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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

MOTION OF REMY INTERNATIONAL FOR AN ORDER EXTENDING AND ENFORCING THE STAY IMPOSED UNDER 11 U.S.C. § 362 (a) TO INCLUDE CERTAIN LITIGATION AGAINST REMY INTERNATIONAL, OR ALTERNATIVELY, ENJOINING SUCH LITIGATION PURSUANT TO 11 U.S.C. § 105

TABLE OF CONTENTS

Page

I. PRELIMINARY STATEMENT 1

II. BACKGROUND 2

III. ARGUMENT 5

A. The Automatic Stay Should be Extended and Enforced as to Remy 5

i. Unitary Interest Between Debtor and Third Party 5

ii. JUDGMENT AGAINST NON-DEBTOR REMY WILL IMPAIR DEBTOR GM'S ESTATE 8

iii. CONCLUSION 9

B. In the Alternative, Remy is Entitled to a Preliminary Injunction Enjoining the GM D&I Cases, as Against Remy, Under 11 U.S.C. § 105 10

IV. WAIVER OF MEMORANDUM OF LAW 14

V. NOTICE 14

TABLE OF AUTHORITY

Page

FEDERAL CASES

In re A.H. Robins Co., 788 F.2d 944 (4th Cir. 1986).. 5

A.H. Robins Co. v. Piccinin (In re A.H. Robins Co.), 788 F.2d 994 (4th Cir.), *cert. denied* 479 U.S. 876, 93 L. Ed. 2d 177, 107 S. Ct 251 (1986).....................2, 6, 7, 8, 9, 10

AP Industrial Inc. v. SN Phelps & Co. (In re AP Industrial, Inc.), 117 B.R. 789 (Bankr. S.D.N.Y. 1990) 11

Alert Holdings, Inc. v. Interstate Protective Services (In re Alert Holdings, Inc.), 148 B.R. 194 (Bankr. S.D.N.Y. 1992) 11

American Film Technologies, Inc. v. Taritero (In re American Film Technologies, Inc.), 175 B.R. 847 (Bankr. D. Del. 1994) 13

C&J Clark America, Inc. v. Carol Ruth, Inc. (In re Wingspread Corp.), 92 B.R. 87 (Bankr. S.D.N.Y. 1988)... 11

Eastern Airlines, Inc. v. Rolleston (In re Ionosphere Clubs, Inc.), 111 B.R. 423 (Bankr. S.D.N.Y. 1990) 12, 13

In re Family Health Services, Inc., 105 B.R. 937 (Bankr. C. D. Cal. 1989)...................... 6

Garrity v. Leffler (In re Neuman), 71 B.R. 567 (S.D.N.Y. 1987) 11, 12

In re Johns-Manville Corp., 26 B.R. 420 (Bankr. S.D.N.Y. 1983) *aff'd* 40 B.R. 219 (S.D.N.Y. 1984) *rev'd in part on other grounds*, 41 B.R. 926 (S.D.N.Y. 1984) 13

In re Johns-Manville Corp., 33 B.R. 254 (Bankr. S.D.N.Y. 1983)............................... 5, 8

In re Johns Manville Corp., 40 B.R. 219 (Bankr. S.D.N.Y. 1984) 11, 13

Johns-Manville Corp. v. Colorado Insurance Guaranty Association (In Re Johns-Manville Corp.), 91 B.R. 225 (Bankr. S.D.N.Y. 1988) 11

Keene Corp. v. Acstar Insurance Co. (In re Keene Corp.), 168 B.R. 285 (Bankr. S.D.N.Y. 1994).. 11

LTV Steel Co. v. Board of Education (In re Chateaugay Corp., Reomar, Inc.), 93 B.R. 26 (S.D.N.Y. 1988)... 11

TABLE OF AUTHORITY
(continued)

Page

Lesser v. 931 Investors (In re Lion Capital Group), 44 B.R. 690 (Bankr. S.D.N.Y. 1984) 12

Lomas Finance Corp. v. Northern Trust Co. (In re Lomas Finance Corp.), 117 B.R. 64 (S.D.N.Y. 1990) 5, 6, 8, 12, 14

North Star Contracting Corp. v. McSpedon (In re North Star Contracting Corp.), 125 B.R. 368 (S.D.N.Y. 1991) 5, 6, 7, 8

In re Otero Mills, Inc., 25 B.R. 1018 (Bankr. D.N.M. 1982) 13

Rosetta Resource Operating LP v. Pogo Producing Co., 48 Bankr. Ct. Dec. 56 (Bankr. S.D.N.Y. 2007) 8

Sudbury, Inc. v. Escott (In re Sudbury, Inc.), 140 B.R. 461 (Bankr. N.D. Ohio 1992) 13

Teachers Insurance and Annuity Association of America, 803 F.2d at 65 8

In re United Health Care Organization, 210 B.R. 228 (S.D.N.Y. 1997) 8, 12

W.R. Grace & Co. v. Chakarian (In re W.R. Grace & Co.), 42 Bankr. Ct. Dec. 270 (Bankr. D.C. Del. 2004) 6

STATE CASES

General Motors Corporation v. Royal & Sun Alliance Insurance Group, PLC, et al., 2007 WL 1206830 (a copy of this decision is annexed hereto as Exhibit "A") 9

FEDERAL STATUTES

11 U.S.C. § 105 .... 1, 15

11 U.S.C. § 362 .... 1, 14

11 U.S.C. § 105(a). 10

TABLE OF AUTHORITY
(continued)

Page

STATE STATUTES

NY CLS Ins § 3420…………………………………………………………… 9

Ind. Code § 27-1-13-7 9

215 ILCS 5/388... 9

R.I. Gen. Laws § 27-7-2.4 9

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

Remy International, Inc. ("Remy") hereby files this motion seeking extension and enforcement of the automatic stay pursuant to 11 U.S.C. § 362 to prevent the prosecution of claims in various courts around the United States, or elsewhere, wherein plaintiffs seek monetary damage from Remy for personal injuries or wrongful death based on exposure to General Motors Corporation ("GM") manufactured products or GM owned plants or facilities (hereinafter referred to as " premises"). In the alternative, to the extent that the Court is not inclined to extend GM's automatic stay to Remy, Remy seeks a preliminary injunction preventing further prosecution of these cases as against Remy pursuant to 11 U.S.C. § 105 in order to avoid prejudice to GM's estate (the "Estate"), and to seek that this injunction become permanent at the time of Plan approval.

I.
PRELIMINARY STATEMENT

1. As more fully described below, Remy has been named in several lawsuits for the sole reason that it purchased the assets, including the name, of the Delco Remy division of GM. The plaintiffs in these lawsuits have sued both GM and Remy. In each of these lawsuits, GM has agreed to defend and indemnify Remy since the lawsuits are based on GM manufactured products or GM owned premises – in other words, any liability of Remy could only be derivative of GM and GM products and/or premises. Hence, since these lawsuits are now stayed as to GM pursuant to the automatic stay of the bankruptcy court, Remy only seeks to have that same stay extend to Remy since GM has been defending Remy in these cases due to GM's contractual obligations to Remy under an Asset Purchase Agreement by and among DR International, Inc., DRA, Inc. and General Motors Corporation dated July 13, 1994, as more fully described below.

2. Since February 20, 2003, there have been 20 lawsuits filed against Remy based on GM products/premises, and in 18 of those[1] GM has defended and indemnified Remy (hereinafter

[1] In one of the remaining actions, *Nangle v. A.W. Chesterton*, the plaintiff filed his first amended complaint on June 8, 2009 – after GM filed for bankruptcy. In the other, *Bynum v. Remy Inc., et al.*, Remy tendered the action to GM but received no response. Bynum's counsel has informed Remy's counsel that he has no objection to dismissing Remy, and Remy is in the process of obtaining that dismissal.

referred to in this motion as the "GM D&I Cases".) (See the declaration of Mr. Jeremiah Shives, Deputy General Counsel for Remy, with accompanying exhibits.) As of this filing, there appear to be only five civil lawsuits remaining, pending in three different state courts: Illinois, Indiana and Rhode Island. These cases are still "open" although one may soon be dismissed and as to another we have been informed that it was settled as part of a GM settlement prior to the bankruptcy filing and await documentation.

3. It is clear from GM's defense of and indemnification of Remy in these lawsuits based on GM products and/or premises, that there is such a "unity of interest" between GM and Remy that GM may be said to be the "real party in interest," and these cases are precisely the "unusual circumstances" contemplated by the Fourth Circuit in the seminal case of *A.H. Robins Co. v. Piccinin (In re A.H. Robins Co.)*, 788 F.2d 994, 999 (4th Cir.), *cert. denied* 479 U.S. 876, 93 L. Ed. 2d 177, 107 S. Ct 251 (1986) for which an extension of the automatic stay or injunction against prosecution of claims against a non-debtor is appropriate.

II.
BACKGROUND

4. The following facts are taken from the Declaration of Jeremiah Shives, Deputy General Counsel for Remy:

a. Delco Remy was a division of GM until 1994, when substantially all of the assets of that division, including its name, were sold to DRA, Inc., a Delaware corporation created in 1993 by a group of private investors led by former Chrysler President Harold K. Sperlich and Delco Remy division Executive Thomas J. Snyder. That sale was accomplished through an Asset Purchase Agreement by and among DR International, Inc., DRA, Inc. and General Motors Corporation dated July 13, 1994 (hereinafter "Agreement" or "APA"). Prior to its purchase of the assets of GM's Delco Remy division, DRA, Inc. did not manufacture, distribute or sell any products – it was merely a shell corporation incorporated by Citicorp Ventures to carry out the asset purchase under the Agreement.

b. A true and correct copy of relevant excerpts of the Agreement are attached to the Declaration of Jeremiah Shives as Exhibit A.

c. Under the terms of the Agreement, DRA, Inc. did not assume any responsibility for General Motors products manufactured prior to July 13, 1994, nor did it assume responsibility for any real property or premises owned by General Motors, all of which were "Excluded Liabilities" under the Agreement. Specifically, DRA, Inc. did not assume any liability for any claim relating to any General Motors product nor to any claim arising from any property owned by General Motors.

d. After purchasing the assets of GM's Delco Remy division, DRA, Inc. became a manufacturer and re-manufacturer of automotive parts, including starters and alternators, which were products GM's Delco Remy division also formerly manufactured.

e. In 2004, the entity formerly know as DRA, Inc. changed its name to Remy International, Inc.

f. Pursuant to the Agreement GM retained certain liabilities relating to the assets being sold under that agreement (the "Retained Liabilities"). Among the "Retained Liabilities" enumerated in section 5.2 of the Agreement are the following: "(i) any liability or obligation of GM existing as a result of any act, failure to act or other state of facts or occurrence which constitutes a breach or violation of any of GM's representations, warranties, covenants or agreements contained in this Agreement; (ii) any product liability claim of any nature in respect of products of the Businesses [GM] manufactured on or prior to the Closing Date; . . . (v) any obligation or liability arising under any Contract, instrument or agreement that (a) is not transferred to Purchaser as part of the Purchased Assets; . . .and (xiv) liabilities in connection with any matter as to which GM has responsibility or liability under Article VIII [entitled 'Environmental Matters']."

g. In conjunction with GM's retention of the "Retained Liabilities," in section 5.3.1(A) of the Agreement, GM agreed to indemnify and hold Remy harmless from any damages relating to the Retained Liabilities. Paragraph 5.3.1(A) of the Agreement provides: "GM shall indemnify [Remy] . . . and hold [Remy] . . . harmless from and against Damages, whether contingent or otherwise, fixed or absolute, known or unknown, present or future or

otherwise, relating directly to or indirectly to, arising out of or resulting from (i) any misrepresentation or breach of any representation, warranty, covenant or agreement made by GM in this Agreement or in any statement, document or certificate furnished or required to be furnished to [Remy] pursuant hereto; . . . or (iii) the Retained Liabilities or otherwise to the extent arising out of or relating to the ownership or use of the Purchased Assets by GM or the operation of the Businesses on or prior to Closing."

h. Pursuant to section 5.3.1(C) of the Agreement, the term "Damages" means "any and all losses, liabilities, third party damages (including fines, penalty and punitive damages), deficiencies, interest, costs and expenses and any actions, judgments, costs and expenses (including reasonable attorneys' fees and all other reasonable expenses incurred in investigating, preparing or defending any litigation or proceeding, commenced or threatened) relating to, or incident to the enforcement of, this Agreement."

i. In addition to the indemnity and defense obligations in sections 5.2 and 5.3.1 of the Agreement, pursuant to section 8.12.3 of the Agreement GM agreed to "defend, indemnify and hold [Remy] harmless from and against any liabilities, damages, penalties, costs, expenses and fines, including reasonable attorney's fees . . . (the "Adverse Consequences") to which [Remy] may be subjected as a result of an action, suit, complaint, formal Notice of probable claim, or proceeding brought by a government agency or other third party (the "Claim"), but only to the extent such Claim is based upon or with respect to clause (i) directly arises as a result of any remedial activity by GM in connection with: (i) an Identified Pre-Closing Environmental Condition . . . or (ii) any breach by GM of the representation and warranties in Section 8.12.2A. . . ." Section 8.12.2(A) of the Agreement concerns GM's representations and warranties regarding environmental conditions at the premises that were being leased by GM to Remy.

j. After the Agreement was executed in 1994 through and until July 16, 2009, GM has been defending Remy in lawsuits filed by persons alleging exposure to products manufactured by GM prior to the Closing Date of the Agreement and to premises owned by GM

– in other words, actions in which any liability of Remy could only be derivative of GM's liability under the Agreement and as law. Because Remy has no liability for any product manufactured by GM prior to the Closing Date of the Agreement, which was July 13, 1994, nor for any premises owned by GM, GM has accepted these tenders and has defended and indemnified Remy in all cases covered by the APA . At this time, it appears that there are four remaining "open" cases out of the 19 cases tendered to GM (three of which tenders have been accepted by GM). Those cases are *Timothy Bynum, William Cawlfield, Robert Phillips* and *Clement Wydra*, case captions of which are attached to the Declaration of Jeremiah Shives as Exhibits B, C, D and E.

k. In addition to the four cases discusses above, there is one action (*Nangle v. A.W. Chesterton, Inc.*, *et al.*) the first amended complaint for which was filed on June 8, 2009 - after GM filed for bankruptcy – which names Remy and alleges exposure to products and premises from 1960 to 2004. While GM is not named in the *Nangle* matter – presumably because of the bankruptcy filing – the plaintiff's allegations of exposure to Remy products and premises from 1960 to 2004 necessarily invokes GM's defense and indemnity obligations under the Agreement because Remy did not begin doing business until 1994. Any alleged exposures from 1960 to 1994 constitute "Retained Liabilities" under the Agreement, and the *Nangle* matter is therefore one in which, absent the bankruptcy filing, GM would undeniably be obligated to defend and indemnify Remy. The case caption for *Nangle* is attached to the Declaration of Jeremiah Shives as Exhibit F.

l. On July 16, 2009, GM informed Remy that it did not intend to continue to honor the Agreement. This information came in an email from Mr. Maynard Timm, Esq., of GM Legal Staff, to counsel for Remy stating in pertinent part that: (a) on July 10, 2009, "GM" emerged from Chapter 11 Bankruptcy and became "General Motors Company," a new entity; (b) as part of the bankruptcy process, General Motors Company did not assume the Agreement; (c) General Motors Company will not assume any responsibility under the Agreement for asbestos

litigation; and (d) "GM" will shortly be communicating this information to outside counsel representing "GM" and Remy.

m. A true and correct copy of the July 16, 2009 email from Mr. Timm is attached to the Declaration of Jeremiah Shives as Exhibit N.

III.
ARGUMENT

A. The Automatic Stay Should be Extended and Enforced as to Remy

i. Unitary Interest Between Debtor and Third Party

5. While the automatic stay provisions of the Bankruptcy Code typically protect estate property by barring proceedings against the debtor itself "some courts have recognized that in circumstances where the debtor and the non-bankrupt party can be considered one entity or as having a unitary interest, a section 362(a)(1) stay may suspend the action against a non-bankrupt party." (*North Star Contracting Corp. v. McSpedon* (*In re North Star Contracting Corp*.), 125 B.R. 368, 370 (S.D.N.Y. 1991); *see also*, *Lomas Fin. Corp. v. Northern Trust Co. (In re Lomas Fin. Corp*.), 117 B.R. 64 (S.D.N.Y. 1990); *In re Johns-Manville Corp*., 33 B.R. 254, 263-64 (Bankr. S.D.N.Y. 1983).

6. In particular, when certain "unusual circumstances" exist the automatic stay may apply to actions against non-debtors "whose interest are so intimately intertwined with those of the debtor that the latter may be said to be the real party in interest." (*In re A.H. Robins Co.*, 788 F.2d 944, 1001 (4th Cir. 1986); *see also In re North Star Contracting Corp.*, 125 B.R. at 370-71 (holding that the lower court "correctly recognized that an identity of interest exists" between the debtor and the non-debtor warranting application of a stay because the non-debtor had "a right of indemnification with respect to [the debtor] and thus any recovery by [the plaintiff] in the state court action [would] adversely affect [the debtor's] assets"); *In re Lomas Fin. Corp.*, 117 B.R. at 68.) "These courts reason that a special circumstance exists because a judgment against the non-debtor will affect directly the debtor's assets." (*In re North Star Contracting Corp.*, 125 B.R. at 370-71; *see also, e.g., In re Lomas Fin. Corp.*, 117 B.R. at 68.) As explained in the Fourth

Circuit's leading decision in *A.H. Robins Co.*, "unusual circumstances" which justify the extension of the bankruptcy stay to a non-debtor, arise:

> when there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third party defendant will in effect be a judgment or finding against the debtor. ***An illustration of such a situation would be a suit against a third-party who is entitled to absolute indemnity by the debtor on account of any judgment that might result against them in the case. To refuse application of the stay in that case would defeat the very purpose and intent of the statute.***

(*A.H. Robins, supra*, 788 F.2d at 999 (emphasis added); *see also In re North Star Contracting Corp.*, 125 B.R. at 370 (citing *A.H. Robins* with approval and noting that the "issue of when a non-bankrupt party should benefit from a section 362(a)(1) stay has been considered most persuasively by the Fourth Circuit" in *Robins*); *In re Family Health Services, Inc*., 105 B.R. 937, 942-943 (Bankr. C. D. Cal. 1989) (staying several collection actions against non-debtor members of a debtor HMO *because judgments against non-debtors would trigger claims for indemnification from the debtor*), *emphasis added*; *W.R. Grace & Co. v. Chakarian* (*In re W.R. Grace & Co*.), 42 Bankr. Ct. Dec. 270 (Bankr. D.C. Del. 2004) (extending the stay to an action between a third party and a defendant who was entitled to indemnification from the debtor pursuant to a stock purchase agreement *because the action had "a direct effect on the reorganization proceedings of these Debtors" and the "Debtors are contractually obligated to defend [the non-debtor defendant]* and, to the extent Samson is found liable, Debtors must indemnify Samson"), *emphasis added*.)

