUM, et al., Plaintiffs,
v.
CHRYSLER GROUP, LLC, Defendant.

Civil Action No. 10–4269
(ES)(CLW). | Dec. 16, 2011.

Attorneys and Law Firms

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Opinion

OPINION and ORDER

SALAS, District Judge.

***1** On October 3, 2011, Magistrate Judge Cathy Waldor issued a Report and Recommendation (D.E.57) recommending that this Court grant Defendant Chrysler Group, LLC's ("Chrysler") Motion to Transfer Venue to the Bankruptcy Court for the Southern District of New York as to Count I, deny Chrysler's Motion to Transfer Venue as to Counts II–IV, and administratively terminate the case pending resolution of Count I.[1] The parties were given notice that they had fourteen days from their receipt of the Report and Recommendation to file and serve any objections pursuant to Local Civil Rule 72.1(c)(2). Plaintiffs timely filed an objection, (D.E.58), and Defendant timely filed a response. (D.E.59). Having carefully reviewed the Report and Recommendation *de novo* and the submissions by the parties, the Court hereby ADOPTS the thoughtful and thorough Report and Recommendation of Magistrate Judge Waldor, attached below. In addition to adopting the facts, the procedural history, the summary of the parties' arguments on transfer, the discussion, and the conclusions of Magistrate Judge Waldor, the Court addresses the Plaintiffs' main objections and the Defendant's main responses to the Report and Recommendation.

First, in their objections to the below Report and Recommendation, Plaintiffs argue that "[a]s a threshold matter, the Court cannot properly grant Chrysler's motion pursuant to 28 U.S.C. § 1412—a statute that governs the transfer of cases already in bankruptcy court" because "this case is not now, nor has it ever been, in bankruptcy." (Pl. Objection at 6). Defendant responds that this case "relates to" a bankruptcy proceeding, and therefore § 1412 provides a proper vehicle for transfer. Defendant further contends, "Plaintiffs refuse to acknowledge the controlling law in this Circuit, and the wealth of opinions from this District, finding that § 1412 is the proper statutory framework for analyzing transfer in a 'related to' proceeding." (Def. Response Br. at 4–5). The Court agrees with Defendant, and adopts the reasoning of Magistrate Judge Waldor, emphasizing the following:

> The Third Circuit and this District, specifically, have consistently applied § 1412 to transfer of "related to" bankruptcy proceedings. *See Johanna Foods, Inc. v. Toobro Holdings TBF LLC*, No. 11–2612, 2011 WL 1791352 (D.N.J. May 10, 2011); *Perno v. Chrysler Grp., LLC*, No. 10–5100, 2011 WL 868899, at * 4 (D.N.J. Mar.10, 2011); *Donahue v. Vertis, Inc.*, No. 10–2942, 2010 WL 5313312 (D.N.J. Dec.20, 2010); *Clark v. Chrysler Grp., LLC*, No. 10–3030, 2010 WL 4486927, at *6 (E.D.Pa. Nov.5, 2010); *Abrams v. General Nutrition Cos., Inc.*, No. 06–1820, 2006 WL 2739642 (D.N.J. Sept.25, 2006). Here, Count I of the Complaint requires interpretation of the Bankruptcy Court's Sale Order to determine whether Chrysler has assumed certain liability in this case. As such, the case is "related to" the bankruptcy proceeding and the Court deems it unnecessary to address this argument further.

***2** (Report and Recommendation, D.E. 57 at 6 n. 2). Therefore, the Court finds that transfer is proper under § 1412, because § 1412 is an appropriate vehicle for transfer where a case relates to a bankruptcy proceeding, and because Count I is related to such a proceeding.

Second, Plaintiffs argue that "[t]ransfer under Section 1412 is entirely discretionary with the Court," "the moving party bears the heavy burden of establishing the need for transfer," and the factors "weigh strongly against transfer of Count I in this case." (Pl. Objection at 7–8). Defendant responds that the relevant factors favor transfer. (Def. Response Br. at 6–8). Courts are to consider the following non-

exhaustive list of factors when determining whether transfer is appropriate under the interests of justice prong: (1) the economics of estate administration; (2) a presumption in favor of the home court; (3) judicial efficiency; (4) the ability to receive a fair trial; (5) the state's interest in having local controversies decided within its borders; (6) the enforceability of any judgment; and (7) plaintiff's choice of forum. *Perno*, 2011 WL 868899, at *3. The Court adopts Magistrate Judge Waldor's careful consideration of the factors, and highlights the following point. In their objections, Plaintiffs argue that "[t]he parties have already invested substantial time and money in proceedings before this Court," and therefore the factor of judicial efficiency weighs in favor of denying transfer. (Pl. Objection Br. at 8). Defendant counters that Magistrate Judge Waldor already "noted [that] Plaintiffs' argument that this Court is more familiar with these proceedings 'is of marginal truth,' due both to the recent reassignment of the case to a new judge and because the Bankruptcy Court has a far superior knowledge of the Sale Order which must be interpreted." (Def. Response Br. at 7). Indeed, the Court finds that transferring a claim related to a Sale Order to the court that retained jurisdiction to interpret it promotes efficiency. This point—along with the Court's independent review of the factors—satisfies the Court that Defendant has met its burden of establishing the need for a transfer.