7. In this case, there does exist such a unity of interest that there is no doubt that the authority cited above is clearly applicable because GM has been indemnifying Remy already in the cases to which Remy seeks to extend the GM stay to itself; for all practical purposes, GM is Remy in these cases because these were GM products or GM facilities, as Remy was not in existence. Instead Delco Remy was a division of GM, a part of GM. There can be no greater unity of interest than to be sued as a part of the whole, and no greater injustice to have the

"whole" stayed but not the "part." Here, the Agreement and the pending cases in which GM has agreed, and has actually undertaken, to defend and indemnify Remy constitute the unitary interest, the "unusual circumstances" required to apply the automatic stay to non-debtor Remy because Remy is "the beneficiary of an express contract of indemnification on the part of" the debtor GM. (*A.H. Robins, supra*, 788 F.2d at 1007.) The dates of GM's acceptances of Remy's tenders of defense are contained in Exhibits H, J and L to the Declaration of Jeremiah Shives. Clearly, the fact that GM has already accepted and agreed to defend Remy in three[2] of these pending cases confirms GM's obligations under 5.2 and 5.3.1 of the Agreement, whereby the Debtor agreed to "indemnify [Remy] . . . and hold [Remy] . . . harmless from and against" all costs and expenses including, without limitation, among others, attorneys fee, damages, losses, disbursement, etc., arising out of any of the Retained Liabilities, which include any and all claims and litigation against Remy arising out of or relating to products manufactured, distributed or sold by the Debtor prior to the date of the Closing Date.

8. GM is sued in the same cases Remy has been sued in; GM has agreed to defend and indemnify Remy. The cases as to GM are now stayed due to the bankruptcy. It is only just that this stay be extended as to Remy because by accepting the tender, GM has admitted that it is responsible for those cases, not Remy. Certainly, where it can be said that debtor and the non-bankrupt party can be considered one entity or as having a unitary interest, a section 362(a)(1) stay may suspend the action against a non-bankrupt party, per *North Star Contracting Corp. v. McSpedon* (*In re North Star Contracting Corp.*), 125 B.R. 368, 370 (S.D.N.Y. 1991) *Lomas Fin. Corp. v. Northern Trust Co.* (*In re Lomas Fin. Corp.*), 117 B.R. 64 (S.D.N.Y. 1990); *In re Johns-Manville Corp.*, 33 B.R. 254, 263-64 (Bankr. S.D.N.Y. 1983). Also under the facts of this case, it is clear that GM has agreed to provide Remy with complete indemnity, pursuant to the Agreement, and hence the authority of *A.H. Robins Co.* is clearly applicable to warrant this Court extending the stay in these cases also to Remy.

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[2] In the fourth case, Bynum, the plaintiffs counsel informed Remy that they need not respond to the complaint since Remy never owned the premises at issue ,and counsel for Remy is in the process of obtaining a dismissal in this matter.

ii. JUDGMENT AGAINST NON-DEBTOR REMY WILL IMPAIR DEBTOR GM'S ESTATE

9. "These courts reason that a special circumstance exists because a judgment against the non-debtor will affect directly the debtor's assets." (*In re North Star Contracting Corp.*, 125 B.R. at 370-71; *see also, e.g., In re Lomas Fin. Corp.*, 117 B.R. at 68.) "[S]everal courts have held that under specific circumstances non-debtors may be protected by the automatic stay…if it contributes to the debtor's efforts to achieve rehabilitation." (*In re United Health Care Org*., 210 B.R. 228, 232 (S.D.N.Y. 1997), quoting *Teachers Ins. and Annuity Ass'n of Am*., 803 F.2d at 65; *Rosetta Res. Operating LP v. Pogo Producing Co*., 48 Bankr. Ct. Dec. 56 at 10-11 (Bankr. S.D.N.Y. 2007) (staying an action against a non-debtor because "1) adjudication of [non-debtor's] liability under the Pogo PSA may effectively be an adjudication of issues regarding the Debtors' liability without giving Calpine an opportunity to adequately defend itself; 2) if the Arbitration is allowed to go forward . . . and [non-debtor] is found liable in the Arbitration, the Debtors may be required to indemnify [non-debtor] for any judgment amount; and 3) the Debtors would have to expend time and energy responding to discovery and protecting their interests if the Arbitration were permitted to go forward").)

10. A judgment or finding in these "open, pending" cases against Remy would cause Remy to increase its claim against the estate of GM because it would trigger a claim for indemnification as set forth above which would include the amount of any judgment, as well as for defense costs incurred during the pendency of these cases. (*See, A.H. Robins, supra*, 788 F.2d at 999.)

11. Similarly, cases filed against Remy coming within the parameters of the Agreement could trigger direct claims by Remy against GM's insurers, at least one of which has been held obligated to pay for liability and defense costs relating to cases such as those within the parameters of the Agreement, to the extent they relate to claims within the policy period. (*See generally, General Motors Corporation v. Royal & Sun Alliance Ins. Group, PLC, et al.* 2007 WL 1206830 (a copy of this decision is annexed hereto as Exhibit "A")). Like New York (NY CLS Ins § 3420), Illinois (215 ILCS 5/388), Indiana (Ind. Code § 27-1-13-7) and Rhode

Island (R.I. Gen. Laws § 27-7-2.4) allow injured parties to access the liability policies of a debtor in bankruptcy. This, if it were to occur, would clearly implicate property of the estate. As stated by the court in *A.H. Robins*, a products liability policy of the debtor is "valuable property of a debtor, particularly if the debtor is confronted with substantial liability claims within the coverage of the policy in which case the policy may well be, as one court has remarked in a case like the one under review, "the most important asset of [i.e., the debtor's] estate." (*A.H. Robins, supra*, 788 F.2d at 1002, citing *In re Johns Manville Corp.*, 40 B.R. 219, 229 (Bankr. S.D.N.Y. 1984).) "Any action in which the judgment may diminish this 'important asset' is unquestionably subject to a stay under this subsection." (*A.H. Robins, supra*, 788 F.2d at 1002.)

12. Accordingly, GM's interests are at stake in the GM D&I Cases notwithstanding the fact that GM itself is no longer a party because of the bankruptcy filing. To "refuse application of the stay in" the GM D&I Cases "would defeat the very purpose and intent of the statute" since continued litigation of the pending GM D&I Cases and future cases which come within the parameters of the APA could effectively result in the estate incurring substantial costs and being held responsible for Remy's losses by virtue of collateral estoppel – liability that Section 362(a) is intended to protect. (*A.H. Robins, supra*, 788 F.2d at 999.)

iii. CONCLUSION

13. It is clear that there is such a unitary interest between GM and Remy in these GM D&I cases that the case law cited above clearly supports extending the GM stay to Remy in this circumstance. Additionally, the line of cases discussing impairment to the Debtors estate should the stay not be extended also clearly apply in this situation because GM has agreed to indemnify Remy in these cases, and should litigation pursue against Remy were the cases not stayed, Remy would then be forced to seek enforcement of GM's indemnity and insurance obligations, thereby triggering "impairment" of the Debtor's estate.

14. Furthermore, the plaintiffs in the present and future cases which come within the parameters of the APA should not be permitted to make an end run around the protections of Section 362 by prosecuting claims asserted against the GM through litigation with Remy – a

party which GM has agreed to defend and indemnify. Remy is entitled to these protections as well, since the cases coming within the terms of the APA are really cases filed against GM, the debtor and which are now stayed due to the bankruptcy. Had these cases not been "GM" cases, GM would never have accepted Remy's tender throughout the years and up to July 16, 2009. To permit plaintiffs to now pursue Remy in cases in which GM has agreed to defend and indemnify Remy would be to allow plaintiffs to try to achieve by indirect means the very same result that it is undisputed that Section 362 would prohibit if pursued directly. Because "the Congressional intent to provide relief to debtors would be frustrated by permitting indirectly what is expressly prohibited in the Code" (*A.H. Robins, supra*, 788 F.2d at 999), enforcement of Section 362 is warranted and the claims as against Remy in all pending cases, including at least the *Bynum*, *Cawlfield*, *Phillips*, *Wydra* and *Nangle* actions, as well as in all future GM D&I Cases should be stayed, and this court should retain jurisdiction to make this preliminary extension of the stay become a permanent extension applying to any future cases filed against Remy which come within the terms of the Agreement.

B. In the Alternative, Remy is Entitled to a Preliminary Injunction Enjoining the GM D&I Cases, as Against Remy, Under 11 U.S.C. § 105

15. Section 105(a) authorizes the Court to "issue any order…necessary or appropriate to carry out the provisions of the" Bankruptcy Code. (11 U.S.C. § 105(a).) The Court's authority under Section 105 "is broader than the automatic stay provisions of Section 362" and the Court "may use its equitable powers to assure the orderly conduct of the reorganization proceedings" or to "enjoin proceedings in other courts when it is satisfied that such a proceeding would defeat or impair its jurisdiction with respect to a case before it." (*Johns-Manville Corp. v. Colorado Ins. Guar. Ass'n* (*In Re Johns-Manville Corp.*), 91 B.R. 225, 227-8 (Bankr. S.D.N.Y. 1988), quoting *LTV Steel Co. v. Board of Educ.* (*In re Chateaugay Corp., Reomar, Inc.*), 93 B.R. 26, 29 (S.D.N.Y. 1988); *accord*, *Alert Holdings, Inc. v. Interstate Protective Servs.* (*In re Alert Holdings, Inc.*), 148 B.R. 194, 200 (Bankr. S.D.N.Y. 1992); *AP Indus. Inc. v. SN Phelps & Co.* (*In re AP Indus, Inc.*), 117 B.R. 789, 802 (Bankr. S.D.N.Y. 1990); *Garrity v. Leffler* (*In re Neuman*), 71 B.R. 567, 571 (S.D.N.Y. 1987). It is a proper exercise of a Court's authority under

Section 105 to extend a Section 362 injunction to stay an action as to a non-debtor where necessary to insure an orderly reorganization to enjoin proceedings in other courts when such proceeding would impair its jurisdiction regarding the case before it. (*See*, *In re Johns Manville Corp*., 40 B.R. 219, 226 (Bankr. S.D.N.Y. 1984) (holding that "[p]ursuant to the exercise of [its] authority [under Section 105] the Court may issue or extend stays to enjoin a variety of proceedings which will have an adverse impact on the Debtor's ability to formulate a Chapter 11 plan")).

16. The standard for issuance of injunctive relief under Section 105 is whether the action to be enjoined is one that would "embarrass, burden, delay or otherwise impede the reorganization proceedings or if the stay is necessary to preserve or protect the debtor's estate and reorganization prospects…." (*In re Alert Holdings, supra*, 148 B.R. at 200; *see also*, *Keene Corp. v. Acstar Ins. Co.* (*In re Keene Corp.*), 168 B.R. 285, 292 (Bankr. S.D.N.Y. 1994) (The Court "can enjoin an activity that threatens the reorganization process or impairs the Court's jurisdiction with respect to a case before it"); *In re Neuman*, *supra*, 71 B.R. at 571-2; *In re Chateaugay Corp. Reomar, supra*, 93 B.R. at 31; *In re Johns-Manville Corp.*, 91 B.R. at 227-8.)

17. In contrast to a preliminary injunction motion outside the bankruptcy context, Section 105 does not require the existence of irreparable injury. (*See*, *In re Keene Corp.*, *supra*, 164 B.R. at 292; *C&J Clark Am., Inc. v. Carol Ruth, Inc.* (*In re Wingspread Corp.*), 92 B.R. 87, 92 (Bankr. S.D.N.Y. 1988) ("The usual grounds for injunctive relief such as irreparable injury need not be shown in a proceeding for an injunction under Section 105(a)"); *Newman*, *supra*, 71 B.R. at 571.

18. Here, even if the GM D&I Cases are not subject to the automatic stay, which they are, an injunction against continued prosecution of the GM D&I Cases against Remy is necessary and appropriate to protect GM's estate and reorganization prospects, and to ensure that those cases do not impede GM's reorganization proceedings.

19. As discussed above, the plaintiffs in the GM D&I Cases could try to use findings as to Remy – which would be nothing more than a surrogate for GM under these facts – against

GM in any subsequent lawsuits. In effect, then, a finding against Remy in the GM D&I case may serve as a finding against GM, even though GM is no longer a party to those cases. Such a finding could trigger additional claims by third parties against GM's Estate, seeking to apply to GM, via collateral estoppel, the findings in the lawsuit against Remy. Moreover, a finding against Remy would trigger an indemnification claim by Remy against GM's Estate pursuant to the APA, and would also trigger a claim by Remy against any of GM's applicable insurance policies, thus both causing Remy to file an amended – increased – claim against GM's Estate, also in order to enforce the Agreement.

20. The threatened impairment of the Debtor's estate were the stay not extended to Remy alone is a strong reason for this court's application of the automatic stay provision of Section 362(a). Even if the court were not inclined to extend the stay to Remy, the potential collateral estoppel effects of proceeding with the GM D&I Cases as against Remy would warrant this court's enjoining such GM D&I cases from proceeding pursuant to Section 105.

21. Courts routinely recognize that Section 105 of the Bankruptcy Code may be used to enjoin litigation against non-debtors where there is the potential threat of the debtor being collaterally estopped from asserting potential defenses if an adverse judgment is rendered against a non-debtor. (*See, In re United Health Care Org.*, *supra*, 210 B.R. at 232; *Eastern Airlines, Inc. v. Rolleston* (*In re Ionosphere Clubs, Inc.*), 111 B.R. 423, 435 (Bankr. S.D.N.Y. 1990); *In re Lomas Fin. Corp.*, *supra*, 117 B.R. at 67; *Lesser v. 931 Investors* (*In re Lion Capital Group*), 44 B.R. 690, 703 (Bankr. S.D.N.Y. 1984); *American Film Technologies, Inc. v. Taritero* (*In re American Film Technologies, Inc.*), 175 B.R. 847, 849-50 (Bankr. D. Del. 1994); *Sudbury, Inc. v. Escott* (*In re Sudbury, Inc.*), 140 B.R. 461, 463 (Bankr. N.D. Ohio 1992); *In re Johns-Manville Corp.*, 26 B.R. 420, 429 (Bankr. S.D.N.Y. 1983) *aff'd* 40 B.R. 219 (S.D.N.Y. 1984) *rev'd in part on other grounds*, 41 B.R. 926 (S.D.N.Y. 1984); *In re Otero Mills, Inc.*, 25 B.R. 1018, 1020 (Bankr. D.N.M. 1982); *In re Johns Manville Corp., supra*, 40 B.R. at 226.)

22. For example, in *In re Ionosphere Clubs Inc.*, the Court enjoined actions against the debtor's co-defendants since the claims against the debtor and the co-defendants were

"inextricably interwoven, presenting common questions of law and fact" such that a finding of liability as to debtor's co-defendants could be extended to debtor, and collateral estoppel could bar the debtor from litigating factual and legal issues critical to its defense. (*In re Ionosphere Clubs, Inc., supra*, 111 B.R. at 434.)

23. Similarly, *In Re Sudbury, Inc.* involved allegations of fraud based "primarily on allegations that the Debtor's business and finances were not properly represented in Debtor's financial and business information furnished the Plaintiffs" by the debtor's officers and directors. (*In re Sudbury, Inc., supra*, 140 B.R. at 463.) The Court recognized that "it is not plausible that the defendants in these actions could be found liable to Plaintiffs except on facts that would impose liability on the Debtor." (*Id.*) Accordingly, the Court concluded that "Debtor asserts credibly that under these circumstances its liability may be determined on collateral estoppel principles in Plaintiffs' action" (*Id.*), and enjoined further prosecution of the fraud action pursuant to Section 105 even though the debtor was not a defendant in the fraud action.

24. In *In re American Film Technologies, Inc.* the Court stayed prosecution of wrongful discharge claims against former and present directors of debtor corporation recognizing that a finding of liability against the directors would expose the debtor to "the risk of being collaterally estopped from denying liability for its directors' action." (*In re American Film Technologies, Inc., supra*, 175 B.R. at 850.) And, in *In re Lomas Fin. Corp.* the court similarly upheld a stay of fraudulent misrepresentation actions against debtors' directors and officers because it was "not possible for the debtor…to be a bystander to a suit which may have a $20 million issue preclusion effect against it in favor of a pre-petition creditor." (*In re Lomas Fin. Corp., supra*, 117 B.R. at 67.)

25. Here, as in the cited cases, the claims against Remy in the GM D&I Cases are inextricably interwoven with claims against GM, presenting common issues of law and fact such that a finding of liability against Remy could bar GM from litigating factual and legal issues that would be critical to GM's own defense of any future asbestos cases filed against GM.

26. Accordingly, an injunction under Section 105 is necessary and appropriate to further the purposes of the Bankruptcy Code.

IV.
WAIVER OF MEMORANDUM OF LAW

27. Because this Motion does not present any novel issues of law and the legal precedent, statutory provisions and rules upon which Remy relies are set forth herein, Remy requests that the Court waive and dispense with the requirement set forth in Local Bankruptcy Rule 9013-1(b) that a separate memorandum of law be filed in support of this Motion. Remy reserves the right, however, to submit a reply memorandum of law in the event objections to the Motion are filed.

V.
NOTICE

28. Notice of this Motion has been given to: (a) all interested parties to the above-caption bankruptcy cases in the manner required by this Court's August 3, 2009 "Case Management Procedures Order;" and (b) all counsel representing affected parties in the GM D&I Cases. Remy respectfully submits, and requests that at any hearing on the Motion, this Court find that no other notice is necessary or required.

29. No previous motion for the requested relief has been made to this or any other Court.

WHEREFORE, Remy respectfully requests that the Court extend the bankruptcy stay provided by 11 U.S.C. § 362 to include Remy and then enforce the stay by issuing an order, in a form substantially similar to the Proposed Order annexed hereto as Exhibit "B," that confirms all pending claims against Remy, filed in the GM D&I Cases, are hereby stayed, and all future claims filed against Remy in this class of cases are hereby stayed until further order of this court, and that this court will retain jurisdiction of this matter for such purposes. Alternatively, Remy respectfully requests that this Court issue an preliminary injunction, pursuant to 11 U.S.C. § 105, enjoining further prosecution of the GM D&I cases against Remy, and to retain jurisdiction to

make such injunction permanent as to all future cases filed against Remy which come within the terms of the Agreement, and to grant such other further relief as is just and proper.

Dated: September 16, 2009
San Francisco, CA

Respectfully submitted,

ROPERS, MAJESKI, KOHN & BENTLEY

By: /S/ N. Kathleen Strickland

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Attorneys for Creditor
REMY INTERNATIONAL, INC.

EXHIBIT A

Not Reported in N.W.2d, 2007 WL 1206830 (Mich.App.)
(Cite as: 2007 WL 1206830 (Mich.App.))

H
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.
GENERAL MOTORS CORPORATION, Plaintiff-Appellant,
v.
ROYAL & SUN ALLIANCE INSURANCE GROUP PLC, Royal & Sun Alliance USA, Inc., Royal Indemnity Co., and Royal Insurance Co. of America, f/k/a Royal Globe Insurance Co., Defendant-Appellee.
No. 267308.

April 24, 2007.

Oakland Circuit Court; LC No. 05-063863-CK.

Before: FORT HOOD, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

***1** Plaintiff appeals by delayed leave granted from the trial court's order denying plaintiff's motion for summary disposition. We reverse.

Plaintiff and defendants entered into a series of insurance policies that covered the period between August 18, 1954, and December 31, 1971. The insurance policies were classified as occurrence based policies. An occurrence based policy provides coverage for liabilities that arise out of injury or damage suffered during the policy period, irrespective of when the injured party brings the claim against the policyholder. This type of policy potentially covers losses even if the damage is discovered or reported after the policy period ends. In 1972, it was alleged that the high cost of the occurrence based coverage caused the parties to switch to claims-reported coverage. Under this type of policy, coverage is potentially covered for those claims that are reported during the policy period. To reflect the change in the type of coverage, Endorsement 15 was added to the comprehensive liability policy. Although Endorsement 15 was dated March 22, 1972, it contained a retroactive effective date and provided:

Insuring Agreement # IV-Policy Period-Territory is amended as follows:

This policy applies worldwide, only to occurrences which are reported to the Insured or the Company, whichever occurs first, during the policy period provided the services, goods, or products were manufactured, sold, handled or distributed within the United States of America, territories, possessions, or Canada. The date of the report to the Insured or the Company, shall be deemed the date of the occurrence.

The term policy period, as used by this endorsement, shall mean a period of twelve (12) consecutive months commencing on and after 12-31-71. Subsequent twelve (12) month periods shall be considered separate policy periods for purposes of this definition.

On November 15, 1974, Endorsement 18 was executed with an effective date of August 31, 1974. It set forth limitations on liability for defendants and provided:

In consideration of the premiums charged for product liability coverage for the period January 1, 1962 through August 31, 1974 and the agreement to adjust claims as provided in the Joint Procedure for Handling claims now endorsed as a Special Condition to this contract, the aggregate limit of liability for all claims occurring after

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January 1, 1962 but reported to the insured or the company prior to September 1, 1974, whichever first, is $164,172,000. This limit will be automatically increased by crediting annually at December 31 90% of the portion of Investment Income apportioned to the funds held by the Company in anticipation of loss payments to be made subsequent to August 31, 1974.

In 1993, plaintiff ended its comprehensive liability insurance program with defendants. On December 1, 1995, the parties entered into a program closure agreement designed to sever the parties' business relationship and reconcile any outstanding obligations between them. The program closure agreement contained the following provision addressing pre-1974 claims:

***2** 5. Pre-1974 Products Run Off Fund

The parties agree that Royal shall retain any balances in the Products Liability run-off Fund that was established in the pre-1974 policy years. Royal also agrees that it shall assume responsibility for the ultimate settlement and resolution of all claims insured during those policy years with no right of indemnity or contribution by GM.

In 2001, a large number of asbestos-related cases were filed against plaintiff, and plaintiff concluded that many of the claims allegedly occurred between 1954 and 1971, during the occurrence coverage period. Consequently, plaintiff requested that defendants defend and indemnify it against those claims under the comprehensive products liability policies in effect during that time period. Defendants refused coverage, alleging that the change in the type of policy coverage in 1972, altered the nature of the agreement and coverage was no longer available for that time period.

Plaintiff filed suit to compel defendants to defend the 1954-1971 occurrence based liability policies and requested partial summary disposition on the issue of the duty to defend. Plaintiff asserted that the duty to defend was broad and was invoked even when coverage was arguably available. Defendants opposed the motion with affidavits and other documentary evidence to assert that there was a question of fact regarding the existence of policy coverage. The trial court denied the motion, holding:

Based on the affidavits submitted by Defendants Royal, Plaintiff's course of conduct in dealing with insurance claims for the past 30 years and the Program Closure Agreement, questions of fact exist which preclude the granting of Plaintiff's motion.

The trial court denied plaintiff's motion for reconsideration. We granted plaintiff's delayed application for leave to appeal.

Issues addressing the proper interpretation of an insurance contract are reviewed de novo. *Allstate Ins Co v. McCarn,* 471 Mich. 283, 288; 683 NW2d 656 (2004). Whether an insurer is obligated under the insurance policy to defend the insured presents a question of law requiring interpretation of the insurance contract. *American Bumper & Manufacturing Co v. National Union Fire Ins Co,* 261 Mich.App 367, 375; 683 NW2d 161 (2004). Insurance contracts are construed in accordance with the established principles of contract construction. *Farmers Ins Exchange v. Kurzmann,* 257 Mich.App 412, 417; 668 NW2d 199 (2003). An insurance policy must be enforced according to its terms. *Nabozny v. Burkhardt,* 461 Mich. 471, 477; 606 NW2d 639 (2000). An insurance company is not responsible for a risk it did not assume. *Id.* "An insurer is free to define or limit the scope of coverage as long as the policy language fairly leads to only one reasonable interpretation and is not in contravention of public policy." *Farmers Ins Exchange, supra* quoting *Heniser v. Frankenmuth Mut Ins Co,* 449 Mich. 155, 161; 534 NW2d 502 (1995).

***3** The goal of contract construction is to determine

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and enforce the parties' intent based on the plain language of the contract itself. *Old Kent Bank v. Sobczak,* 243 Mich.App 57, 63; 620 NW2d 663 (2000). When the language of a contract is clear and unambiguous, its construction presents a question of law for the trial court. *Michigan National Bank v. Laskowski,* 228 Mich.App 710, 714; 580 NW2d 8 (1998). The duty to interpret and apply the law is allocated to the courts, not the parties' witnesses. *Hottmann v. Hottmann,* 226 Mich.App 171, 179; 572 NW2d 259 (1997). Parol evidence may not be used to vary the terms of an otherwise clear and unambiguous contract. *Meagher v. Wayne State University,* 222 Mich.App 700, 722; 565 NW2d 401 (1997).

"An insurer is not required to defend its insured against claims specifically excluded from policy coverage." *Nat'l Union, supra.* The duty to defend is similar to the duty to indemnify in that it occurs only with regard to the insurance afforded by the policy. *American Bumper & Manufacturing Co v. Hartford Fire Ins Co,* 452 Mich. 440, 450; 550 NW2d 475 (1996). If the policy is inapplicable, there is no duty to defend. *Id.* The duty to defend is broader than the duty to indemnify. *Id.* If the allegations by a third party against the policyholder "even arguably" fall within the policy coverage, the insurer "must provide a defense." *Id.* at 450-451. In *Protective National Ins Co v. Woodhaven,* 438 Mich. 154, 159; 476 NW2d 374 (1991), the Supreme Court described the insurer's duty to defend by quoting the following passage from *Detroit Edison Co v. Michigan Mutual Ins Co,* 102 Mich.App 136, 141-142; 301 NW2d 832 (1980):

> The duty of the insurer to defend the insured depends upon the allegations in the complaint of the third party in his or her action against the insured. This duty is not limited to meritorious suits and may even extend to actions which are groundless, false, or fraudulent, so long as the allegations against the insured *even arguably* come within the policy coverage. An insurer has a duty to defend, despite theories of liability asserted against any insured which are not covered under the policy, if there are any theories of recovery that fall within the policy. *Dochod v. Central Mutual Ins Co,* 81 Mich.App 63; 264 NW2d 122 (1978). The duty to defend cannot be limited by the precise language of the pleadings. The insurer has the duty to look behind the third party's allegations to analyze whether coverage is possible. *Shepard Marine Construction Co v. Maryland Casualty Co,* 73 Mich.App 62; 250 NW2d 541 (1976). In a case of doubt as to whether or not the complaint against the insured alleges a liability of the insurer under the policy, the doubt must be resolved in the insured's favor. 14 Couch, Insurance, 2d (rev ed), § 51:45, p 538 (now § 51:49, P 489). (Emphasis in original.)

The insurer has the duty to undertake the defense until it can confine the claim to a recovery that the policy did not cover. *Protective Nat'l Ins, supra* at 159-160. "Uncertainty regarding whether an allegation comes within the scope of the policy must be resolved in the policyholder's favor." *Hartford Fire Ins, supra* at 455.

***4** In *Hartford Fire Ins, supra,* it was ultimately concluded that there was no contamination that required an environmental cleanup. Despite this final conclusion, the possibility remained during the underlying litigation between the insured and the Environmental Protection Agency that an occurrence might be found that would have triggered the insured's policy coverage. Consequently, the Supreme Court held that the defendant insurers could not escape liability for defense costs incurred in responding to the claim. *Id.* at 463-464.

Applying the facts of the present case, plaintiff has submitted complaints wherein it was named as a party responsible for asbestos exposure to individuals during the policy period in question, specifically between 1954 to 1971. Although the policy coverage was altered in 1972, Endorsement 15 provided

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that the policy was amended effective December 31, 1971, and the endorsement fails to delineate any change to prior policies that were in effect. Endorsement 18 set a liability cap for claims occurring after January 1, 1962 but reported before September 1, 1974, but did not otherwise address the policies at issue. Moreover, after the parties ended their relationship in 1993, a closure agreement was executed. This agreement expressly provided that defendants were retaining balances in the products liability run off fund established in the pre-1974 policy years, and defendants' agreement to assume responsibility for the ultimate resolution "of all claims during those policy years." The plain language of the policy at issue invokes the broad duty to defend. *Nabozny, supra; Hartford Fire Ins, supra.* Defendants contend that the documentary evidence submitted with the responsive pleading demonstrates that factual issues remain regarding the existence of coverage. However, the duty to interpret and apply the law is the province of the court, not the parties' witnesses. *Hottmann, supra.* Accordingly, the trial court erred in denying plaintiff's motion for partial summary disposition.

Reversed.

Mich.App.,2007.
General Motors Corp. v. Royal & Sun Alliance Ins. Group PLC
Not Reported in N.W.2d, 2007 WL 1206830 (Mich.App.)

END OF DOCUMENT

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EXHIBIT B

Hearing Date and Time: October 6, 2009, at 9:45 a.m. (prevailing Eastern Time)
Objection Deadline: October 1, 2009 at 4:00 p.m. (prevailing Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	Chapter 11
MOTORS LIQUIDATION COMPANY, et al.,	Case No. 09-50026(REG)
Debtors.	(Jointly Administered)

ORDER GRANTING MOTION OF REMY INTERNATIONAL, INC. FOR AN ORDER EXTENDING AND ENFORCING THE STAY IMPOSED UNDER 11 U.S.C. § 362 (a) TO COVER CERTAIN LITIGATION RELATING TO REMY INTERNATIONAL, OR ALTERNATIVELY, ENJOINING SUCH LITIGATION PURSUANT TO 11 U.S.C. § 105

Upon the Motion, dated September 16, 2009, of Remy International, Inc. ("Remy"), for an Order extending and enforcing the automatic stay pursuant to 11 U.S.C. § 362 to include non-debtor Remy or, alternatively, issue a preliminary injunction pursuant to 11 U.S.C. § 105 (the "Motion"), to prevent the continued or future prosecution of asbestos claims against Remy in various courts around the United States, or elsewhere, all as more fully described in the Motion; and due and proper notice of the Motion having been provided, and it appearing that no other or

further notice need be provided; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, creditors, and all 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 therefore, it is hereby

ORDERED that the Motion is granted as provided herein; and it is further

ORDERED that the automatic stay pursuant to 11 U.S.C. § 362 is extended to Remy and there shall be no further prosecution of the claims against Remy in (1) *Bynum v. Remy Inc., et al.*, Indiana State Superior Court for the County of Marion, Case No. 49D12-08-09-CT-043673; (2) *Cawlfied v. A.W. Chesterton, et al.*, Illinois State Circuit Court for the County of Madison, Case No. 08-L-82; (3) *Phillips v. A.W. Chesterton, et al.*, Indiana State Superior Court for the County of Marion, Case No. 49D02-9801-MI-0001-127; and (4) *Wydra v. A.W. Chesterton, et al.*, State of Rhode Island and Providence Plantations Superior Court for Providence/Bristol, Case No. PC06-2153; (5) *Nangle v. A.W. Chesterton, Inc., et al.*, Illinois State Circuit Court for the County of Madison, Case No. 09-L-574; nor in any other GM D& I cases as defined in said motion; nor shall any party file such claims against Remy going forward absent further order of this Court allowing the same; and it is further

ORDERED that the Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: New York, New York

____

____

Hon. Robert E. Gerber
United States Bankruptcy Judge

Hearing Date and Time: October 6, 2009, at 9:45 a.m. (prevailing Eastern Time)
Objection Deadline: October 1, 2009 at 4:00 p.m. (prevailing Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DECLARATION OF JEREMIAH SHIVES IN SUPPORT OF THE MOTION OF REMY INTERNATIONAL, INC. FOR AN ORDER EXTENDING THE AUTOMATIC STAY IMPOSED UNDER 11 USC §362(a) TO REMY INTERNATIONAL TO INCLUDE LITIGATION FILED AGAINST REMY INTERNATIONAL, OR ALTERNATIVELY ENJOINING SUCH LITIGATION PURSUANT TO 11 USC §105

I, JEREMIAH SHIVES, hereby declare pursuant to section 1746 of Title 28 of the United States Code:

1. I am above the age of 21. I am not a party to this action, and I am competent to give sworn testimony and have personal knowledge of the facts stated herein, which are true and correct. I am sufficiently familiar with the facts set forth herein to testify competently if required.

2. I am currently employed as Deputy General Counsel for Remy International, Inc. (hereinafter "Remy"). I have been in this position since 2006. I have been employed by Remy since 1999.

3. I am an attorney licensed to practice in the State of Indiana (State Bar Number 26120-29).

4. In my capacity as Deputy General Counsel, I have sufficient knowledge and first hand familiarity with the corporate history of Remy, and the documents reflecting such history as those documents are kept at Remy in the ordinary course of business and form the corporate files contained within the legal department of Remy. In such capacity, I also have knowledge of the litigation files which have been tendered to GM pursuant to the Asset Purchase and Sale Agreement between GM and Remy, the tender of which GM has accepted.

5. Contained within Remy's business files, is an Asset Sale and Purchase Agreement by and among General Motors Corporation and DR International, Inc. and DRA, Inc. dated July 13, 1994 (hereinafter the "Agreement"), relevant portions of which are attached to this Declaration as Exhibit A. Prior to July 13, 1994, Delco Remy was a division of General Motors Corporation (hereinafter "General Motors" or "GM"). On July 13, 1994, DRA, Inc., a Delaware corporation created in 1993 by a group of private investors led by former Chrysler President Harold K. Sperlich and Delco Remy division Executive Thomas J. Snyder, purchased certain assets from GM, to wit, starters and alternators. Prior to its purchase of the assets of GM's Delco Remy division, DRA, Inc. did not manufacture, distribute or sell any products – it was merely a shell corporation incorporated by Citicorp Ventures to carry out the asset purchase under the Agreement. Under the terms of the Agreement, DRA, Inc. did not assume any responsibility for General Motors products manufactured prior to July 13, 1994, nor did it assume responsibility for any real property or premises owned by General Motors, all of which were "Excluded

Liabilities" under the Agreement. Specifically, DRA, Inc. did not assume any liability for any claim relating to any General Motors product nor to any claim arising from any property owned by General Motors. Under the Agreement, General Motors agreed to indemnify DRA, Inc. against all claims arising from products manufactured prior to the date of the sale and from all claims arising from the real property owned by General Motors and subleased to DRA, Inc.

6. After purchasing certain assets of GM's Delco Remy division, to wit, starters and alternators, DRA, Inc. became a manufacturer and re-manufacturer of automotive parts, including starters, alternators and electric drive motors. In 2004, the entity formerly know as DRA, Inc. changed its name to Remy International, Inc.

7. Attached to this declaration as *Exhibit A* are true and correct copies of the relevant pages of the Asset Purchase Agreement which is contained within Remy's business files located in the department which I supervise.[1] The pages attached are from Articles V. and VIII. of Agreement, entitled "Assumption of Liabilities; Retained Liabilities" and "Environmental Matters," respectively, as well as the title page and signature page. Among some of the "Retained Liabilities" enumerated in section 5.2 is the following pertinent language: "(i) any liability or obligation of GM existing as a result of any act, failure to act or other state of facts or occurrence which constitutes a breach or violation of any of GM's representations, warranties, covenants or agreements contained in this Agreement; (ii) any product liability claim of any nature in respect of products of the Businesses [GM] manufactured on or prior to the Closing Date; . . . (v) any obligation or liability arising under any Contract, instrument or agreement that (a) is not transferred to Purchaser as a part of the Purchased Assets; . . .and (xiv) liabilities in connection with any matter as to which GM has responsibility or liability under Article VIII [entitled "Environmental Matters"]."

---

[1] Remy will provide a complete copy of this entire document to this court should the court for its review should the court deem it necessary to decide this motion. The entire document is 108 pages, most of which is irrelevant to this motion. I attest to the fact that the relevant pages to this motion are attached hereto and are the complete sections discussing retained and assumed liabilities as well as indemnification.

8. In conjunction with GM's retained liabilities, GM agreed, in section 5.3.1(A) of the Agreement, attached hereto, to indemnify and hold Remy harmless from any damages relating to the retained liabilities, specifically: "GM shall indemnify [Remy] ….and hold [Remy] …..harmless from and against Damages, whether contingent or otherwise, fixed or absolute, known or unknown, present or future or otherwise, relating directly or indirectly to, arising out of or resulting from (i) any misrepresentation or breach of any representation, warranty, covenant or agreement made by GM in this Agreement or in any statement, document or certificate furnished or required to be furnished to [Remy] pursuant hereto;…..or (iii) the Retained Liabilities or otherwise to the extent arising out of or relating to the ownership or use of the Purchased Assets by GM or the operation of the Businesses on or prior to Closing."

9. Pursuant to section 5.3.1(C) of the Agreement, the term "Damages" means "any and all losses, liabilities, third party damages (including fines, penalty and punitive damages), deficiencies, interest, costs and expenses and any actions, judgments, costs and expenses (including reasonable attorneys' fees and all other reasonable expenses incurred in investigating, preparing or defending any litigation or proceeding, commenced or threatened) relating to, or incident to the enforcement of, this Agreement."