Third, Plaintiffs argue that "[t]here is no dispute that Counts II–IV are not affected by the Sale Order, and thus they should not be delayed while the Sale Order is interpreted in the Bankruptcy Court," thus, [i]t is paramount that all discovery on this case ... not be frozen *indefinitely* pending the determination on Count I." (Pl. Objection at 11–12). Defendant responds, "[a]bsent a stay, this Court will be faced with the possibility of expending its limited resources presiding over discovery disputes involving some claims, only to have to revisit those disputes if Plaintiffs' 'other' claim is deemed to be viable by the Bankruptcy Court." (Def. Response Br. at 9–10). The Court agrees with Defendant.

Under its inherent power to manage its docket, the Court finds that proceeding with discovery over claims that could be affected by the determination of Count I in the bankruptcy court undermines judicial efficiency and exposes the parties to potentially unnecessary costs. *See, e.g., Int'l Consumer Prods. N.J., Inc. v. Complete*, No. 07–325, 2008 WL 2185340, at *1 (D.N.J. May 23, 2008) (staying action and directing the parties to proceed before the bankruptcy court "even in the absence of the bankruptcy petition" based on the court's "inherent power to control the docket" because "the interests of judicial economy will be best served by staying this action in its entirety"), *reconsideration denied by* No. 07–325, 2008 WL 4723025 (D.N.J. Oct.24, 2008); *All–Am. Chevrolet, Inc. v. De Santis*, No. 05–5672, 2007 WL 4355477 (D.N.J. Dec.7, 2007) (staying action pending determination in bankruptcy court pursuant to the court's "inherent power to control the docket and in the interests of judicial economy" and granting leave to the parties to move to reopen the case "when appropriate"); *Jackson Hewitt Inc. v. Childress*, No. 06–909, 2008 WL 834386 (D.N.J. Mar.20, 2006) (staying case "pending the outcome of proceedings in the Bankruptcy Court").

***3** Finally, the Court addresses Plaintiffs concern that discovery will be stayed indefinitely pursuant to this Order. The Court shares Plaintiffs' concern, and therefore clarifies Magistrate Judge Waldor's recommendation to administratively terminate the case pending a determination of Count I in bankruptcy court. Per the below Order—and pursuant to its inherent power to manage its docket—the Court stays the action *sua sponte* for purposes of avoiding potentially duplicative litigation and discovery. *See, e.g., Rodgers v. U.S. Steel Corp.*, 508 F.2d 152, 162 (3d Cir.1975) ("The district court had inherent discretionary authority to stay proceedings pending litigation in another court."); *Landmark Am. Ins. Co. v. Rider Univ.*, No. 08–1250, 2010 U.S. Dist. LEXIS 110020, at *27–28, 2010 WL 4063199 (D.N.J. Oct. 14, 2010) ("[The] Court exercises its discretion to *sua sponte* stay this matter and administratively terminate the case pending the outcome of factual discovery in the underlying ... Action pending in Superior Court."); *MEI, Inc. v. JCM Am. Corp.*, No. 09–351, 2009 U.S. Dist. LEXIS 96266, at *12, 2009 WL 3335866 (D.N.J. Oct. 15, 2009) ("Federal courts have inherent power to control their dockets by staying proceedings." (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S.Ct. 163, 81 L.Ed. 153 (1936)). In light of this stay, the Court shall exercise its discretion to administratively terminate—without prejudice—Defendant's Motion to Dismiss Second Amended Complaint Pursuant to Fed.R.Civ.P. 12(b) (6) and 9(b) (D.E.37) and Defendant's Motion to Dismiss for Lack of Jurisdiction (D.E.38), pending the bankruptcy court's decision on Count I. *See, e.g., SEC v. Infinity Grp. Co.*, 212 F.3d 180, 197 (3d Cir.2000) ("Matters of docket control and scheduling are within the sound discretion of the district court."); *White v. City of Trenton*, Slip. Op. No. 06–5177 (D.N.J. Oct. 14, 2009) (exercising discretion "to administratively terminate Defendant's Motion for Summary Judgment pending a decision on Mr. White's Motion for Reconsideration"). Once the bankruptcy Court has decided Count I, the Court grants leave to re-file the motions.

Additionally, to ensure that the case does not stall indefinitely, below the Court orders that the parties file a one-page joint status letter every ninety days from the date of the below Order until the bankruptcy court reaches a conclusion, addressing the progress of Count I.

ORDER

IT IS on this 15th day of December 2011 ORDERED as follows:

1. The thoughtful and thorough Report and Recommendation of Magistrate Judge Waldor is hereby adopted—as clarified in the above Opinion—as the opinion of this Court;

2. Defendant's Motion to Transfer Venue to the Bankruptcy Court for the Southern District of New York as to Count I is GRANTED;

3. Defendant's Motion to Transfer Venue to the Bankruptcy Court for the Southern District of New York as to Counts II–IV is DENIED;

4. The Court administratively stays this action until the resolution of Count I in bankruptcy court;

***4** 5. The Court administratively terminates the following motions, granting leave for them to be re-filed after the resolution of Count I in the bankruptcy court: Defendant's Motion to Dismiss Second Amended Complaint Pursuant to Fed.R.Civ.P. 12(b)(6) and 9(b) (D.E.37) and Defendant's Motion to Dismiss for Lack of Jurisdiction (D.E.38);

6. The Clerk of Court shall administratively terminate the following motion, decided in this Opinion and Order: (D.E.32);

7. The Clerk of Court shall administratively terminate the Report and Recommendation of Magistrate Judge Waldor, adopted in this opinion: (D.E.57);

8. The Court directs the parties to file a one-page joint status letter every ninety days from the date of this Order until the bankruptcy court resolves Count I, addressing the progress of the Count.