10. In addition to the indemnity and defense obligations in sections 5.2 and 5.3.1 of the Agreement, pursuant to section 8.12.3 of the Agreement GM agreed to "defend, indemnify and hold [Remy] harmless from and against any liabilities, damages, penalties, costs, expenses and fines, including reasonable attorney's fees . . . (the "Adverse Consequences") to which [Remy] may be subjected as a result of an action, suit, complaint, formal Notice of probable claim, or proceeding brought by a government agency or other third party (the "Claim"), but only to the extent such Claim is based upon or with respect to clause (i) directly arises as a result of any remedial activity by GM in connection with: (i) an Identified Pre-Closing Environmental Condition . . . or (ii) any breach by GM of the representation and warranties in Section 8.12.2A. . . ." Section 8.12.2(A) of the Agreement concerns GM's representations and warranties regarding environmental conditions at the premises that were being leased by GM to Remy.

11. Since the Agreement was executed in 1994, GM has defended and is currently defending Remy in lawsuits filed by persons alleging injury from products GM manufactured prior to the Closing Date of the Agreement or from real property/premises GM owned(s) – in other words, actions in which any liability of Remy could only be derivative of GM's liability under the Agreement and as law. Since Remy has no liability for such products nor for such premises, GM has accepted these tenders in 18 cases dating back to February 20, 2003. As corporate in-house counsel, I have reviewed the list of cases in which GM has accepted such tenders, and according to our records and Ms. Strickland, the outside counsel working with Remy on this matter, the only open cases remaining on the list of GM accepted cases, are *Cawlfield v. A.W. Chesterton, et al*., Illinois State Circuit Court for the County of Madison, Case No. 08-L-82;[2] *Phillips v. A.W. Chesterton, et al*., Indiana State Superior Court for the County of Marion, Case No. 49D02-9801-MI-0001-127; and *Wydra v. A.W. Chesterton, et al.*, State of Rhode Island and Providence Plantations Superior Court for Providence/Bristol, Case No. PC06-2153. In a fourth open matter, *Bynum v. Remy Inc., et al*., Indiana State Superior Court for the County of Marion, Case No. 49D12-08-09-CT-043673, Remy has made a tender to GM but received no response.[3] In the final open matter, *James Nangle v. A.W. Chesterton, Inc., et al.*, Illinois State Circuit Court for the Count of Madison, Case No. 09-L-574, the plaintiff filed his first amended complaint on June 8, 2009 - after GM filed for bankruptcy. While GM is not named in the *Nangle* matter – presumably because of the bankruptcy filing – the plaintiff's allegations of exposure to Remy products and premises from 1960 to 2004 necessarily invokes GM's defense and indemnity obligations under the Agreement because Remy did not begin doing business until 1994. Any alleged exposures from 1960 to 1994 constitute "Retained

[2] I was informed by Ms. Strickland, who spoke with Remy's counsel in this matter that GM has settled this case, obtained a release and such settlement included a settlement and release of all indemnified parties which would include Remy. However, since we have not yet obtained documents verifying this oral conversation, this case is still listed as "open."

[3] I was informed by Ms. Strickland, who spoke with plaintiff's counsel in this matter, that plaintiff agreed in October 2008, in conversation with Remy's counsel at that time, not to pursue this action against Remy since Remy never owned or operated the premises involved, and that a stipulated dismissal would need to be signed by all parties and entered on the court's record, which is in the process of being accomplished.

Liabilities" under the Agreement, and the *Nangle* matter is therefore one in which, absent the bankruptcy filing, GM would undeniably be obligated to defend and indemnify Remy.

12. Attached hereto as Exhibits B, C, D, E and F respectively, are true and correct copies of the face sheets of the complaints in *Cawlfield, Phillips, Wydra, Bynum and Nangle.*

13. Attached to this declaration as Exhibits G and H are true and correct copies of the September 23, 2004 letter from Remy's counsel Mark A. Nadeau, of Squire, Sanders & Dempsey L.L.P., to Glenn A. Jackson of GM, tendering the *Phillips* matter to GM, and the November 8, 2004 response from Glenn A Jackson of GM accepting the tender.

14. Attached to this declaration as Exhibits I and J are true and correct copies of the May 2, 2006 letter from Remy's Director of Legal Services, Sheila Cannon, to Glenn A. Jackson of GM, tendering the *Wydra* matter to GM, and the May 8, 2006 response from Maynard L. Timm of GM accepting the tender.

15. Attached to this declaration as Exhibits K and L are true and correct copies of the September 24, 2008 letter from Remy's counsel Quinn Williams, of Greenberg Traurig, to Glenn A. Jackson of GM, tendering the *Cawlfield* matter to GM, and the October 1, 2008 response from Maynard L. Timm of GM accepting the tender.

16. Attached to this declaration as Exhibit M is a true and correct copy of the October 2, 2008 letter from Remy's counsel Quinn Williams, of Greenberg Traurig, to Glenn A. Jackson of GM, tendering the *Bynum* matter to GM.

17. Remy appeared in this action on June 12, 2009.

18. Up until July 16, 2009, General Motors had continued to honor its contractual obligations to Remy to defend, indemnify and hold harmless Remy for any litigation arising from its products manufactured by GM prior to July 13, 1994 or from its owned facilities.

19. On July 16, 2009, GM informed Remy that it did not intend to continue to honor the Asset Purchase Agreement. This information came in an email from Mr. Maynard Timm at GM to general counsel for Remy:

> On July 10, 2009, General Motors Corporation emerged from Chapter 11 Bankruptcy and became General Motors Company, a completely new entity. As part of the bankruptcy process, General Motors Company did not assume the July 31, 1994 Remy (f/k/a Delco Remy International, Inc.) Asset Purchase Agreement. Consequently, General Motors Company will have no involvement or assume any responsibility for the defense of asbestos exposure litigation against Remy (f/k/a Delco Remy International, Inc.). We will be communicating this information to outside counsel.

A true and correct copy of Mr. Timm's email, redacted to remove attorney-client communication, is attached as Exhibit N to this declaration.

20. In light of the above, Remy requests that this court extend the GM Section 362 stay to Remy for all open/pending cases[4] in which GM has accepted the defense of Remy, as well to all future cases filed against Remy which would come within the scope of the GM defense and indemnity obligations under the Agreement. Remy requests this Court retain jurisdiction to decide the applicability of the stay to any future cases filed against Remy, should that become an issue, although we do not expect there to be any future cases filed against Remy. Extending the stay to Remy is fair and reasonable since Remy was not in existence prior to 1994 and therefore Remy has no liability for claims covered by the 1994 Agreement, so extending the bar permanently to such claims is fair and just as GM assumed responsibility to defend such claims on behalf of Remy and now that stay is permanently in place as to GM, the same stay should also be extended to pending and future cases in which Remy is named.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day of September, 2009.

_/S/ Jeremiah J. Shives_____________
JEREMIAH J. SHIVES
DEPUTY GENERAL COUNSEL

[4] Out of an abundance of caution, Remy requests the stay be extended to the 4 cited open cases and also to the group of 19, should any of the cases which I have been told are "closed" later become "open."

EXHIBIT A

ASSET PURCHASE AGREEMENT

BY AND AMONG

DR INTERNATIONAL, INC.,

DRA, INC.

AND

GENERAL MOTORS CORPORATION

DATED

JULY 13, 1994

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4.3. Payment of Cash Consideration. At Closing, Purchaser shall pay the Cash Consideration by wire transfer to the account of GM at Citibank. N.A.. New York City. that GM shall designate to Purchaser in writing at least 5 business days prior to the Closing Date.

V. ASSUMPTION OF LIABILITIES; RETAINED LIABILITIES.

5.1. Assumed Liabilities. At and as of the Closing, subject to the terms and conditions of this Agreement. GM will assign and transfer to Purchaser the Specified Leases. the Intellectual Property Agreements and the other Contracts specifically listed on Schedule 5.1A or referred to in paragraph 3(iii) thereof. and other Contracts not so specifically listed which in the aggregate do not involve payment or performance obligations of Purchaser in excess of $500,000 (collectively, the "Assigned Contracts"), and Purchaser will assume the Assigned Contracts and in a timely fashion will perform in accordance with the provisions thereof, including with respect to (i) except as provided in Section 5.2, all of GM's obligations and liabilities under the Assigned Contracts in accordance with the respective terms thereof: (ii) liabilities and expenses incurred by Purchaser on account of product warranties for products of the Businesses manufactured and placed in service following the Closing other than those described in Section 5.2(iii); (iii) liabilities in connection with any matter as to which Purchaser has responsibility or liability pursuant to Article VIII: and (iv) certain other liabilities and expenses pertaining to Transferred Employees following the Closing as specified in Article VII hereof (collectively. the liabilities and obligations assumed by Purchaser under this Section 5.1 are referred to as the "Assumed Liabilities").

5.2. Retained Liabilities. Except as otherwise specifically set forth in Section 5.1 of this Agreement. Purchaser shall not assume any liabilities or obligations of GM of any kind. whether such liabilities or obligations relate to payment. performance or otherwise. whether matured or unmatured. known or unknown. whether contingent or otherwise. fixed or absolute. present. future or otherwise (the "Retained Liabilities"), it being understood that all of such Retained Liabilities shall be retained, and paid, performed and/or discharged by GM in accordance with their respective terms. Without limiting the foregoing, the following shall be considered "Retained Liabilities" for the purposes of this Agreement: (i) any liability or obligation of GM existing as a result of any act. failure to act or other state of facts or occurrence which constitutes a breach or violation of any of GM's representations, warranties. covenants or agreements contained in this Agreement: (ii) any product liability claim of any nature in respect of products of the Businesses manufactured on or prior to the Closing Date: (iii) any product warranty claim credited or paid respecting Non-Allied Sales of products to original equipment manufacturer customers with an in-service date no later than 90 days after the Closing Date: and any product warranty claim credited or paid respecting Non-Allied Sales of service parts for claims made within 4 months following Closing and one-half of any such warranty claim made between 4 months following Closing and 16 months following Closing, in each case determined substantially in accordance with the Businesses' warranty administration procedures in effect as of the Closing Date: (iv) all of GM's liabilities for Taxes that have been or may be incurred as a result of GM's operation of the Businesses or ownership of the Purchased Assets on or before the Closing Date (except any such Taxes incurred or paid by GM or assessed on the Businesses or Purchased Assets prior to the Closing Date which relate to periods after the Closing Date) including (a) any of such Taxes that will arise as a result of the sale or lease of the Purchased Assets pursuant to this Agreement, except to the extent such Taxes become the responsibility of Purchaser pursuant to Section 13.12 pertaining to sales and transfer taxes. and (b) any liability for deferred Taxes of any nature: (v) any obligation or liability arising under any Contract, instrument or

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agreement that (a) is not transferred to Purchaser as part of the Purchased Assets. or (b) is not transferred to Purchaser because of GM's failure or inability to obtain any third-party consent required for the transfer or assignment of such Contract to Purchaser. or (c) relates to any breach or default (or an event which might, with the passing of time or the giving of notice. or both. constitute a default) under any Contract or to any services to be provided by GM under any such Contract arising out of or relating to periods on or prior to the Closing Date: (vi) any liabilities or obligations of GM to indemnify its officers. directors. employees or agents: (vii) any liabilities or obligations of the Businesses to GM or any of its Affiliates (including intra-GM or inter-GM and its Affiliates' accounts), except to the extent of liabilities or obligations to GM or its Affiliates that arise in the ordinary course of business under the Assigned Contracts after the Closing Date: (viii) any obligation or liability under any Contract that is transferred to Purchaser as part of the Purchased Assets which arises on or after the Closing Date but which is attributable to or associated with any breach of or default under such Contract or to any services to be provided by GM under such Contract on or prior to the Closing Date: (ix) any obligations relating to the Meridian Lease arising on or before the Closing Date, including any guarantees relating thereto: (x) except for the Assumed Liabilities as specifically and expressly set forth herein, any liability or obligation with respect to compensation or employee benefits of any nature owed to any employees. whether or not the affected employees become Transferred Employees. that arises out of or relates to the employment relationship between GM or its Affiliates and such employees. or arises out of or relates to events or conditions occurring on or before the Closing Date (including all obligations in respect of bonuses, profit-sharing payments and other compensatory payments awarded to or accrued for employees for any periods or portions thereof on or prior to the Closing Date); (xi) any obligation or liability arising out of or related to any employee grievances. lawsuits. claims. litigation. arbitration or proceeding commenced or relating to periods on or prior to the Closing Date whether or not the affected employees become Transferred Employees: (xii) any obligations or liabilities relating to or arising from the broken pinion stop customer satisfaction recall: (xiii) any liability directly or indirectly arising out of or relating to the employment or engagement of contract personnel: and (xiv) liabilities in connection with any matter as to which GM has responsibility or liability under Article VIII.

5.3. Indemnification. Each of GM and Purchaser agrees as follows:

5.3.1. General Indemnification Obligations.

A. GM shall indemnify DRI, Purchaser and their respective directors, officers and Affiliates and hold DRI, Purchaser and their respective directors, officers and Affiliates harmless from and against Damages. whether contingent or otherwise, fixed or absolute, known or unknown, present or future or otherwise, relating directly or indirectly to, arising out of or resulting from (i) any misrepresentation or breach of any representation, warranty, covenant or agreement made by GM in this Agreement or in any statement, document or certificate furnished or required to be furnished to DRI or Purchaser pursuant hereto; (ii) any violation of, or liability arising under, any applicable bulk sales or similar laws relating to the transactions contemplated hereunder: or (iii) the Retained Liabilities or otherwise to the extent arising out of or relating to the ownership or use of the Purchased Assets by GM or the operation of the Businesses on or prior to Closing.

B. Purchaser shall indemnify GM and its directors, officers and Affiliates and hold GM and its directors, officers and Affiliates harmless from and against any and all Damages, whether contingent or otherwise, fixed or absolute, known or unknown, present or future or otherwise, relating

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directly or indirectly to, arising out of or resulting from (i) any material misrepresentation or breach of any representation, warranty, covenant or agreement made by Purchaser in this Agreement or in any statement, document or certificate furnished or required to be furnished to GM pursuant hereto: or (ii) the Assumed Liabilities or otherwise to the extent arising out of or relating to the ownership or use of the Purchased Assets by Purchaser or the operation of the Businesses subsequent to Closing.

C. For purposes of this Agreement other than Article VIII, "Damages" shall mean any and all losses, liabilities, third-party damages (including any fines, penalty or punitive damages), deficiencies, interest, costs and expenses and any actions, judgments, costs and expenses (including reasonable attorneys' fees and all other reasonable expenses incurred in investigating, preparing or defending any litigation or proceeding, commenced or threatened) relating to, or incident to the enforcement of, this Agreement.

5.3.2. General Indemnification Procedures.

A. A party seeking indemnification pursuant to this Section 5.3 (an "Indemnified Party") shall give prompt notice to the party from whom such indemnification is sought (the "Indemnifying Party") of the assertion of any claim, or the commencement of any action, suit or proceeding, in respect of which indemnity may be sought hereunder and will give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request, but failure to give such notice shall not relieve the Indemnifying Party of any liability hereunder (except to the extent that the Indemnifying Party has suffered actual prejudice thereby). The Indemnifying Party shall have the right (but not the obligation), exercisable by written notice to the Indemnified Party within 30 days of receipt of notice from the Indemnified Party of the commencement of or assertion of any claim or action, suit or proceeding by a third party (other than an Affiliate of any party hereto) in respect of which indemnity may be sought hereunder (a "Third Party Claim"), to assume the defense and control the settlement of such Third Party Claim which involves (and continues to involve) solely monetary damages; provided that (i) the Indemnifying Party expressly agrees in such notice that, as between the Indemnifying Party and the Indemnified Party, the Indemnifying Party shall be solely obligated to satisfy and discharge the Third Party Claim; (ii) the defense of such Third Party Claim by the Indemnifying Party will not, in the reasonable judgment of the Indemnified Party, have any continuing material adverse effect on the Indemnified Party's business; and (iii) the Indemnifying Party makes reasonably adequate provision to ensure the Indemnified Party of the ability of the Indemnifying Party to satisfy the full amount of any adverse monetary judgment that may result (the conditions set forth in clauses (i), (ii) and (iii) are collectively referred to as the "Litigation Conditions").

B. Within 15 days after the Indemnifying Party has given written notice to the Indemnified Party of its intended exercise of its right to defend and control the right to settle a Third Party Claim, the Indemnified Party shall give written notice to the Indemnifying Party of any objection thereto based upon the Litigation Conditions. If the Indemnified Party so objects, the Indemnified Party shall continue to defend the Third Party Claim subject to the other party's right to participate in such defense as provided in (D) below, until such time as such objection is withdrawn. If no such notice of objection is given, or if any such objection is withdrawn, the Indemnifying Party shall be entitled to assume and conduct such defense, with counsel selected by the Indemnifying Party and reasonably acceptable to the Indemnified Party, until such time as the Indemnified Party shall give notice that any of the Litigation Conditions, in its reasonable judgment, are no longer satisfied. If the Indemnified Party

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Property or relating to the Assets or operations of the Businesses will be subject to any such privilege or doctrine. Any such inspection or audit, including employee interviews and assistance, will be coordinated with DRA management personnel responsible for environmental compliance and will not unreasonably interfere with DRA's continued operations of the Businesses. DRA will be entitled to have counsel or the person normally charged with and primarily responsible for management of environmental affairs on behalf of DRA (either on the corporate level or at the facility) to be present during any interview of DRA employees by GM. This right of audit and inspection does not constitute a duty on GM's part to so inspect and in no event relieves DRA of any obligations under this Agreement or under any law.