REPORT & RECOMMENDATION

WALDOR, United States Magistrate Judge.

Before the Court is Defendant Chrysler Group LLC's ("Chrysler") motion to transfer venue ("Motion to Transfer Venue") pursuant to 28 U.S.C. § 1412 to the Bankruptcy Court for the Southern District of New York. (Docket Entry No. 32). Plaintiffs Gabriella Tatum and Jamie Meyer ("Plaintiffs") submitted opposition to the motion. (Docket Entry No. 36). Pursuant to Local Civil Rule 72. 1, the Honorable Esther Salas, United States District Judge, referred this motion to the Undersigned for report and recommendation. For the reasons set forth below, this Court respectfully recommends GRANTING in part and DENYING in part Chrysler's Motion to Transfer Venue to the Bankruptcy Court for the Southern District of New York.

I. FACTS AND PROCEDURAL HISTORY

Plaintiffs filed their original complaint ("Complaint") on August 19, 2010 alleging the existence of a braking defect in model-year 2009 and 2010 Dodge Journey vehicles. Plaintiffs seek relief, in part, for alleged violations of the New Jersey Consumer Fraud Act ("NJCFA"), N.J.S.A. 56:8–1, *et seq.* This claim is based on alleged acts and omissions occurring before Defendant existed. More specifically, on April 30, 2009, Old Carco LLC (f/k/a Chrysler LLC) and several of its subsidiaries ("Old Carco" and/or "Debtors") filed for bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York. *See In re Old Carco LLC (f/k/a Chrysler LLC)*, Case No. 09–50002 (Bankr.S.D.N.Y.). Defendant Chrysler, an entity that did not exist until April 28, 2009, purchased certain assets of Old Carco in the bankruptcy proceeding pursuant to the terms of a 49–page Order entered by the Bankruptcy Court on June 1, 2009 "(I) Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith and Related Procedures, and (III) Granting Related Relief" ("the Sale Order"). The Sale Order addressed, in pertinent part, whether Chrysler would be responsible for the liabilities of the Debtors:

> ***5** Except for the assumed liabilities expressly set forth in the purchase agreement or described therein ... none of the Purchaser, its successors or assigns or any of their respective affiliates shall have any liability for any claim that (a) arose prior to the closing date, (b) relates to the production of vehicles prior to the Closing date or (c) is otherwise assertable against the Debtors or is related to the Purchased Assets prior to the Closing Date. The Purchaser

> shall not be deemed ... to: (a) be a legal successor, or otherwise be deemed a successor to the Debtors ... (b) have, *de facto*, or otherwise, merged with or into the Debtors; or (c) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors.
>
> (Sale Order ¶ 35.)

The Sale Order also addressed whether Chrysler Group would be liable for state breach of warranty claims under the Magnuson–Moss Warranty Act:

> Notwithstanding anything else contained herein or in the Purchase Agreement, in connection with the purchase of the Debtor's brands and related Purchased Assets, the Purchaser, from and after the Closing, will recognize, honor and pay liabilities under Lemon Laws for additional repairs, refunds, partial refunds (monetary damages) or replacement of a defective vehicle (including reasonable attorneys' fees, if any, required to be paid under such Lemon Laws and necessarily incurred in obtaining those remedies), and for any regulatory obligations under such Lemon Laws arising now, including but not limited to cases resolved pre-petition or in the future, on vehicles manufactured by the Debtor in the five years prior to the Closing (without extending any statute of limitations provided under such Lemon Laws), but in any event not including punitive, exemplary, special, consequential, or multiple damages or penalties and not including any claims for personal injury or other consequential damages that may be asserted in relationship to such vehicles under the Lemon Laws. As used herein, "Lemon Law" means a federal or state statute, including, but not limited to, claims under the Magnuson–Moss Warranty Act based on or in conjunction with a state breach of warranty claim, requiring a manufacturer to provide a consumer remedy when the manufacturer is unable to conform he vehicle to the warranty after a reasonable number of attempts as defined in the applicable statute.
>
> (Sale Order ¶ 19.)

The Bankruptcy Court retained jurisdiction to "interpret, enforce, and implement the terms and provisions of [the] Sale Order and Purchase Agreement." (Sale Order ¶ 43). The Bankruptcy Court has also noted that it has "special expertise regarding the meaning of its own order," and that "its interpretation is entitled to deference." *Wolff v. Chrysler Group*, slip op. at 13 (Adv.Proc. No. 10–5007, S.D.N.Y., July 30, 2010) (attached to Def's Mot. at Ex. H, at 7; CM/ECF No. 32).

On December 22, 2010, Chrysler filed a motion to dismiss ("Motion to Dismiss") pursuant to Fed.R.Civ.P. 12(b)(6), arguing that Chrysler is not liable for obligations that existed prior to the bankruptcy reorganization that created Chrysler as it is presently constituted. (Docket Entry No. 6). On March 28, 2011, Judge Cavanaugh issued an opinion granting in part and denying in part Chrysler's Motion to Dismiss. (Docket Entry No. 13). As it relates to the instant motion, Judge Cavanaugh discussed and analyzed the relevant law relating to successor liability but ultimately reserved decision with respect to whether Chrysler impliedly assumed liability under the Sale Order. *Id.*

***6** On May 24, 2011, Plaintiffs filed a Second Amended Complaint ("SAC"). The SAC contains four causes of action: Counts I and II allege violations of the NJCFA; Count III alleges breach of warranty under the Magnuson–Moss Warranty Act; and Count IV alleges breach of express warranty under state law. On May 27, 2011, Chrysler filed the present Motion to Transfer Venue pursuant to 28 U.S.C. § 1412. (Docket Entry No. 32). On June 21, 2011, Plaintiffs filed opposition to Chrysler's Motion to Transfer Venue. (Docket Entry No. 36).

II. PARTIES' ARGUMENTS ON TRANSFER

Defendant contends that the issue of whether Chrysler assumed the liabilities for the claims made in Count I of Plaintiffs' SAC should be determined by the Bankruptcy Court that issued the Sale Order. (Def's Br. 7). In support, Chrysler argues that several district courts, including courts in this District, have transferred cases brought against Chrysler to the Bankruptcy Court, which has retained jurisdiction to interpret and enforce the Sale Order, when a threshold issue in the case involved a dispute over an alleged assumed liability. [1] *Id.* at 9. Here, Chrysler contends that Plaintiffs' claims raise a threshold issue as to whether Chrysler assumed liabilities arising out of violations of state consumer protection statutes thus requiring an interpretation and application of the Sale Order. As such, it is Chrysler's belief that transfer is appropriate. *Id.* at 10.

Plaintiffs argue that transfer is inappropriate because the only claim that may arguably implicate assumed liability is the Count I NJCFA claim, N.J.S.A. 56:8–1, *et seq.* (Pl's Br. 2). Plaintiffs further claim that because the original Complaint was filed on August 19, 2010, the Court has already invested considerable time becoming familiar with the relevant facts and legal issues thus making this Court the more efficient

forum to handle the litigation. *Id.* Next, Plaintiffs take issue with the means by which Defendant seeks to transfer the case; namely, Plaintiffs argue that 28 U.S.C. § 1412 is inapplicable because the statute governs transfer of cases already pending in bankruptcy court. Finally, Plaintiffs claim that Chrysler's filing of the present motion, more than nine months after the case was filed, is nothing more than a prejudicial attempt to forum-shop. *Id.* at 6.

Neither party disputes that the remaining three counts of the Complaint may be properly and effectively handled by this Court. In fact, Chrysler conceded and stipulated on the record that it assumed liabilities associated with breach of warranty claims arising out of alleged defects in the vehicles at issue. (Def's Br. 1, n. 1). Moreover, Chrysler has explicitly represented and agreed as follows: "If this case is transferred so that the Bankruptcy Court can interpret its own Sale Order on the 'successor liability' issue implicated by the First Count of the SAC, Chrysler Group will not oppose a motion filed by Plaintiffs to remand back to this Court whatever claims may remain after that Court issues its ruling(s) on any legal issues implicated by the SAC." (Def.'s Reply Br. 5).

III. DISCUSSION

A. Legal Standard

***7** 28 U.S.C. § 1412 provides that "[a] district court may transfer a case or proceeding under title 11 to a district court for another district, in the interests of justice or for the convenience of the parties." *Id.* Section 1412 allows for the transfer of a case in either of two situations: in the interests of justice **or** for the convenience of the parties. *Clark v. Chrysler Group, LLC,* No. 10–3030, 2010 WL 4486927, at *5 (E.D.Pa. Nov.5, 2010) (emphasis added); *In re Dunmore Homes, Inc.*, 380 B.R. 663, 670 (S.D.N.Y.2008) ("Section 1412 is worded in the disjunctive allowing a case to be transferred under either the interest [of justice] rationale or the convenience of parties rationale."); *Perno v. Chrysler Group, LLC,* No. 10–5100, 2011 WL 868899 (D.N.J. Mar.10, 2011). [2]

Defendant moves to transfer under the interests of justice prong. This prong is "broad and flexible" and must be "applied on a case-by-case basis." *Perno,* 2011 WL 868899, at *3 (citing *Gulf States Exploration Co. v. Manville Forest Prods. Corp.,* 896 F.2d 1384, 1391 (2d Cir.1990). Courts are to consider the following non-exhaustive list of factors when determining whether transfer is appropriate under the interests of justice prong: (1) the economics of estate administration; (2) a presumption in favor of the home court; (3) judicial efficiency; (4) the ability to receive a fair trial; (5) the state's interest in having local controversies decided within its borders; (6) the enforceability of any judgment; and (7) plaintiff's choice of forum. *Id.*

A case need not be transferred in whole. Fed.R.Civ.P. 21 provides: "any claim against any party may be severed and proceeded with separately." *See Chrysler Credit Corp. v. Country Chrysler, Inc.*, 928 F.2d 1509, 1518–19 (10th Cir.1991) (holding that claims may be properly severed under Fed.R.Civ.P. 21); *Dao v. Knightsbridge Intern. Reinsurance Group,* 15 F.Supp.2d 567 (D.N.J.1998); *Murray, Wilson and Hunter v. Jersey Boats, Inc.*, No. 91–7733, 1992 WL 37516, at *2 (E.D.Pa., Feb.21, 1992). A court may order severance of an action on its own initiative. *American Fidelity Fire Ins. Co. v. Construcciones Werl, Inc.*, 407 F.Supp. 164 (D.Vi.1975). *See In re LR Buffalo Creek, LLC,* No. 09–196, 2009 WL 2382285 (W.D.N.C. July 30, 2009) (severing and transferring claim deemed related and critical to the bankruptcy proceeding).