8.12. Representations, Warranties and Acknowledgements; Indemnification Obligations.

8.12.1. Intentionally Omitted.

8.12.2. Representations, Warranties and Acknowledgements.

A. GM's Representations and Warranties. GM represents and warrants that, as of the date of this Agreement and to the Knowledge of GM, and except as set forth on Schedule 8.12.2A: (i) no notice, citation, summons or order has been issued, no complaint has been filed, no penalty has been assessed, and no investigation or review is pending or threatened by any Authority: (a) with respect to any alleged violation of any Environmental Law, as existing and in effect prior to the date of such notice, citation, summons, order, complaint, penalty assessment, investigation or review or threat thereof, or related order of any such Authority applicable to the Businesses or the Assets; or (b) with respect to any use, possession, generation, treatment, storage, recycling, transportation or disposal of Hazardous Materials at any site in the State of Indiana by or on behalf of the Businesses or in connection with the Assets; (ii) GM has not received from any Authority any written request for information, notice of claim, demand or notification that it is or may be potentially responsible with respect to any investigation or cleanup of any Release at any of the Real Property; (iii) none of the Real Property is listed or proposed for listing on the National Priority List promulgated pursuant to CERCLA or any similar state list of sites of environmental contamination; (iv) no Lien has attached to the Real Property under any Environmental Law which has not been removed or discharged of record; (v) all material expenses related to environmental compliance accrued and recorded by GM on its books with respect to the Businesses at the Real Property for the 1989 through 1993 calendar years are included in the Income Statements set forth on Schedule 6.1.11, except where failure to include such expenses would not have a Material Adverse Effect on the Businesses; (vi) with the exception of Privileged Documents and GM Proprietary Documents, GM has made or will before the Closing Date make available to and will on the Closing Date transfer to DRA true and complete copies of all documents, writings, recordings and video or computer tapes relating to GM's responsibilities under and compliance with Environmental Laws, as existing and in effect prior to the Closing Date, including all correspondence to and from governmental agencies, relating specifically to the Assets, the Businesses and the Real Property, and the environmental condition of the Land; and (vii) the Privileged Documents contain no Material Information relating to pre-Closing operational activities at the Real Property relevant to environmental compliance, the presence or management of Hazardous Substances at the Real Property, or known or suspected instances of non-compliance with Environmental Laws at the Real Property, that is not also contained in documents which are not Privileged Documents to which DRA and/or its representatives were provided access on or prior to the Closing Date. "Material Information" consists of information in existence on or before the Closing Date specific to the Real Property, the Assets and the Businesses which is not available to DRA

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from any other documentary source and which DRA must have to: (a) operate the Businesses on and after the Closing Date in accordance with Environmental Laws, as existing and in effect as of the Closing Date: and/or (b) address any Pre-Closing Environmental Condition at the Real Property which to the Knowledge of GM existed as of the Closing Date.

B. DRA's Acknowledgments. DRA acknowledges that prior to the Closing Date: (i) there may have been Releases on, at, about or under the Real Property; and (ii) GM and others may have, among other things, used, generated, treated, stored, recycled or disposed of Hazardous Materials on, at, about or under the Real Property; provided, however, that nothing in this Section 8.12.2B will affect GM's representations or obligations under the other provisions of this Article VIII.

8.12.3. GM's Defense and Indemnification Obligations; Claims Procedures. GM will, in accordance with the following terms and conditions, defend, indemnify and hold DRA harmless from and against any liabilities, damages, penalties, costs, expenses and fines, including reasonable attorney's fees (but in no event will GM's agreement to defend and indemnify DRA include consequential, special or incidental damages such as, by way of example and not limitation, loss of profits or loss of business opportunity, loss of use or diminution in value of the Real Property, the Assets or the Businesses, or any attorney's or consultant's fees or other expenses as to any matter as to which GM has accepted its defense and indemnity obligations) (the "Adverse Consequences") to which DRA may be subjected as a result of an action, suit, complaint, formal notice of probable claim, or proceeding brought by a governmental agency or other third party (the "Claim"), but only to the extent such Claim is based upon or with respect to clause (i) directly arises as a result of any remedial activity by GM in connection with: (i) an Identified Pre-Closing Environmental Condition which: (a) constitutes a violation of a specifically applicable Environmental Law, as existing and in effect as of the Closing Date; or (b) results in an investigation or remediation obligation or liability being imposed upon DRA by a federal, state or local governmental agency or a third party under Environmental Laws, as existing and in effect as of the Closing Date; or (ii) any breach by GM of the representations and warranties in Section 8.12.2A; provided, however, that a claim for indemnification under this clause (ii) or for any such breach must be brought within two (2) years after the Closing Date and will otherwise be limited as provided in this sentence except for clause (i). The foregoing indemnities will be effective as follows:

A. DRA agrees that it will promptly, but in no event later than thirty (30) days after the date of its discovery of facts which are reasonably likely to give rise to a demand by it for defense and/or indemnification under this Article VIII or relating to any such Claim, notify GM in writing of such facts and potential Claim. DRA's written notice will specify in detail the particular facts and Environmental Law involved.

B. DRA and GM will use best efforts to resolve promptly any disputes regarding any Claim hereunder.

C. GM's defense and indemnity obligations hereunder will be apportioned to the extent that a Claim results from, or GM's expenses are materially increased by, DRA's failure to provide timely notice as required under Section 8.12.3A. Except as provided in Section 8.12.3D, no defense or indemnity obligation exists if, without the prior written approval of GM, DRA has negotiated and/or agreed with a third party to conduct investigation, remediation or other actions with respect to a Claim or to settle a Claim.

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D. After notification is given under Section 8.12.3A. GM will be entitled, but not obligated, to assume the defense or settlement of any Claim or to participate in any negotiations or proceedings to settle or otherwise dispose of any Claim. If GM fails to elect in writing within thirty (30) days after the notification referred to above to assume the defense or settlement of such claim, DRA may engage counsel to defend, settle or otherwise dispose of such Claim. For any matter for which DRA may make a defense or an indemnity claim under this Article VIII, DRA will not undertake any corrective actions, other than in the case of an emergency or where immediate action is otherwise required under an Environmental Law or by order of a governmental agency or court, unless GM fails to assume responsibility for the Claim within thirty (30) days after receipt of written notice of the Claim. Notwithstanding anything to the contrary in this Article VIII, if GM fails to assume responsibility for such Claim within such thirty (30) day period, DRA's actions thereafter will not be deemed to be a waiver of its rights to defense or indemnification under this Article VIII.

E. In cases where GM has assumed the defense, settlement or disposition of a Claim, GM will be entitled to assume the defense or settlement thereof with counsel of its own choosing, and will be entitled to settle, compromise, decline to appeal, or otherwise dispose of the Claim without the consent or agreement of DRA: provided, however, that in such event GM will consult in advance with DRA concerning the terms and conditions of such disposition and will use its best efforts to obtain from the claimant a release in favor of DRA from all liability with respect to such Claim. Unless mandated by an Environmental Law or by a governmental agency or court, GM will not enter into any voluntary disposition that would materially and significantly impair the ability of DRA to produce products in the ordinary course of business.

F. In any case in which GM assumes the defense or settlement of a Claim, DRA will not be entitled to participate in any such action or proceeding or in any negotiations or proceedings to settle or otherwise dispose of the Claim for which defense or indemnification is being sought unless so requested by GM, and only in such event will DRA have the right to employ its own counsel in such regard and at its sole cost. In no event will GM be liable for the cost of employing or using in-house legal counsel regardless of whether GM has, or has not, assumed the defense or settlement of such Claim. In the event that DRA receives notice that a governmental agency is about to initiate an enforcement action or revocation proceeding against it due to the failure of GM to undertake action within the scope of GM's defense or indemnification obligations under this Article VIII, DRA may, following written notice to, consultation with, and a reasonable opportunity to cure by GM and failure of GM to so cure, elect to assume direct responsibility for implementing the action demanded by the agency. Such election will not be deemed a waiver by DRA of any rights to defense or indemnification under this Article VIII.

G. In the event that defense or indemnification is requested, GM and its representatives and agents will, subject to claims of attorney-client or work product privilege or protection, have access to the premises, books and records of DRA to the extent reasonably necessary to assist it in defending or settling any Claim; provided, however, that such access will be conducted in such manner so as not to interfere unreasonably with DRA's operations.

H. Until the expiration of the longest indemnification period under Section 8.12.3I, DRA agrees to retain all documents with respect to all matters as to which defense or indemnity obligations may be sought under this Article VIII. Before disposing of or otherwise destroying

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any such documents, DRA will give reasonable notice to such effect and deliver to GM, at GM's cost and upon its request, a copy of any such documents. In addition, DRA will use reasonable efforts to cause its employees to cooperate with and assist GM in connection with any Claim for which defense or indemnity is sought by DRA under this Section 8.12.3.

I. Except as provided in Sections 8.12.4B and 8.12.3J, the term of GM's defense and indemnity obligations under this Section 8.12.3 will be as follows: (i) as to each parcel of Real Property covered by the Leases and by the Sublease, GM's defense and indemnity obligations will continue in effect as to such parcel of Real Property until the expiration or termination of the applicable Lease or Sublease, as the case may be, but in no case will GM's defense and indemnity obligations terminate prior to the date ten (10) years after the Closing Date; and (ii) in the event that DRA acquires title to or an assignment of GM's leasehold interest in any such Real Property, GM's defense and indemnity obligations will terminate ten (10) years after the Closing Date as to the parcel of Real Property involved. Except as provided in Sections 8.12.4B, 8.12.5A and 8.12.5C, upon termination of GM's defense and indemnity obligations under the preceding sentence, DRA will have no right of action against GM for environmental matters or conditions relating to the Real Property, the Assets, or the Business under contract (including this Agreement), Environmental Laws, other laws or the common law or in equity; provided, however, that: (i) in the event that a Claim is asserted before the termination of the defense and indemnity obligations of GM, GM's obligation to defend and indemnify DRA will continue, but only as to such Claim; and (ii) in the event that GM has not completed a Remedial Plan required and implemented with respect to any Claim prior to the expiration of GM's defense and indemnity obligations, GM will nevertheless complete the actions required under such Remedial Plan.

J. With respect to the Horn Area, the Bridge Area and the Compressed Air Area, each as defined in the Leases: (i) the minimum ten (10) year term of GM's defense and indemnification obligations under Section 8.12.3I will in no case terminate prior to the date ten (10) years after the Closing Date, extended by a period equal to the Horn Occupancy Period, as defined in the Leases, with respect to the Horn Area, the Bridge Area Occupancy Period, as defined in the Leases, with respect to the Bridge Area, and the C.A. Occupancy Period, as defined in the Leases, with respect to the Compressed Air Area; and (ii) the number of years set forth in the first column of the table in Section 8.12.4B entitled "Year After Closing In Which The Claim Is Asserted" will be increased by the same period with respect to each such respective area.

8.12.4. <u>DRA's Defense and Indemnification Obligations; Claims Procedures.</u>

A. <u>Defense and Indemnification.</u> DRA will, in accordance with the following terms and conditions, defend, indemnify and hold GM harmless from and against any Claims with respect to Adverse Consequences asserted against or to which GM may be subjected and which are caused by, relate to or arise in connection with: (i) any breach by DRA of any warranty, representation, covenant or agreement by DRA under this Article VIII; (ii) any violation by DRA and its Related Parties of any Environmental Law with respect to the Assets, the Real Property or the Businesses; (iii) any act or omission of DRA and its Related Parties or environmental matter or condition first arising on or after the Closing Date (to the extent not due to the act or omission of GM and its Related Parties (other than a trespasser)), including the creation on or after the Closing Date of any Solid Waste Management Unit or any Release or release of any substance to the extent occurring on or after the Closing Date from any Solid Waste Management Unit in existence and located on the Real Property prior to the Closing Date;

IN WITNESS WHEREOF, the Parties hereto have caused this Asset Purchase Agreement to be executed by their duly authorized officers.

GENERAL MOTORS CORPORATION	DR INTERNATIONAL, INC.
By: Robert D. Feller, attorney-in-fact for Heidi Kunz	By: James R. Gerrity
Print Name: Robert D. Feller	Print Name: James R. Gerrity
Its: Treasurer	Its: Executive V.P.

And

	DRA, INC.
By: Charles A. Cotten, attorney-in-fact for J.T. Battenberg, III	By: James R. Gerrity
Print Name: CHARLES A. COTTEN	Print Name: James R. Gerrity
Its: Senior Vice President	Its: Executive V.P.

EXHIBIT B

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

FILED
AUG 18 2008
CLERK OF CIRCUIT COURT #6
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

WILLIAM CAWLFIELD,

Plaintiff,

-vs-

A.W. CHESTERTON, INC.,
AGCO CORPORATION,
ALLIED MANUFACTURING COMPANY,
AMPEX CORPORATION,
ARVINMERITOR INC.,
BONDEX INTERNATIONAL INC.,
BRAND INSULATIONS INC.,
BORG-WARNER CORPORATION, by its successor-in-interest,
BORGWARNER MORSE TEC INC.,
CBS CORPORATION, a Delaware corporation, f/k/a
VIACOM INC., successor by merger to CBS CORPORATION,
a Pennsylvania corporation, f/k/a
WESTINGHOUSE ELECTRIC CORPORATION,
CERTAIN-TEED CORPORATION,
CHRYSLER LLC,
CLEAVER-BROOKS COMPANY INC.,
COOPER INDUSTRIES, INC.,
CROWN CORK & SEAL COMPANY, INC.,
DEERE & COMPANY,
DELCO REMY INTERNATIONAL INC.,
DOMCO PRODUCTS TEXAS, L.P.,
EMERSON RADIO CORP.,
EVRAZ OREGON STEEL MILLS,
FORD MOTOR COMPANY,
FOSTER WHEELER ENERGY CORP.,
GARLOCK INC.,
GENERAL ELECTRIC COMPANY,
GENERAL GASKET CORPORATION,
GENERAL MOTORS CORPORATION,
GENERAL REFRACTORIES COMPANY,
GEORGIA-PACIFIC CORPORATION,
GOODYEAR TIRE AND RUBBER COMPANY,
GRIMES AEROSPACE COMPANY, d/b/a
SURFACE COMBUSTION,
HONEYWELL INTERNATIONAL INC.,
INDUSTRIAL HOLDINGS CORPORATION, f/k/a
THE CARBORUNDUM COMPANY

08-L-82

INGERSOLL-RAND COMPANY,)
INTERNATIONAL PAPER COMPANY,)
INTERNATIONAL TRUCK & ENGINE CORPORATION,)
JOHN CRANE, INC.,)
JOHN DEERE COMPANY,)
KENTILE FLOORS, INC.)
LG ELECTRONICS U.S.A., INC.,)
MW CUSTOM PAPERS LLC,)
MAREMONT CORPORATION,)
MCKESSON CHEMICAL COMPANY,)
MCKESSON CORPORATION,)
METROPOLITAN LIFE INSURANCE COMPANY,)
MOTOROLA, INC.,)
OWENS-ILLINOIS, INC.,)
PHILIPS ELECTRONICS NORTH AMERICA CORPORATION,)
PNEUMO ABEX CORPORATION,)
RCA CORPORATION,)
RILEY STOKER CORPORATION,)
RPM INTERNATIONAL INC.,)
RPM INC.,)
SPRINKMANN SONS CORPORATION,)
SPRINKMANN SONS CORPORATION OF ILLINOIS,)
T.H. AGRICULTURE & NUTRITION, L.L.C. successor to)
THOMPSON HAYWARD CHEMICAL CO., INC.,)
TRANE US, INC.,)
WESTERN AUTO SUPPLY COMPANY,)
YOUNG GROUP LTD., f/k/a YOUNG SALES CORP.,)
YOUNG INSULATION GROUP OF ST. LOUIS, INC.,)
ZENITH ELECTRONICS LLC,)
)
Defendants,)

FIRST AMENDED COMPLAINT

COUNT I

(NEGLIGENCE COUNT)

Now comes the Plaintiff, by his attorneys, SIMMONSCOOPER LLC, and for his cause of action against the Defendants, states:

1. The Plaintiff, William Cawlfield, is a resident of the State of Colorado.

EXHIBIT C

STATE OF INDIANA)
)
COUNTY OF MARION)

MARION COUNTY SUPERIOR COURT
CIVIL DIVISION ROOM NO. 2
CAUSE NO. 49D02-9801-MI-0001-127

Robert Phillips,)
)
Plaintiff,)
v.)
)
A.E. Staley Manufacturing Co.)
A W Chesterton Co.)
Allis Chalmers Product Liability Trust)
American Standard, Inc.)
Asarco, Inc.)
Asbestos Corp., Ltd.)
Asphalt Materials, Inc.)
Atlantic Richfield Co. successor in interest to)
The Anaconda Co.)
Atlas Turner, Inc.)
Bayer Cropscience, LP, successor to)
Amchem Products, Inc.)
Bell Asbestos Mines, Ltd.)
BMW Constructors, Inc.)
BOC Group)
Borg-Warner, Inc.)
BP Corp. North America, Inc.)
Brand Insulation, Inc.)
Buffalo Pumps, Inc.)
Bunge North America (East), Inc. f/k/a)
Central Soya Co., Inc.)
CertainTeed Corp.)
Circle B Co.)
Cleaver-Brooks, Inc.)
Coca Cola Enterprises, Inc.)
Copeland Corp.)
Crompton Corp. successor in interest to)
Witco Corp.)
Crown Cork & Seal Co., Inc.)
Daimler-Chrysler Corp.)
Dana Corp.)
DAP, Inc.)
Delco Electronics LLC)
Durabla Manufacturing Co.)
F.A. Wilhelm Construction Co., Inc)

FILED
SEP 01 2004
[signature]
CLERK OF THE
MARION CIRCUIT COURT

Fargo Insulation, Inc.)
Ford Motor Co.)
Foster Wheeler, LLC)
Freyn Brothers, Inc.)
G.W. Berkheimer Co., Inc.)
Garlock, Inc.)
General Motors Corp.)
Golden Casting Corp.)
Grace Foods, Inc.)
Hagerman Construction Corp.)
Hedman Resources, Ltd.)
Henry Co.)
Hormel Foods Corp.)
Hunt Construction Group, Inc.)
Indiana Bell Telephone Co., Inc.)
Indianapolis Power & Light Co. (IPL))
INDOPCO, Inc. f/k/a National Starch &)
Chemical Corp.)
International Paper Co.)
International Truck and Engine Corp.)
Kennedy Tank & Manufacturing)
Lucent Technologies, Inc. successor in)
interest to Western Electric)
Marathon Oil Co.)
McMaster-Carr Supply Co.)
Metropolitan Life Insurance Co.)
Millennium Petrochemicals, Inc. successor in)
interest to Bridgeport Brass)
Minnesota Mining & Manufacturing Co.)
Norton Co. n/k/a St-Gobain Abrasives, Inc.)
Oakfabco, Inc., f/k/a Kewanee Boiler Corp.)
Otis Elevator Co.)
Owens-Illinois, Inc.)
Praxair Surgface Technologies, Inc.)
Prox Co., Inc.)
PSI Energy, Inc.)
Quigley Co., Inc.)
Reilly Industries, Inc.)
Remy International, Inc.)
Riley Power, Inc., f/k/a Riley Stoker Corp.)
Rinker Materials Corp.)
Rogers Corp.)
SEPCO, Inc.)
Shambaugh & Son, LLC)

Sid Harvey)
Sprinkmann Sons Corp. of Illinois)
Steel Grip, Inc.)
Stokley-Van Camp, Inc.)
The Dow Chemical Co.)
The Great Atlantic & Pacific Tea Co.)
The Kroger Co.)
The Quaker Oats Co.)
The Sager Corp.)
Triangle Enterprises, Inc.)
Tyco International (U.S.), Inc. successor in)
interest to Ansul, Inc.)
Union Carbide Corp.)
Uniroyal, Inc.)
Viacom, Inc., successor in interest to)
Westinghouse Electric Corp.)
Weil McLain)
)
Defendants.)