B. Application

1. Count I: Violation of the New Jersey Consumer Fraud Act

The Court finds that transfer of Count I is appropriate because it is necessary to interpret the Sale Order to determine whether Chrysler has assumed certain liabilities in this case. The relevant § 1412 factors favor transfer. First, courts have concluded that when civil actions are related to a pending bankruptcy, there is a presumption that the district where the bankruptcy case is pending is the appropriate venue. *Toth v. Bodyonics, Ltd.*, No. 06–1617, 2007 WL 792172, at *2 (E.D.Pa. Mar.15, 2007). To that end, Chrysler asserts, and Plaintiff concedes, that interpretation of the Sale Order is required to determine whether a claim requiring both a breach of warranty **and** bad faith or unfair dealing equates with a claim for breach of warranty, alone, within the meaning of the Sale Order. Second, transfer will promote judicial efficiency. As noted above, the Bankruptcy Court has expressly retained jurisdiction to interpret the terms of its Sale Order. (Sale Order ¶ 43). By transferring the case to the Bankruptcy Court, the Court reduces the risk of inconsistent interpretation of the Sale Order. As Judge Falk noted in *Perno,* "allowing for different courts in different jurisdictions to interpret the terms of the Sale Order creates the possibility for inconsistent determinations, inconsistent liability to [Chrysler], and needless confusion." 2011 WL 868899, at *4.

***8** The Court has considered Plaintiffs' choice of forum, convenience and expedience arguments and the deference afforded to Plaintiffs in litigating in the forum they select. However, these factors are outweighed by those stated above. Specifically, although Plaintiffs argue that this Court is more familiar with these proceedings, that representation is of marginal truth. This case was first referred to this particular Court on August 3, 2011. As such, the Court has had little opportunity to engage in more than a cursory review of the Sale Order. The Bankruptcy Court, however, as the enforcer of the Sale Order at issue, is significantly more familiar with the voluminous Sale Order. Lastly, to the extent Count I requires the application of New Jersey law, Plaintiffs are not precluded from filing a motion to remand the claim back to this Court once the question of Chrysler's liability under the Sale Order is resolved.

Finally, Plaintiffs contend that Chrysler has essentially waived its ability to move to transfer venue because of the purported maturity of this litigation. This Court disagrees. A motion to transfer venue is not deemed to have been waived if not raised in an initial response to the complaint. *McGuire v. Waste Mgmt., Inc.*, No. 09–2591, 2011 WL 692203 (D.S.C. Feb.18, 2011). *See Ins. Co. of N. America v. Ozean/Stinnes–Linien*, 367 F.2d 224, 227 (5th Cir.1966) (holding that a motion to transfer venue could have been made even after a motion to dismiss has been denied); *Campbell v. FMC Corporation*, No. 91–7536, 1992 WL 176417, *6, n. 6 (E.D.Pa. July 17, 1992) (according no weight to plaintiff's allegation of "dilatoriness" where neither party had progressed far in preparation for trial); *Inter–City Prods. Corp. v. Ins. Co. of N. America*, No. 90–717, 1993 WL 18948, at *9 (D.N.J. Jan. 26, 1993) (finding that timing did not weigh against transfer). Accordingly, the fact that Defendant first filed its Motion to Transfer Venue nine months after the filing of the original Complaint does not waive its ability to seek relief under § 1412.

2. Counts II–IV

The Court does not believe it appropriate to transfer Counts II–IV to the Bankruptcy Court because the remaining claims do not relate to the pending bankruptcy proceeding. The remaining counts are as follows: (1) Count II: Violation of the NJCFA, N.J.S.A. 56:8–1, *et seq.;* (2) Count III: Breach of Written Warranty under the Magnuson–Moss Warranty Act, 15 U.S.C. § 2301, *et seq.;* and (3) Count IV: Breach of Express Warranty under State Law. These claims implicate no assumed liability issues. Instead, these claims focus exclusively on breach of warranty claims or rely entirely on allegations related to Chrysler's post-bankruptcy conduct. To that end, Chrysler conceded and stipulated on the record that it assumed the liabilities associated with breach of warranty claims arising out of alleged defects in the vehicles at issue. Additionally, Chrysler has already expressed its willingness to litigate the remaining claims in this forum. Lastly, the Court agrees with Plaintiffs' contention that the balance of factors fails to support transfer. Plaintiffs selected this forum, Named Plaintiff Jamie Meyer's claim arose out of New Jersey, and it would be more convenient and less costly to Plaintiffs to litigate the balance of claims in this District. Accordingly, to the extent Chrysler seeks entry of an Order transferring Counts II–IV to the Bankruptcy Court for the Southern District of New York, this Court recommends that the request be denied.

IV. CONCLUSION

***9** For the reasons set forth above, the Court recommends GRANTING Chrysler's Motion to Transfer Venue to the Bankruptcy Court for the Southern District of New York as to Count I and DENYING Chrysler's Motion to Transfer Venue as to Counts II–IV. In the interest of administrative efficiency, the Court also recommends administratively terminating the case pending resolution of Count I. Pursuant to Local Civil Rule 72. 1, the parties have fourteen days from receipt of this Report and Recommendation to file and serve any objections.