AMENDED COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

Plaintiff **Robert Phillips**, by counsel, allege and incorporate as follows:

GENERAL ALLEGATIONS

1. Robert Phillips is the Plaintiff herein.

2. DEFENDANTS which PLAINTIFF alleges manufactured, sold, installed or caused to be installed, used, distributed, and/or otherwise placed into the stream of commerce, asbestos and/or asbestos-containing products to which PLAINTIFF Robert Phillips was exposed are as follows:

> **A W Chesterton Co; Allis Chalmers Products Liability Trust; American Standard, Inc; Asarco, Inc; Asbestos Corp., Ltd; Atlas Turner, Inc; Bayer Cropscience, LP, Successor to Amchem Products, Inc; BMW Constructors, Inc; Bell Asbestos Mines, Ltd; BOC Group; Brand Insulation, Inc; Buffalo Pumps, Inc; CertainTeed Corp; Circle B Co; Cleaver-Brooks, Inc; Copeland Corp; Crown Cork & Seal Co., Inc; Dana Corp; DAP, Inc; Durabla Manufacturing Co; F.A. Wilhelm Construction Co., Inc; Fargo Insulation, Inc; Foster Wheeler, LLC; Freyn Brothers, Inc; G.W. Berkheimer Co., Inc; Garlock, Inc; Hagerman Construction Corp; Hedman Resources, Ltd; Henry Co; Hunt Construction Group, Inc; International Paper Co. ; Kennedy Tank & Manufacturing; McMaster-Carr Supply Co; Metropolitan Life Insurance Co; Minnesota Mining & Manufacturing Co; Norton Co., n/k/a Saint-Gobain Abrasives, Inc; Oakfabco, Inc., f/k/a Kewanee Boiler Corp; Owens-**

EXHIBIT D

IN THE SUPERIOR COURT

FOR THE COUNTY OF PROVIDENCE

STATE OF RHODE ISLAND

IN RE: ASBESTOS LITIGATION

MARY ANN WYDRA and ROBERT BINDA,
AS CO-INDEPENDENT EXECUTORS
OF THE ESTATE OF CLEMENT WYDRA and
MARY ANN WYDRA, INDIVIDUALLY

C.A. NO. PC-06-2153

VERSUS

JURY TRIAL DEMANDED

A.W. CHESTERTON COMPANY
BUFFALO PUMPS, INC.
CBS CORPORATION
Individually, and as Successor in
Interest to Westinghouse Electric Corp., and
as successor in interest to B.F. Sturtevant
COOPER-BESSEMER CORP.
D.C. FABRICATORS, INC.
individually and as successor in interest
to C.H. Wheeler Company
DELCO REMY INTERNATIONAL, INC.
ELLIOTT TURBOMACHINERY COMPANY, INC.
ENPRO INDUSTRIES, INC.
Individually and as Successor in Interest
to Fair Banks Morse Engine
GARDNER-DENVER, INC.
GARLOCK SEALING TECHNOLOGIES, LLC.
GENERAL ELECTRIC COMPANY

GENERAL MOTORS CORPORATION
IMO INDUSTRIES, INC.
INGERSOLL-RAND COMPANY
Individually and as Successor in
Interest to Terry Steam Turbine Company
JOHN CRANE, INC.
METROPOLITAN LIFE INSURANCE COMPANY
NEWPORT NEWS SHIPBUILDING, INC.
NEWPORT NEWS SHIPBUILDING AND
DRY DOCK CO.
NORTHERN PUMP COMPANY
PACKINGS AND INSULATION CORP.
P.I.C. CONTRACTORS, INC.
QUIMBY EQUIPMENT CO., INC
SCHUTTE & KOERTING, INC.
TERRY CORPORATION OF CONNECTICUT
UNION CARBIDE CORPORATION
VICKERS LTD.
WARREN PUMPS, INC.,
Individually and as Successor to the
Quimby Pump Company
WEINMAN PUMP AND SUPPLY COMPANY
WESTINGHOUSE AIR BRAKE COMPANY
WESTINGHOUSE ELECTRIC CORPORATION

COMPLAINT

1. Plaintiffs, Mary Ann Wydra and Robert Binda, individually and as Co-Independent Executors of the Estate of Clement Wydra ("Decedent") bring suit on behalf of the Estate of Clement Wydra and Mary Ann Wydra individually, for losses sustained as a result of her husband's injury and death.

2. The Federal Courts lack subject matter jurisdiction over this action, as there is no federal question and incomplete diversity of citizenship due to the presence of a Rhode Island defendant. Removal is improper. Every claim arising under the Constitution, treaties, or laws of the United States is expressly disclaimed (including any claim arising from an act or omission on a federal enclave, or of any federal officer of the U.S. or any agency or person acting under him occurring under color of such office). No claim of admiralty or maritime law is raised. Plaintiffs sue no foreign state or agency. Venue is proper in this court.

3. Each of the defendants named in the caption above has conducted business in the State of Rhode Island and has produced, manufactured or distributed asbestos and/or asbestos containing products with the reasonable expectation that such products would be used or consumed in this State, which products were so used or consumed, and has committed the tortious acts set forth below in this state.

EXHIBIT E

STATE OF INDIANA) IN THE MARION COUNTY SUPERIOR COURT
)SS:
COUNTY OF MARION) CAUSE NO.

49D12 08 09 CT 0 4 3 6 7 3

TIMOTHY BYNUM,

Plaintiff,

vs.

REMY INC.,
REMY INTERNATIONAL, INC., and
REMY INTERNATIONAL HOLDINGS, INC.,
GENERAL MOTORS CORPORATION,
DELPHI AUTOMOTIVE SYSTEMS HOLDING, INC.,
DELPHI AUTOMOTIVE SYSTEMS, LLC,
and
ADAMO DEMOLITION COMPANY,

Defendants.

FILED
(115) SEP 25 2008
Elizabeth L. White
CLERK OF THE MARION CIRCUIT COURT

COMPLAINT FOR DAMAGES

Comes now the Plaintiff, by counsel, and for his cause of action against the Defendants, each of them, states as follows;

1. At all times hereinafter mentioned Defendants Remy Inc., Remy International Inc., Remy International Holdings, Inc., General Motors Corporation, Delphi Automotive Systems Holding, Inc., and Delphi Automotive Systems, LLC owned, operated and maintained a factory known as Plant 11 in Anderson, Indiana.

2. Between September 25th and September 28th, 2006 Defendant Adamo Demolition Company was providing services at Plant 11 to shut down the Plant.

3. At said time and place, Tim Bynum was working as an employee of an independent contractor, when he was subjected to a toxic exposure.

EXHIBIT F

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

JAMES NANGLE,	)	
	)	
Plaintiff,	)	
	)	
-vs.-	)	NO. 09-L-574
	)	
A.W. CHESTERTON, INC.,	)	
A.O. SMITH CORPORATION,	)	
ASHLAND INC.,	)	FILED
BEAZER EAST INC.,	)	
BONDEX INTERNATIONAL INC.,	)	
BRAND INSULATIONS INC.,	)	JUN 08 2009
BORG-WARNER CORPORATION, by its successor-in-interest,	)	CLERK OF CIRCUIT COURT #10
BORGWARNER MORSE TEC INC.,	)	THIRD JUDICIAL CIRCUIT
CBS CORPORATION, a Delaware corporation, f/k/a	)	MADISON COUNTY, ILLINOIS
VIACOM INC., successor by merger to CBS CORPORATION,	)	
a Pennsylvania corporation, f/k/a	)	
WESTINGHOUSE ELECTRIC CORPORATION,	)	
CERTAIN-TEED CORPORATION,	)	
CLEAVER-BROOKS COMPANY INC.,	)	
COOPER INDUSTRIES, INC.,	)	
CRANE CO.,	)	
CROWN CORK & SEAL COMPANY, INC.,	)	
DUPONT CHEMICAL COMPANY,	)	
FORD MOTOR COMPANY,	)	
FOSECO INC.,	)	
FOSTER WHEELER ENERGY CORP.,	)	
GARLOCK INC.,	)	
GARLOCK SEALING TECHNOLOGIES LLC,	)	
GENERAL ELECTRIC COMPANY,	)	
GENUINE PARTS COMPANY,	)	
GEORGIA-PACIFIC LLC,	)	
GRIMES AEROSPACE COMPANY, d/b/a	)	
SURFACE COMBUSTION,	)	
HERCULES POWDER COMPANY,	)	
HONEYWELL INTERNATIONAL INC.,	)	
IMO INDUSTRIES INC.,	)	
INDUSTRIAL HOLDINGS CORPORATION, f/k/a	)	
THE CARBORUNDUM COMPANY	)	
INGERSOLL-RAND COMPANY,	)	
JOHN CRANE, INC.,	)	

KENTILE FLOORS, INC.)
MAREMONT CORPORATION,)
MCKESSON CHEMICAL COMPANY,)
MCKESSON CORPORATION,)
METROPOLITAN LIFE INSURANCE COMPANY,)
MW CUSTOM PAPERS LLC,)
OCCIDENTAL CHEMICAL CORPORATION,)
ON MARINE SERVICES COMPANY, A WHOLLY OWNED SUBSIDIARY OF OGLEBAY NORTON COMPANY,)
OWENS-ILLINOIS, INC.,)
PNEUMO ABEX LLC, successor-in-interest to ABEX CORPORATION, f/k/a PNEUMO ABEX CORPORATION,)
REMY INTERNATIONAL INC.,)
RILEY STOKER CORPORATION,)
RPM INTERNATIONAL INC.,)
RPM INC.,)
SEPCO CORPORATION,)
SPRINKMANN INSULATION, INC.,)
SPRINKMANN SONS CORPORATION,)
SPRINKMANN SONS CORPORATION OF ILLINOIS,)
TAMKO BUILDING PRODUCTS INC.,)
TRANE US, INC.,)
TRIANGLE CONDUIT & CABLE CO. INC.,)
WYETH (INC.),)
YOUNG GROUP LTD., f/k/a YOUNG SALES CORP.,)
YOUNG INSULATION GROUP OF ST. LOUIS, INC.,)
)
Defendants,)

FIRST AMENDED COMPLAINT

COUNT I

(NEGLIGENCE COUNT)

Now comes the Plaintiff, by his attorneys, SIMMONSCOOPER LLC, and for his cause of action against the Defendants, states:

1. The Plaintiff, James Nangle, is a resident of the State of Florida.

EXHIBIT G

SEP 30 2004

SQUIRE, SANDERS & DEMPSEY L.L.P.

Two Renaissance Square
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004-4498

Office: +1.602.528.4000
Fax: +1.602.253.8129

SQUIRE SANDERS | LEGAL COUNSEL WORLDWIDE

Direct Dial: +1.602.528.4001
MNadeau@ssd.com

September 23, 2004

VIA FACSIMILE (248) 267-4320
AND REGULAR MAIL

Glenn A. Jackson, Esq.
General Motors Legal Staff
General Motors Corporation
400 GM Renaissance Center
PO Box 400
Detroit, Michigan 48265-4000

Re: Robert Phillips v. A.W. Chesterton Co., et al.
Cause No. 49D02-9801-MI-0001-127, Marion Superior Court, Indianapolis, Indiana

Dear Glenn:

Enclosed is copy of an amended complaint and summons concerning alleged asbestos exposure, which was served on Delco Remy International, Inc., now known as ("nka") Remy International, Inc. ("RII"), on September 8, 2004. The enclosed amended complaint is submitted to you under the Asset Purchase Agreement between RII and General Motors dated July 13, 1994, in which General Motors agreed to defend and indemnify RII for all "retained liabilities." Accordingly, please consider this correspondence to serve as RII's prompt notice seeking a defense and indemnification under Section 5.2, 5.3.1 and 5.3.2 of the aforementioned Asset Purchase Agreement.

For your convenience, Section 5.2 of the July 1994 Asset Purchase Agreement, which concerns Retained Liabilities, states in part:

> Purchaser shall not assume any liabilities or obligations of GM of any kind, whether such liabilities or obligations relate to payment, performance or otherwise, whether matured or unmatured, known or unknown, whether contingent or otherwise, fixed or absolute, present, future or otherwise (the "Retained Liabilities"), it being understood that all of such Retained Liabilities shall be retained, and paid, performed and/or discharged by GM in accordance with their respective terms.

Section 5.3.1 of the July 1994 Asset Purchase Agreement, which concerns General Indemnification Obligations, states in part:

> GM Shall indemnify DRI [nka RII], Purchaser and their respective directors, officers and Affiliates and hold DRI [nka RII], Purchaser and their respective directors, officers and Affiliates harmless from and against Damages, whether contingent or otherwise, fixed or absolute, known or unknown, present or future or otherwise, relating directly or indirectly to, arising out of or resulting from . . . (iii) the Retained Liabilities or otherwise to the extent arising out of or relating to the ownership or use of the Purchased Assets by GM or the operation of the Businesses on or prior to Closing.

The claims in this amended complaint fall squarely under these provisions. As we have discussed previously, under Section 5.3.2, General Motors has the right to assume the defense of RII in this matter. Please confirm in writing, as soon as possible, that General Motors will indemnify RII and whether General Motors will exercise its right to defend RII in this action.

Thank you for your assistance and prompt attention to this matter.

Very truly yours,

Mark A. Nadeau

MAN/dt

cc: Debra Rutschman
Sheila Cannon

EXHIBIT H

Glenn A. Jackson
Attorney

General Motors Corporation
Legal Staff
400 GM Renaissance Center
Mail Code: 482-028-205
Detroit, Michigan, 48265-4000
Tel 313-665-7518
Fax 248-267-4320
glenn.jackson@gm.com

November 8, 2004 **VIA FAX 602-253-8129 and U.S. Mail**

Mark A. Nadeau, Esq.
Squire, Sanders & Dempsey, L.L.P.
Two Renaissance Square
40 North Central Avenue, Suite 2700
Phoenix, AZ 85004-4498

Re: **INDEMNIFICATION REQUEST**
Robert Phillips v. A. W. Chesterton Co., et al.
GM File No.: 485432

Dear Mr. Nadeau:

I have reviewed your September 23, 2004 correspondence which, in part, makes a request for indemnification and defense on behalf of Remy International in the above captioned matter.

Although there is little factual information on which to base a decision, it appears that Mr. Phillips is claiming he was exposed to asbestos, in part, for which he alleges Remy International, Inc. was responsible. GM agrees to indemnify and defend Remy International for claims made arising from alleged premises liability exposure to asbestos in which the plaintiff is alleging his exposure occurred prior to 1994. If plaintiff should change his description of exposure or update it such that he specifies some exposure occurring after 1994, we will advise you accordingly.

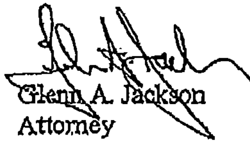
Of course, such a change in the factual situation would change this analysis materially and, GM reserves the right to reconsider this decision and, after notifying you, re-tender both the indemnity and defense to Remy International for all or any part of this claim in that instance.

GM's counsel, Dennis R. McEwen of Eckert Seamans Cherin & Mellott has been instructed to contact you to arrange for the transfer of the file to Mr. McEwen and for his substitution as counsel for Remy International.

As you are aware, it is critically important for defendants to be able to respond to discovery. Please identify the appropriate person or persons who will act as a liaison for purposes of responding to discovery directed to Remy International. Our mutual counsel will be in touch with that person to begin the process of gathering information.

If you would like to discuss this further or have any questions, please give me a call.

Very truly yours,



Glenn A. Jackson
Attorney

GAJ:dlr

c: Michael A. Bergin, Esq.
Phillip Cosgrove, Esq.
Dennis R. McEwen, Esq.

EXHIBIT I

Remy International, Inc.
World Headquarters • 2902 Enterprise Drive • Anderson, Indiana 46013
765-778-6499
Fax 765-778-6525

Writer's Direct Number: 765-778-6895
Fax: 765-778-6760
Cell: 765-621-8829
E-mail: cannon.sheila@remyinc.com

May 2, 2006

Glenn A. Jackson, Esq.
General Motors Legal Staff
General Motors Corporation
400 GM Renaissance Center
P. O. Box 400
Detroit, Michigan 48265-4000

Dear Mr. Jackson:

Re: Mary Ann Wydra & Robert Binda v. A.W. Chesterton Co., et al, C.A. No. PC-06-2153, Superior Court, County of Providence, State of Rhode Island

Enclosed is a copy of a complaint and summons concerning alleged asbestos exposure, which was served on Remy International, Inc., ("Remy") on April 28, 2006. The enclosed complaint is submitted to you under the Asset Purchase Agreement between Remy (f/k/a Delco Remy International, Inc.) and General Motors, dated July 13, 1994, in which General Motors agreed to defend and indemnify Remy for all "retained liabilities". Accordingly, please consider this correspondence to serve as Remy's prompt notice seeking a defense and indemnification under Section 5.2, 5.3.1 and 5.3.2 of the aforementioned Asset Purchase Agreement.

For your convenience, Section 5.2 of the July 1994 Asset Purchase Agreement, which concerns Retained Liabilities, states in part:

> Purchaser shall not assume any liabilities or obligations of GM of any kind, whether such liabilities or obligations relate to payment, performance or otherwise, whether matured or unmatured, known or unknown, whether contingent or otherwise, fixed or absolute, present, future or otherwise (the "Retained Liabilities"), it being understood that all of such Retained Liabilities shall be retained, and paid, performed and/or discharged by GM in accordance with their respective terms.

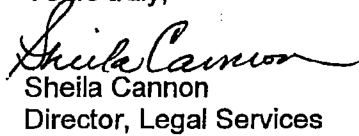
Section 5.3.1 of the July 1994 Asset Purchase Agreement, which concerns General Indemnification Obligations, states in part:

> GM shall indemnify DRI, Purchaser and their respective directors, officers and Affiliates and hold DRI, Purchaser and their respective directors, officers and Affiliates harmless from and against Damages, whether contingent or otherwise, fixed or absolute, known or unknown, present or future or otherwise, relating directly or indirectly to, arising out of or resulting from . . . (iii) the Retained Liabilities or otherwise to the extent arising out of or relating to the ownership or use of the Purchased Assets by GM or the operation of the Businesses on or prior to Closing.

Based upon the facts, we believe the claims in this complaint fall squarely under these provisions. Under Section 5.3.2, General Motors has the right to assume the defense of Remy in this matter. Please confirm in writing, as soon as possible, that General Motors will indemnify Remy and whether General Motors will exercise its right to defend Remy in this action.

Thank you for your assistance and prompt attention to this matter.

Yours truly,



Sheila Cannon
Director, Legal Services

SDDC:ms

Enclosure

Via Express Courier

cc: Q. Williams

EXHIBIT J

Maynard L. Timm
Attorney

General Motors Corporation
Legal Staff
400 GM Renaissance Center
Mail Code: 482-026-601
Detroit, Michigan, 48265-4000
Tel 313-665-7375
Fax 313-665-7376
maynard.l.timm@gm.com

May 8, 2006

Via Facsimile (No. 765/778-6760)
Confirmed by U.S. Mail

Sheila Cannon
Director, Legal Services
Remy International, Inc.
World Headquarters
2902 Enterprise Drive
Anderson, IN 46013

Re: **REQUEST FOR INDEMNIFICATION**
CLEMENT WYDRA, et al. *v. GMC, et al.*
Superior Court, Providence County
GM File No. 510318

Dear Ms. Cannon:

In response to your letter of May 2, 2006, General Motors is willing to accept the further defense and indemnify Delco Remy International, Inc., in this case against any judgment rendered against it in this action.

Based upon the factual information provided and the language of the July 1994 Agreement, GM agrees to indemnify and defend Delco Remy International for claims made arising from alleged asbestos exposure which occurred prior to 1994. It currently appears that Mr. Wydra is claiming his exposure to Delco Remy International's products or premises (the allegations are unclear) prior to 1994. If plaintiff should change his description of exposure or update it such that he specifies some exposure occurring after 1994, we will advise you accordingly. This undertaking is necessarily based on the understanding that all reasonable steps have been taken to protect the defense of Delco Remy International.

Of course such a change in the factual situation would change this analysis materially and, GM reserves the right to reconsider this decision and, after notifying you, retender both the indemnity and defense to Delco Remy International for all or any part of this claim in that instance.

GM has selected Robert P. Morgan of the firm of Eckert Seamans Cherin & Mellott, LCC to defend the interests of Delco Remy International and General Motors.

The provisions under which GM is agreeing to defend and, if necessary, indemnify Delco Remy International require Delco Remy International to cooperate fully in the defense of this case. I understand that you have already sent us some documents. Please review your records and

immediately contact Robert Morgan and send him any other pleadings or suit papers, together with copies of letters, memoranda, notes and any other documents the dealership has that relate in any way to plaintiff's claim. Also, please let Robert Morgan know, immediately, the name, position, and telephone number of the most appropriate dealership employee to act as the contact between Robert Morgan and Delco Remy International.

As you are aware, it is critically important for defendants to be able to respond to discovery. Please identify the appropriate person or persons who will act as a liaison for purposes of responding to discovery directed to Delco Remy International. Our mutual counsel will be in touch with that person to begin the process of gathering information.

We do not know if the dealership has already hired an attorney to defend it in this lawsuit but if you have, you should immediately let that attorney know about this letter.

We are sending a copy of this letter to Robert Morgan.

Very truly yours,

Maynard L. Timm/cb

Maynard L. Timm
Attorney

MLT/cb

c: VIA FACSIMILE (No. 412/566-6099)
Robert P. Morgan, Esq.
Eckert Seamans Cherin & Mellott LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

EXHIBIT K

Greenberg Traurig

Quinn P. Williams
Tel. 602.445.8344
Fax. 602.445.8647
WilliamsQ@gtlaw.com

September 24, 2008

Glenn A. Jackson, Esq.
General Motors Legal Staff
General Motors Corporation
300 GM Renaissance Center
P. O. Box 482-C25-A36
Detroit, Michigan 48265-3000

Dear Mr. Jackson:

Re: *William Cawlfield v. A.W. Chesterton* (including Delco Remy International, Inc.)
Case No. 08-L-82 – Circuit Court of the Third Judicial Circuit, Madison County, Illinois

We represent Remy International, Inc. ("Remy"). Enclosed is a copy of a complaint and summons concerning alleged asbestos exposure, which was served on Remy on September 8, 2008, to which a **response is due before October 8, 2008**. We have requested a 30-day extension to answer and are currently awaiting a response from Plaintiff's counsel. The enclosed complaint is submitted to you under the Asset Purchase Agreement between Remy (f/k/a Delco Remy International, Inc.) and General Motors, dated July13, 1994, in which General Motors agreed to defend and indemnify Remy for all "retained liabilities". Accordingly, please consider this correspondence to serve as Remy's prompt notice seeking a defense and indemnification under Section 5.2, 5.3.1 and 5.3.2 of the aforementioned Asset Purchase Agreement.

For your convenience, Section 5.2 of the July 1994 Asset Purchase Agreement, which concerns Retained Liabilities, states in part:

> Purchaser shall not assume any liabilities or obligations of GM of any kind, whether such liabilities or obligations relate to payment, performance or otherwise, whether matured or unmatured, known or unknown, whether contingent or otherwise, fixed or absolute, present, future or otherwise (the "Retained Liabilities"), it being understood that all of such Retained Liabilities shall be retained, and paid, performed and/or discharged by GM in accordance with their respective terms.

Section 5.3.1 of the July 1994 Asset Purchase Agreement, which concerns General Indemnification Obligations, states in part:

> GM shall indemnify DRI, Purchaser and their respective directors, officers and Affiliates and hold DRI, Purchaser and their respective directors, officers and Affiliates harmless from and against Damages, whether contingent or otherwise, fixed or absolute, known or unknown, present or future or otherwise, relating directly or indirectly to, arising out of or resulting from . . . (iii) the Retained Liabilities or otherwise to the extent arising out of or relating to the ownership or use of the Purchased Assets by GM or the operation of the Businesses on or prior to Closing.

ALBANY
AMSTERDAM
ATLANTA
BOCA RATON
BOSTON
CHICAGO
DALLAS
DELAWARE
DENVER
FORT LAUDERDALE
HOUSTON
LAS VEGAS
LOS ANGELES
MIAMI
NEW JERSEY
NEW YORK
ORANGE COUNTY, CA
ORLANDO
SACRAMENTO
SILICON VALLEY
PHILADELPHIA
PHOENIX
TALLAHASSEE
TOKYO
TYSONS CORNER
WASHINGTON, D.C.
WEST PALM BEACH
ZURICH

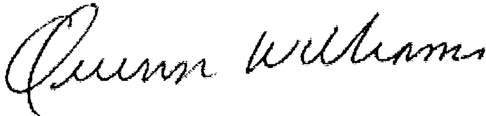
The claims in this complaint fall squarely under these provisions as all alleged exposure, as can be ascertained from the complaint, occurred prior to Closing. Under Section 5.3.2, General Motors has the right to assume the defense of Remy in this matter. Please confirm in writing, as soon as possible, that General

Motors will indemnify Remy and whether General Motors will exercise its right to defend Remy in this action.

Thank you for your assistance and prompt attention to this matter.

Very truly yours,

GREENBERG TRAURIG, LLP



Quinn Williams

QW/SDDC:ms

Enclosure

cc: S. Cannon

Greenberg Traurig, LLP | Attorneys at Law | 2375 East Camelback Road, Suite 700 | Phoenix, Arizona 85016 | Tel. 602.445.8000 | Fax 602.445.8100

www.gtlaw.com

EXHIBIT L

Maynard L. Timm
Attorney

General Motors Corporation
Legal Staff
400 GM Renaissance Center
Mail Code: 482-026-601
Detroit, Michigan, 48265-4000
Tel 313-665-7375
Fax 248-267-4389
maynard.l.timm@gm.com

October 1, 2008

Via Facsimile (No. 602-445-8647)
Confirmed by Mail

Quinn P. Williams, Esq.
Greenberg Traurig, LLP
2375 East Camelback Road, Suite 700
Phoenix, AZ 85016

Re: **INDEMNIFICATION REQUEST**
William Cawlfield v. A.W. Chesterfield (including Remy International, Inc.)
Circuit Court of the Third Judicial Circuit, Madison County, Illinois
Case No. 08-L-82
GM Case No. 644847

Dear Mr. Williams:

I have reviewed your letter dated September 24, 2008, regarding Remy International, Inc.'s (f/k/a Delco Remy International, Inc.) indemnification request and have also reviewed the 1994 Asset Purchase Agreement.

Based upon the above factual information and the language of the July 1994 Agreement, GM agrees to indemnify and defend Remy International for claims made arising from alleged exposure to Remy International products prior to 1994. It currently appears that William Cawlfield is claiming he was exposed to Remy International's products prior to 1994. If plaintiff should change his description of exposure or update it such that he specifies some exposure occurring after 1994, we will advise you accordingly.

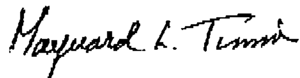
Of course, such a change in the factual situation would change this analysis materially and, GM reserves the right to reconsider this decision and, after notifying you, retender both the indemnity and defense to Remy International for all or any part of this claim in that instance.

As you are aware, it is critically important for defendants to be able to respond to discovery. Please identify the appropriate person or persons who will act as a liaison for purposes of responding to discovery directed to Remy and notify both me and our mutual counsel, Paul

Lankford. Our mutual counsel, Paul Lankford, will be in touch with that person to begin the process of gathering information.

If you would like to discuss this further or have any questions, please give me a call.

Very truly yours,



Maynard L. Timm
Attorney

MLT:sdw

c: Paul V. Lankford, Esq.
Lankford & Crawford LLP
2 Theatre Square, Suite 240
Orinda, CA 94563
Phone No. (925) 258-9091

EXHIBIT M

Greenberg Traurig

Quinn P. Williams
Tel. 602.445.8344
Fax. 602.445.8647
WilliamsQ@gtlaw.com

October 2, 2008

Glenn A. Jackson, Esq.
General Motors Legal Staff
General Motors Corporation
300 GM Renaissance Center
P. O. Box 482-C25-A36
Detroit, Michigan 48265-3000

Dear Mr. Jackson:

Re: *Timothy Bynum v. Remy Inc., et al* (including General Motors Corporation)
Cause No. 49D12 08 09 CT 043673 – Marion County Superior Court, Indiana

We represent Remy Inc. ("Remy"). Enclosed is a copy of a summons and complaint concerning alleged injury due to exposure and development of histoplasmosis during the shut down of Plant 11 in Anderson, Indiana. This complaint was served on Remy's registered agent on September 29, 2008, and a **response is due before October 22, 2008**. A 30-day extension to answer has been requested, and we are currently awaiting a response from Plaintiff's counsel. The enclosed complaint is submitted to you under the Asset Purchase Agreement between Remy (f/k/a Delco Remy International, Inc.) and General Motors, dated July13, 1994, in which General Motors agreed to defend and indemnify Remy for all "retained liabilities". Accordingly, please consider this correspondence to serve as Remy's prompt notice seeking a defense and indemnification under Section 5.2, 5.3.1 and 5.3.2 of the aforementioned Asset Purchase Agreement.

For your convenience, Section 5.2 of the July 1994 Asset Purchase Agreement, which concerns Retained Liabilities, states in part:

> Purchaser shall not assume any liabilities or obligations of GM of any kind, whether such liabilities or obligations relate to payment, performance or otherwise, whether matured or unmatured, known or unknown, whether contingent or otherwise, fixed or absolute, present, future or otherwise (the "Retained Liabilities"), it being understood that all of such Retained Liabilities shall be retained, and paid, performed and/or discharged by GM in accordance with their respective terms.

Section 5.3.1 of the July 1994 Asset Purchase Agreement, which concerns General Indemnification Obligations, states in part:

> GM shall indemnify DRI, Purchaser and their respective directors, officers and Affiliates and hold DRI, Purchaser and their respective directors, officers and Affiliates harmless from and against Damages, whether contingent or otherwise, fixed or absolute, known or unknown,

ALBANY
AMSTERDAM
ATLANTA
BOCA RATON
BOSTON
CHICAGO
DALLAS
DELAWARE
DENVER
FORT LAUDERDALE
HOUSTON
LAS VEGAS
LOS ANGELES
MIAMI
NEW JERSEY
NEW YORK
ORANGE COUNTY, CA
ORLANDO
SACRAMENTO
SILICON VALLEY
PHILADELPHIA
PHOENIX
TALLAHASSEE
TOKYO
TYSONS CORNER
WASHINGTON, D.C
WEST PALM BEACH
ZURICH

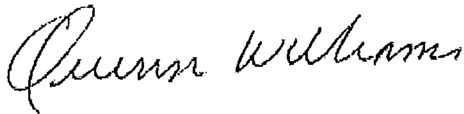
> present or future or otherwise, relating directly or indirectly to, arising out of or resulting from . . . (iii) the Retained Liabilities or otherwise to the extent arising out of or relating to the ownership or use of the Purchased Assets by GM or the operation of the Businesses on or prior to Closing.

The claims in this complaint fall squarely under these provisions as all alleged exposure, as can be ascertained from the complaint, occurred prior to Closing. Under Section 5.3.2, General Motors has the right to assume the defense of Remy in this matter. Please confirm in writing, as soon as possible, that General Motors will indemnify Remy and whether General Motors will exercise its right to defend Remy in this action.

Thank you for your assistance and prompt attention to this matter.

Very truly yours,

GREENBERG TRAURIG, LLP



Quinn Williams

QW/SDDC

Enclosure

cc: S. Cannon

Greenberg Traurig, LLP | Attorneys at Law | 2375 East Camelback Road, Suite 700 | Phoenix, Arizona 85016 | Tel. 602.445.8000 | Fax 602.445.8100

www.gtlaw.com

EXHIBIT N

REDACTED

From: maynard.l.timm@gm.com <maynard.l.timm@gm.com>
To: Williams, Quinn P. (Shld-Phx-CP)
Cc: damon.l.white@gm.com <damon.l.white@gm.com>
Sent: Thu Jul 16 07:27:14 2009
Subject: Asbestos Indemnification Requests--July 31, 1994 Remy (f/k/a Delco Remy International, Inc.) Asset Purchase Agreement--General Motors Company

Quinn–

On July 10, 2009, General Motors Corporation emerged from Chapter 11 Bankruptcy and became General Motors Company, a completely new entity. As part of the bankruptcy process, General Motors Company did not assume the July 31, 1994 Remy (f/k/a Delco Remy International, Inc.) Asset Purchase Agreement. Consequently, General Motors Company will have no involvement or assume any responsibility for the defense of asbestos exposure litigation against Remy (f/k/a Delco Remy International, Inc.). We will be communicating this information to outside counsel shortly.

Maynard L. Timm
(313) 665-7375 (8/255)
(248) 267-4389 or (313) 665-7376 (Fax)
maynard.l.timm@gm.com
GM Legal Staff, M/C: 482-026-601
400 Renaissance Center, Detroit, MI 48265-4000

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby

notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. To reply to our email administrator directly, please send an email to postmaster@gtlaw.com.

CONFIDENTIALITY NOTICE:

This e-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by returning it to the sender and delete this copy from your system. Thank you.

Hearing Date and Time: October 6, 2009, at 9:45 a.m. (prevailing Eastern Time)
Objection Deadline: October 1, 2009 at 4:00 p.m. (prevailing Eastern Time)

Ropers Majeski Kohn & Bentley
201 Spear Street, Suite 1000
San Francisco, CA 94105
Telephone: (415) 543-4800
Facsimile: (415) 972-6301
Email: kstrickland@rmkb.com
N. Kathleen Strickland, Esq. (*Pro Hac Vice Admission Granted)*

Ropers Majeski Kohn & Bentley
17 State Street, Suite 2400
New York, NY 10004
Telephone: (212) 668-5927
Facsimile: (212) 668-5929
Email: gheineman@rmkb.com
Geoffrey W. Heineman, Esq.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DECLARATION OF N. KATHLEEN STRICKLAND IN SUPPORT OF MOTION OF REMY INTERNATIONAL, INC. FOR AN ORDER EXTENDING AND ENFORCING THE STAY IMPOSED UNDER 11 U.S.C. § 362 (a) TO INCLUDE CERTAIN LITIGATION RELATING TO REMY INTERNATIONAL, OR ALTERNATIVELY, ENJOINING SUCH LITIGATION PURSUANT TO 11 U.S.C. § 105

I, N. KATHLEEN STRICKLAND, hereby declare pursuant to Section 1746 of Title 28 of the United States Code:

1. I am above the age of 21. I am counsel, in good standing in the state bars of California, Colorado and Texas, a partner of the law firm Ropers, Majeski, Kohn and Bentley. I

have been admitted pro hac vice in this General Motors Corporation ("GM") Bankruptcy proceeding, and am counsel of record in this proceeding for Remy International, Inc. ("Remy"). I am competent to give sworn testimony and have personal knowledge of the facts stated herein, except as to those matters stated upon information and belief, and as to those matters I believe them to be true. I am sufficiently familiar with the facts set forth herein to testify competently if required.

2. In my capacity as counsel to Remy, I was provided with a case list from Mr. Jeremiah Shives, containing a list of 19 cases which had been tendered to GM. Upon review of said list and contacting the named courts in which such cases were filed, to the best of my knowledge, and on information and belief, there are currently 3 open pending cases in which GM has accepted Remy's tender and in which GM has been defending Remy, prior to the June 1, 2009 filing of GM's bankruptcy petition with this Court. There is also one case (*Bynum*) in which a tender has been made to GM, but no response was received.[1] I have since been informed that post GM bankruptcy filing, Remy has been served with the *Nangle* case complaint.

3. The plaintiff's names in the five pending cases are: *Timothy Bynum, William Cawlfield, Robert Phillips, Clement Wydra* and *James Nangle*.

4. Attached hereto as Exhibits A, B, C, D and E are true and correct copies of the face sheets of the complaints in those five actions. I have reviewed the complaints filed in the above cases and have served plaintiffs counsel in the above five cases with notice and copies of this motion. [2]

5. My review of each complaint, copies of which I have in my possession, reveals that both GM and Remy (also named as Delco Remy International, Inc.) are named in each complaint, with the exception of the recently filed *Nagle* complaint.

---

[1] In *Bynum*, after speaking with plaintiffs counsel, he informed me that he has no objection to dismissing Remy, and our office is in the process of securing said dismissal. This is an action in which plaintiffs counsel informed counsel for Remy that a response to the complaint need not be filed. Hence, my office is in the process of obtaining this dismissal.

[2] The *Nangle* complaint as to Remy alleges exposure during the time period of the GM defense and indemnity obligation and hence comes within the scope of the APA Agreement.

6. I have reviewed the exhibits to Mr. Jeremiah Shives declaration, and based thereon, upon information and belief, GM has accepted the tender of the *Cawlfield*, *Phillips* and *Wydra* cases from Remy and that through July 16, 2009 GM has been defending Remy in those cases. As of today's date, Remy has received no notification that GM is no longer defending Remy in these cases except for the July 16, 2009 email received from Mr. Timm regarding a sixth matter, the *Lewis* case, referred to in this motion and in the Declaration of Jeremiah Shives of Remy. Since that time, our office has secured a dismissal of the *Lewis* case from plaintiff's counsel, so that case is not included within the count of five pending cases.

I declare under penalty of perjury that the foregoing is true and correct. Executed this ____th day of September, 2009.