Footnotes

1 Below, the Court adopts a clarified version of this recommendation by Magistrate Judge Waldor. Instead of administratively terminating the case pending a decision on Count I in the bankruptcy court, the Court *stays* the case in this Court pending the bankruptcy court's determination, and this Court administratively terminates the existing motions without prejudice, granting leave to re-file the motions once the case is reactivated.

1 Chrysler specifically points the Court to the following cases: *Perno v. Chrysler Group, LLC*, 2011 WL 868899 at *3, n. 2 (D.N.J. Mar.10, 2011) at *3, n. 2; *Shatzki v. Abrams*, No. 09–2046, 2010 WL 148183 (E.D.Ca. Jan.12, 2010); *Clark v. Chrysler Group, LLC*, No. 10–3030, 2010 WL 4486927, *7–8 (E.D.Pa. Nov.5, 2010); *Doss v. Chrysler Group, LLC*, No. 09–2130, 2009 WL 4730932, *3 (D.Ariz. Dec.7, 2009); *Cooper v. Daimler AG*, No. 09–2507, 2009 WL 4730306, *4 (N.D.Ga. Dec.3, 2009).

2 The Court notes Plaintiffs' argument that 28 U.S.C. § 1412 is inapplicable because "the current case was brought against Chrysler Group LLC, a non-bankrupt entity, in federal district court and raises state and federal statutory and common law claims having nothing to do with title 1 1." (Pl. Opp., at 7). However, the Third Circuit and this District, specifically, have consistently applied § 1412 to transfer of "related to" bankruptcy proceedings. *See Perno*, No. 10–5100, 2011 WL 868899 at *4; *Clark*, No. 10–3030, 2010 WL 4486927, at *6; *Johanna Foods, Inc. v. Toobro Holdings TBF LLC*, No. 11–2612, 2011 WL 1791352 (D.N.J. May 10, 2011); *Donahue v. Vertis, Inc.*, No. 10–2942, 2010 WL 5313312 (D.N.J. Dec.20, 2010); *Abrams v. General Nutrition Companies, Inc.* ., No. 06–1820, 2006 WL 2739642 (D.N.J. Sept.25, 2006). Here, Count I of the Complaint requires interpretation of the Bankruptcy Court's Sale Order to determine whether Chrysler has assumed certain liability in this case. As such, the case is "related to" the bankruptcy proceeding and the Court deems it unnecessary to address this argument further.

End of Document

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. TRUSKY on behalf of Herself and all others similarly situated,

Plaintiff,

Case No. 2:11-cv-12815-SFC-LJM

vs.

Honorable Sean F. Cox

GENERAL MOTORS COMPANY

Defendant.

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DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION TO TRANSFER VENUE TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK PURSUANT TO 28 U.S.C. § 1412

RESPONSE

Although General Motors LLC f/k/a General Motors Company ("New GM"), does not agree with all of the assertions of the Plaintiffs offered in support of their Motion to Transfer, New GM does not object to the transfer of this matter.

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Dated: January 31, 2012

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2012, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to the attorneys of record in this matter.

DYKEMA GOSSETT PLLC

By: /s/ Benjamin W. Jeffers

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Dated: January 31, 2012

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

DONNA M. TRUSKY, ASHA JEFFRIES, GAYNELL COLE on behalf of themselves and all others similarly situated, Plaintiffs, vs GENERAL MOTORS COMPANY 300 Renaissance Center Detroit, MI48243 Defendant.	Case No. 2:11-cv-12815 HON. SEAN F. COX

STIPULATED ORDER GRANTING PLAINTIFFS' MOTION TO TRANSFER VENUE TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK PURSUANT TO 28 U.S.C. § 1412

1. This case is before the Court on the stipulation of the parties concerning Plaintiffs' Motion to Transfer Venue To The United States District Court For The Southern District Of New York Pursuant to 28 U.S.C. § 1412 ("Motion to Transfer"). *See* dkt #21.

2. Plaintiffs in this putative class action filed claims against General Motors LLC f/k/a General Motors Company ("New GM"), alleging that New GM breached express warranties with Plaintiffs and the putative class members. *See* Amended Class Action Complaint, dkt #15.

3. New GM filed a Motion to Dismiss arguing, in part, that the claims asserted and the relief sought by Plaintiffs are outside the scope of the warranty terms and impermissibly are premised on conduct of Motors Liquidation Company f/k/a General Motors Corporation ("Old GM"). New GM contends that the claims and relief constitute a violation of the Order of the

United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") pursuant to which New GM acquired its assets and assumed specific liabilities only. *See* Motion to Dismiss, dkt #18. Additionally, New GM contends that the adjudication of the issues noted in this paragraph are within the exclusive jurisdiction of the Bankruptcy Court. Plaintiffs dispute New GM's position and believe that they properly may pursue their claims and seek relief against New GM and in this Court. The parties' disagreement constitutes an actual and pending dispute (the "Dispute").

4. Plaintiffs asserted that it would serve judicial economy for them to petition the Bankruptcy Court, in Case No. 09-50026, and request, *inter alia*, that the Bankruptcy Court address and resolve the Dispute in paragraph 3, above. Consequently, Plaintiffs requested, and New GM agreed, to the entry of an Order staying this action until such time as the Bankruptcy Court resolves the Dispute as noted above or declines to do so ("Stay Order"). This Court entered the Stay Order on November 21, 2012. *See* dkt #20.

5. Plaintiffs later concluded that, in order to seek such relief from the Bankruptcy Court, it is necessary to transfer this case to the United States District Court, Southern District of New York, for ultimate referral to the Bankruptcy Court. On January 17, 2012, Plaintiffs filed their Motion to Transfer. See dkt #21.

6. Although New GM does not agree with all of the assertions of the Plaintiffs offered in support of their Motion to Transfer, New GM does not object to the transfer of this case.

7. New GM hereby withdraws the pending Motion to Dismiss (dkt #18) without prejudice, reserving all rights to answer or otherwise respond to the current Amended Complaint or any amended pleading.

IT IS HEREBY ORDERED:

1. Plaintiffs' Motion to Transfer is **GRANTED**;

2. This case is hereby transferred to the United Stated District Court, Southern District of New York;

3. New GM's current Motion to Dismiss (dkt #18) is withdrawn without prejudice; and

4. New GM shall have forty-five (45) days to answer or otherwise respond to Plaintiffs' Amended Complaint or any amended pleading after the date this case is transferred to, and docketed with, the District Court in New York.

Dated: February 10, 2012

s/ Sean F. Cox
Sean F. Cox
U. S. District Judge

SO STIPULATED

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CLOSED, DQ, STAYED

U.S. District Court
Eastern District of Michigan (Detroit)
CIVIL DOCKET FOR CASE #: 2:11−cv−12815−SFC−LJM

Trusky v. General Motors Company
Assigned to: District Judge Sean F. Cox
Referred to: Magistrate Judge Laurie J. Michelson
Cause: 28:1330 Breach of Contract

Date Filed: 06/29/2011
Date Terminated: 02/10/2012
Jury Demand: Plaintiff
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

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Date Filed	#	Docket Text
06/29/2011	Ï 1	COMPLAINT filed by All Plaintiffs against All Defendants with Jury Demand. Plaintiff requests summons issued. Receipt No: 0645−3047448 − Fee: $350. County Where Action Arose: Wayne − [Previously dismissed case: No] [Possible companion case(s): None] (Attachments: # 1 Exhibit 1 − 08032A Bulletin) (Fink, David) (Entered: 06/29/2011)
06/30/2011	Ï 2	SUMMONS Issued for *General Motors Company* (DWor) (Entered: 06/30/2011)
07/06/2011	Ï 3	NOTICE of Appearance by Marc H. Edelson on behalf of All Plaintiffs. (Edelson, Marc) (Entered: 07/06/2011)

07/12/2011	Ï 4	CERTIFICATE of Service/Summons Returned Executed. All Defendants. (Fink, David) Modified on 7/12/2011 (NHol). [GENERAL MOTORS SERVED ON 7/7/2011] (Entered: 07/12/2011)
07/13/2011	Ï 5	ORDER for Donna M Trusky to Show Cause why this Case should not be Dismissed for Lack of Subject Matter Jurisdiciton. **Show Cause Response due by 7/26/2011** Signed by District Judge Sean F. Cox. (JHer) (Entered: 07/13/2011)
07/15/2011	Ï 6	ATTORNEY APPEARANCE: Jeffrey L. Kodroff appearing on behalf of Donna M Trusky (Kodroff, Jeffrey) (Entered: 07/15/2011)
07/15/2011	Ï 7	ATTORNEY APPEARANCE: John A. Macoretta appearing on behalf of Donna M Trusky (Macoretta, John) (Entered: 07/15/2011)
07/25/2011	Ï 8	NOTICE of Appearance by Benjamin W. Jeffers on behalf of General Motors Company. (Jeffers, Benjamin) (Entered: 07/25/2011)
07/26/2011	Ï 9	MEMORANDUM re 5 Order to Show Cause by Donna M Trusky (Attachments: # 1 Exhibit 1 − Affidavit of Donna M. Trusky) (Bressack, Darryl) [DOCUMENT ENTITLED RESPONSE] Modified on 7/26/2011 (CGre). (Entered: 07/26/2011)
07/26/2011	Ï 10	NOTICE of Appearance by Darryl Bressack on behalf of Donna M Trusky. (Bressack, Darryl) (Entered: 07/26/2011)
07/27/2011	Ï 11	NOTICE by General Motors Company re 5 Order to Show Cause *Concurrence That Plaintiff Has Alleged Jurisdiction in Response to The Court's Order to Show Cause* (Attachments: # 1 Index of Exhibits, # 2 Exhibit A. Sale Approval Order, # 3 Exhibit B. In Re: OnStar Contract Litig., Case No. 2:07−MDL−01867, Opinion &Order Granting in Part and Denying in Part Plaintiffs' Motion For Leave to File a Third Amended Complaint) (Jeffers, Benjamin) (Entered: 07/27/2011)
08/01/2011	Ï	TEXT−ONLY ORDER Vacating re 5 Order to Show Cause. Signed by District Judge Sean F. Cox. (JHer) (Entered: 08/01/2011)
08/01/2011	Ï 12	STIPULATION AND ORDER Extending Time for Defendant to Respond re 1 Complaint. Responsive pleading due 8/11/2011. Signed by District Judge Sean F. Cox. (JHer) (Entered: 08/01/2011)
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10/24/2011	19	STIPULATION AND ORDER Extending Briefing Deadline as to 18 MOTION to Dismiss (**Responses due by 11/21/2011**) Signed by District Judge Sean F. Cox. (JHer) (Entered: 10/24/2011)
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01/31/2012	22	RESPONSE to 21 MOTION to Transfer Case *to Southern District of New York* filed by General Motors Company. (Jeffers, Benjamin) (Entered: 01/31/2012)
02/10/2012	23	STIPULATED ORDER TRANSFERRING CASE to Southern District of New York. Signed by District Judge Sean F. Cox. (DWor) (Entered: 02/10/2012)

CLOSED, DQ, STAYED

U.S. District Court
Eastern District of Michigan (Detroit)
CIVIL DOCKET FOR CASE #: 2:11−cv−12815−SFC−LJM
Internal Use Only

Trusky v. General Motors Company
Assigned to: District Judge Sean F. Cox
Referred to: Magistrate Judge Laurie J. Michelson
Cause: 28:1330 Breach of Contract

Date Filed: 06/29/2011
Date Terminated: 02/10/2012
Jury Demand: Plaintiff
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

Donna M Trusky

represented by **Darryl Bressack**
Fink Associates Law
100 West Long Lake Road
Suite 111
Bloomfield Hills, MI 48304
248−971−2500
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Email: dbressack@finkandassociateslaw.com
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Fax: 248−971−2600
Email: dfink@finkandassociateslaw.com
ATTORNEY TO BE NOTICED

Plaintiff

Asha Jeffries represented by **David H. Fink**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Gaynell Cole represented by **David H. Fink**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

General Motors Company represented by **Benjamin W. Jeffers**
Dykema Gossett (Detroit)
400 Renaissance Center
Detroit, MI 48243−1668
313−568−6800
Email: bjeffers@dykema.com
ATTORNEY TO BE NOTICED

Michael P. Cooney
Dykema Gossett
400 Renaissance Center
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Fax: 313−568−6701
Email: mcooney@dykema.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/29/2011	Ï 1	COMPLAINT filed by All Plaintiffs against All Defendants with Jury Demand. Plaintiff requests summons issued. Receipt No: 0645−3047448 − Fee: $350. County Where Action Arose: Wayne − [Previously dismissed case: No] [Possible companion case(s): None] (Attachments: # 1 Exhibit 1 − 08032A Bulletin) (Fink, David) (Entered: 06/29/2011)
06/30/2011	Ï 2	SUMMONS Issued for *General Motors Company* (DWor) (Entered: 06/30/2011)
06/30/2011	Ï	(Court only) ***Set/Clear Flags (DWor) (Entered: 06/30/2011)

07/06/2011	Ï 3	NOTICE of Appearance by Marc H. Edelson on behalf of All Plaintiffs. (Edelson, Marc) (Entered: 07/06/2011)
07/12/2011	Ï 4	CERTIFICATE of Service/Summons Returned Executed. All Defendants. (Fink, David) Modified on 7/12/2011 (NHol). [GENERAL MOTORS SERVED ON 7/7/2011] (Entered: 07/12/2011)
07/13/2011	Ï 5	ORDER for Donna M Trusky to Show Cause why this Case should not be Dismissed for Lack of Subject Matter Jurisdiciton. **Show Cause Response due by 7/26/2011** Signed by District Judge Sean F. Cox. (JHer) (Entered: 07/13/2011)
07/15/2011	Ï 6	ATTORNEY APPEARANCE: Jeffrey L. Kodroff appearing on behalf of Donna M Trusky (Kodroff, Jeffrey) (Entered: 07/15/2011)
07/15/2011	Ï 7	ATTORNEY APPEARANCE: John A. Macoretta appearing on behalf of Donna M Trusky (Macoretta, John) (Entered: 07/15/2011)
07/25/2011	Ï 8	NOTICE of Appearance by Benjamin W. Jeffers on behalf of General Motors Company. (Jeffers, Benjamin) (Entered: 07/25/2011)
07/26/2011	Ï 9	MEMORANDUM re 5 Order to Show Cause by Donna M Trusky (Attachments: # 1 Exhibit 1 − Affidavit of Donna M. Trusky) (Bressack, Darryl) [DOCUMENT ENTITLED RESPONSE] Modified on 7/26/2011 (CGre). (Entered: 07/26/2011)
07/26/2011	İ 10	NOTICE of Appearance by Darryl Bressack on behalf of Donna M Trusky. (Bressack, Darryl) (Entered: 07/26/2011)
07/27/2011	İ 11	NOTICE by General Motors Company re 5 Order to Show Cause *Concurrence That Plaintiff Has Alleged Jurisdiction in Response to The Court's Order to Show Cause* (Attachments: # 1 Index of Exhibits, # 2 Exhibit A. Sale Approval Order, # 3 Exhibit B. In Re: OnStar Contract Litig., Case No. 2:07−MDL−01867, Opinion &Order Granting in Part and Denying in Part Plaintiffs' Motion For Leave to File a Third Amended Complaint) (Jeffers, Benjamin) (Entered: 07/27/2011)
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
TRUSKY,

Plaintiff(s),

NOTICE OF COURT CONFERENCE

-against-

GENERAL MOTORS COMPANY, 12 civ 1097 (JGK)

Defendant(s).
----------X

To All Parties,

You are directed to appear for a pretrial conference, to be held on **Tuesday, April 17, 2012** in Courtroom 12B, at 4:30pm in front of the Honorable John G. Koeltl.

All requests for adjournments must be made in writing to the Court.

For any further information, please contact the Court at (212) 805-0107.

Don Fletcher

Courtroom Case Manager

Dated: New York, New York
February 22, 2012