_/S/ N. Kathleen Strickland_____________
N. Kathleen Strickland

EXHIBIT A

STATE OF INDIANA) IN THE MARION COUNTY SUPERIOR COURT
)SS:
COUNTY OF MARION) CAUSE NO.

TIMOTHY BYNUM)
)
Plaintiff,)
)
vs.)
)
REMY INC.,)
REMY INTERNATIONAL, INC., and)
REMY INTERNATIONAL HOLDINGS,)
INC.,)
GENERAL MOTORS CORPORATION,)
DELPHI AUTOMOTIVE SYSTEMS)
HOLDING, INC.,)
DELPHI AUTOMOTIVE SYSTEMS, LLC,)
and)
ADAMO DEMOLITION COMPANY,)
)
Defendants.)

49D12 08 09 CT 0 4 3 6 7 3

FILED
(115) SEP 25 2008
Elizabeth L. White
CLERK OF THE MARION CIRCUIT COURT

COMPLAINT FOR DAMAGES

Comes now the Plaintiff, by counsel, and for his cause of action against the Defendants, each of them, states as follows:

1. At all times hereinafter mentioned Defendants Remy Inc., Remy International Inc., Remy International Holdings, Inc., General Motors Corporation, Delphi Automotive Systems Holding, Inc., and Delphi Automotive Systems, LLC owned, operated and maintained a factory known as Plant 11 in Anderson, Indiana.

2. Between September 25th and September 28th, 2006 Defendant Adamo Demolition Company was providing services at Plant 11 to shut down the Plant.

3. At said time and place, Tim Bynum was working as an employee of an independent contractor, when he was subjected to a toxic exposure.

EXHIBIT B

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

FILED
AUG 18 2008
CLERK OF CIRCUIT COURT #6
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

WILLIAM CAWLFIELD,)
)
Plaintiff,)
)
-vs.-) 08-L-82
)
A.W. CHESTERTON, INC.,)
AGCO CORPORATION,)
ALLIED MANUFACTURING COMPANY,)
AMPEX CORPORATION,)
ARVINMERITOR INC.,)
BONDEX INTERNATIONAL INC.,)
BRAND INSULATIONS INC.,)
BORG-WARNER CORPORATION, by its successor-in-interest,)
BORGWARNER MORSE TEC INC.,)
CBS CORPORATION, a Delaware corporation, f/k/a)
VIACOM INC., successor by merger to CBS CORPORATION,)
a Pennsylvania corporation, f/k/a)
WESTINGHOUSE ELECTRIC CORPORATION,)
CERTAIN-TEED CORPORATION,)
CHRYSLER LLC,)
CLEAVER-BROOKS COMPANY INC.,)
COOPER INDUSTRIES, INC.,)
CROWN CORK & SEAL COMPANY, INC.,)
DEERE & COMPANY,)
DELCO REMY INTERNATIONAL INC.,)
DOMCO PRODUCTS TEXAS, L.P.,)
EMERSON RADIO CORP.,)
EVRAZ OREGON STEEL MILLS,)
FORD MOTOR COMPANY,)
FOSTER WHEELER ENERGY CORP.,)
GARLOCK INC.,)
GENERAL ELECTRIC COMPANY,)
GENERAL GASKET CORPORATION,)
GENERAL MOTORS CORPORATION,)
GENERAL REFRACTORIES COMPANY,)
GEORGIA-PACIFIC CORPORATION,)
GOODYEAR TIRE AND RUBBER COMPANY,)
GRIMES AEROSPACE COMPANY, d/b/a)
SURFACE COMBUSTION,)
HONEYWELL INTERNATIONAL INC.,)
INDUSTRIAL HOLDINGS CORPORATION, f/k/a)
THE CARBORUNDUM COMPANY)

INGERSOLL-RAND COMPANY,)
INTERNATIONAL PAPER COMPANY,)
INTERNATIONAL TRUCK & ENGINE CORPORATION,)
JOHN CRANE, INC.,)
JOHN DEERE COMPANY,)
KENTILE FLOORS, INC.)
LG ELECTRONICS U.S.A., INC.,)
MW CUSTOM PAPERS LLC,)
MAREMONT CORPORATION,)
MCKESSON CHEMICAL COMPANY,)
MCKESSON CORPORATION,)
METROPOLITAN LIFE INSURANCE COMPANY,)
MOTOROLA, INC.,)
OWENS-ILLINOIS, INC.,)
PHILIPS ELECTRONICS NORTH AMERICA CORPORATION,)
PNEUMO ABEX CORPORATION,)
RCA CORPORATION,)
RILEY STOKER CORPORATION,)
RPM INTERNATIONAL INC.,)
RPM INC.,)
SPRINKMANN SONS CORPORATION,)
SPRINKMANN SONS CORPORATION OF ILLINOIS,)
T.H. AGRICULTURE & NUTRITION, L.L.C. successor to)
THOMPSON HAYWARD CHEMICAL CO., INC.,)
TRANE US, INC.,)
WESTERN AUTO SUPPLY COMPANY,)
YOUNG GROUP LTD., f/k/a YOUNG SALES CORP.,)
YOUNG INSULATION GROUP OF ST. LOUIS, INC.,)
ZENITH ELECTRONICS LLC,)
)
Defendants,)

FIRST AMENDED COMPLAINT

COUNT I

(NEGLIGENCE COUNT)

Now comes the Plaintiff, by his attorneys, SIMMONSCOOPER LLC, and for his cause of action against the Defendants, states:

1. The Plaintiff, William Cawlfield, is a resident of the State of Colorado.

EXHIBIT C

STATE OF INDIANA)
)
COUNTY OF MARION)

MARION COUNTY SUPERIOR COURT
CIVIL DIVISION ROOM NO. 2
CAUSE NO. 49D02-9801-MI-0001-127

Robert Phillips,)
)
Plaintiff,)
v.)
)
A.E. Staley Manufacturing Co.)
A W Chesterton Co.)
Allis Chalmers Product Liability Trust)
American Standard, Inc.)
Asarco, Inc.)
Asbestos Corp., Ltd.)
Asphalt Materials, Inc.)
Atlantic Richfield Co. successor in interest to)
The Anaconda Co.)
Atlas Turner, Inc.)
Bayer Cropscience, LP, successor to)
Amchem Products, Inc.)
Bell Asbestos Mines, Ltd.)
BMW Constructors, Inc.)
BOC Group)
Borg-Warner, Inc.)
BP Corp. North America, Inc.)
Brand Insulation, Inc.)
Buffalo Pumps, Inc.)
Bunge North America (East), Inc. f/k/a)
Central Soya Co., Inc.)
CertainTeed Corp.)
Circle B Co.)
Cleaver-Brooks, Inc.)
Coca Cola Enterprises, Inc.)
Copeland Corp.)
Crompton Corp. successor in interest to)
Witco Corp.)
Crown Cork & Seal Co., Inc.)
Daimler-Chrysler Corp.)
Dana Corp.)
DAP, Inc.)
Delco Electronics LLC)
Durabla Manufacturing Co.)
F.A. Wilhelm Construction Co., Inc)

FILED
SEP 01 2004
Doris Anne Sadler
CLERK OF THE
MARION CIRCUIT COURT

Fargo Insulation, Inc.)
Ford Motor Co.)
Foster Wheeler, LLC)
Freyn Brothers, Inc.)
G.W. Berkheimer Co., Inc.)
Garlock, Inc.)
General Motors Corp.)
Golden Casting Corp.)
Grace Foods, Inc.)
Hagerman Construction Corp.)
Hedman Resources, Ltd.)
Henry Co.)
Hormel Foods Corp.)
Hunt Construction Group, Inc.)
Indiana Bell Telephone Co., Inc.)
Indianapolis Power & Light Co. (IPL))
INDOPCO, Inc. f/k/a National Starch &)
Chemical Corp.)
International Paper Co.)
International Truck and Engine Corp.)
Kennedy Tank & Manufacturing)
Lucent Technologies, Inc. successor in)
interest to Western Electric)
Marathon Oil Co.)
McMaster-Carr Supply Co.)
Metropolitan Life Insurance Co.)
Millennium Petrochemicals, Inc. successor in)
interest to Bridgeport Brass)
Minnesota Mining & Manufacturing Co.)
Norton Co. n/k/a St-Gobain Abrasives, Inc.)
Oakfabco, Inc., f/k/a Kewanee Boiler Corp.)
Otis Elevator Co.)
Owens-Illinois, Inc.)
Praxair Surgface Technologies, Inc.)
Prox Co., Inc.)
PSI Energy, Inc.)
Quigley Co., Inc.)
Reilly Industries, Inc.)
Remy International, Inc.)
Riley Power, Inc., f/k/a Riley Stoker Corp.)
Rinker Materials Corp.)
Rogers Corp.)
SEPCO, Inc.)
Shambaugh & Son, LLC)

Sid Harvey)
Sprinkmann Sons Corp. of Illinois)
Steel Grip, Inc.)
Stokley-Van Camp, Inc.)
The Dow Chemical Co.)
The Great Atlantic & Pacific Tea Co.)
The Kroger Co.)
The Quaker Oats Co.)
The Sager Corp.)
Triangle Enterprises, Inc.)
Tyco International (U.S.), Inc. successor in)
interest to Ansul, Inc.)
Union Carbide Corp.)
Uniroyal, Inc.)
Viacom, Inc., successor in interest to)
Westinghouse Electric Corp.)
Weil McLain)
)
Defendants.)

AMENDED COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

Plaintiff **Robert Phillips**, by counsel, allege and incorporate as follows:

GENERAL ALLEGATIONS

1. Robert Phillips is the Plaintiff herein.

2. DEFENDANTS which PLAINTIFF alleges manufactured, sold, installed or caused to be installed, used, distributed, and/or otherwise placed into the stream of commerce, asbestos and/or asbestos-containing products to which PLAINTIFF Robert Phillips was exposed are as follows:

> **A W Chesterton Co; Allis Chalmers Products Liability Trust; American Standard, Inc; Asarco, Inc; Asbestos Corp., Ltd; Atlas Turner, Inc; Bayer Cropscience, LP, Successor to Amchem Products, Inc; BMW Constructors, Inc; Bell Asbestos Mines, Ltd; BOC Group; Brand Insulation, Inc; Buffalo Pumps, Inc; CertainTeed Corp; Circle B Co; Cleaver-Brooks, Inc; Copeland Corp; Crown Cork & Seal Co., Inc; Dana Corp; DAP, Inc; Durabla Manufacturing Co; F.A. Wilhelm Construction Co., Inc; Fargo Insulation, Inc; Foster Wheeler, LLC; Freyn Brothers, Inc; G.W. Berkheimer Co., Inc; Garlock, Inc; Hagerman Construction Corp; Hedman Resources, Ltd; Henry Co; Hunt Construction Group, Inc; International Paper Co. ; Kennedy Tank & Manufacturing; McMaster-Carr Supply Co; Metropolitan Life Insurance Co; Minnesota Mining & Manufacturing Co; Norton Co., n/k/a Saint-Gobain Abrasives, Inc; Oakfabco, Inc., f/k/a Kewanee Boiler Corp; Owens-**

EXHIBIT D

IN THE SUPERIOR COURT

FOR THE COUNTY OF PROVIDENCE

STATE OF RHODE ISLAND

IN RE: ASBESTOS LITIGATION

MARY ANN WYDRA and ROBERT BINDA,
AS CO-INDEPENDENT EXECUTORS
OF THE ESTATE OF CLEMENT WYDRA and
MARY ANN WYDRA, INDIVIDUALLY

C.A. NO. PC-06-2153

VERSUS

JURY TRIAL DEMANDED

A.W. CHESTERTON COMPANY
BUFFALO PUMPS, INC.
CBS CORPORATION
Individually, and as Successor in
Interest to Westinghouse Electric Corp., and
as successor in interest to B.F. Sturtevant
COOPER-BESSEMER CORP.
D.C. FABRICATORS, INC.
individually and as successor in interest
to C.H. Wheeler Company
DELCO REMY INTERNATIONAL, INC.
ELLIOTT TURBOMACHINERY COMPANY, INC.
ENPRO INDUSTRIES, INC.
Individually and as Successor in Interest
to Fair Banks Morse Engine
GARDNER-DENVER, INC.
GARLOCK SEALING TECHNOLOGIES, LLC.
GENERAL ELECTRIC COMPANY

GENERAL MOTORS CORPORATION
IMO INDUSTRIES, INC.
INGERSOLL-RAND COMPANY
Individually and as Successor in
Interest to Terry Steam Turbine Company
JOHN CRANE, INC.
METROPOLITAN LIFE INSURANCE COMPANY
NEWPORT NEWS SHIPBUILDING, INC.
NEWPORT NEWS SHIPBUILDING AND
DRY DOCK CO.
NORTHERN PUMP COMPANY
PACKINGS AND INSULATION CORP.
P.I.C. CONTRACTORS, INC.
QUIMBY EQUIPMENT CO., INC
SCHUTTE & KOERTING, INC.
TERRY CORPORATION OF CONNECTICUT
UNION CARBIDE CORPORATION
VICKERS LTD.
WARREN PUMPS, INC.,
Individually and as Successor to the
Quimby Pump Company
WEINMAN PUMP AND SUPPLY COMPANY
WESTINGHOUSE AIR BRAKE COMPANY
WESTINGHOUSE ELECTRIC CORPORATION

COMPLAINT

1. Plaintiffs, Mary Ann Wydra and Robert Binda, individually and as Co-Independent Executors of the Estate of Clement Wydra ("Decedent") bring suit on behalf of the Estate of Clement Wydra and Mary Ann Wydra individually, for losses sustained as a result of her husband's injury and death.

2. The Federal Courts lack subject matter jurisdiction over this action, as there is no federal question and incomplete diversity of citizenship due to the presence of a Rhode Island defendant. Removal is improper. Every claim arising under the Constitution, treaties, or laws of the United States is expressly disclaimed (including any claim arising from an act or omission on a federal enclave, or of any federal officer of the U.S. or any agency or person acting under him occurring under color of such office). No claim of admiralty or maritime law is raised. Plaintiffs sue no foreign state or agency. Venue is proper in this court.

3. Each of the defendants named in the caption above has conducted business in the State of Rhode Island and has produced, manufactured or distributed asbestos and/or asbestos containing products with the reasonable expectation that such products would be used or consumed in this State, which products were so used or consumed, and has committed the tortious acts set forth below in this state.

EXHIBIT E

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

JAMES NANGLE,

Plaintiff,

-vs.-

NO. 09-L-574

A.W. CHESTERTON, INC.,
A.O. SMITH CORPORATION,
ASHLAND INC.,
BEAZER EAST INC.,
BONDEX INTERNATIONAL INC.,
BRAND INSULATIONS INC.,
BORG-WARNER CORPORATION, by its successor-in-interest,
BORGWARNER MORSE TEC INC.,
CBS CORPORATION, a Delaware corporation, f/k/a
VIACOM INC., successor by merger to CBS CORPORATION,
a Pennsylvania corporation, f/k/a
WESTINGHOUSE ELECTRIC CORPORATION,
CERTAIN-TEED CORPORATION,
CLEAVER-BROOKS COMPANY INC.,
COOPER INDUSTRIES, INC.,
CRANE CO.,
CROWN CORK & SEAL COMPANY, INC.,
DUPONT CHEMICAL COMPANY,
FORD MOTOR COMPANY,
FOSECO INC.,
FOSTER WHEELER ENERGY CORP.,
GARLOCK INC.,
GARLOCK SEALING TECHNOLOGIES LLC,
GENERAL ELECTRIC COMPANY,
GENUINE PARTS COMPANY,
GEORGIA-PACIFIC LLC,
GRIMES AEROSPACE COMPANY, d/b/a
SURFACE COMBUSTION,
HERCULES POWDER COMPANY,
HONEYWELL INTERNATIONAL INC.,
IMO INDUSTRIES INC.,
INDUSTRIAL HOLDINGS CORPORATION, f/k/a
THE CARBORUNDUM COMPANY
INGERSOLL-RAND COMPANY,
JOHN CRANE, INC.,

FILED
JUN 08 2009
CLERK OF CIRCUIT COURT #10
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

KENTILE FLOORS, INC.)
MAREMONT CORPORATION,)
MCKESSON CHEMICAL COMPANY,)
MCKESSON CORPORATION,)
METROPOLITAN LIFE INSURANCE COMPANY,)
MW CUSTOM PAPERS LLC,)
OCCIDENTAL CHEMICAL CORPORATION,)
ON MARINE SERVICES COMPANY, A WHOLLY OWNED)
SUBSIDIARY OF OGLEBAY NORTON COMPANY,)
OWENS-ILLINOIS, INC.,)
PNEUMO ABEX LLC, successor-in-interest to ABEX)
CORPORATION, f/k/a PNEUMO ABEX CORPORATION,)
REMY INTERNATIONAL INC.,)
RILEY STOKER CORPORATION,)
RPM INTERNATIONAL INC.,)
RPM INC.,)
SEPCO CORPORATION,)
SPRINKMANN INSULATION, INC.,)
SPRINKMANN SONS CORPORATION,)
SPRINKMANN SONS CORPORATION OF ILLINOIS,)
TAMKO BUILDING PRODUCTS INC.,)
TRANE US, INC.,)
TRIANGLE CONDUIT & CABLE CO. INC.,)
WYETH (INC.),)
YOUNG GROUP LTD., f/k/a YOUNG SALES CORP.,)
YOUNG INSULATION GROUP OF ST. LOUIS, INC.,)
)
Defendants,)

FIRST AMENDED COMPLAINT

COUNT I

(NEGLIGENCE COUNT)

Now comes the Plaintiff, by his attorneys, SIMMONSCOOPER LLC, and for his cause of action against the Defendants, states:

1. The Plaintiff, James Nangle, is a resident of the State of Florida.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

------------------------------------- x	
In re	Chapter 11
MOTORS LIQUIDATION COMPANY, et al.,	Case No. 09-50026(REG)
Debtors.	(Jointly Administered)
------------------------------------- x	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 16, 2009, copies of the following documents were served by overnight courier upon the entities on the attached service list and by electronic mail on all parties receiving notice via the Court's ECF System.

NOTICE OF HEARING ON MOTION OF REMY INTERNATION FOR AN ORDER EXTENDING AND ENFORCING THE STAY IMPOSED UNDER 11 U.S.C. § 362 (a) TO COVER CERTAIN LITIGATION RELATING TO REMY INTERNATIONAL, OR ALTERNATIVELY, ENJOINING SUCH LITIGATION PURSUANT TO 11 U.S.C. § 105

MOTION OF REMY INTERNATION FOR AN ORDER EXTENDING AND ENFORCING THE STAY IMPOSED UNDER 11 U.S.C. § 362 (a) TO COVER CERTAIN LITIGATION RELATING TO REMY INTERNATIONAL, OR ALTERNATIVELY, ENJOINING SUCH LITIGATION PURSUANT TO 11 U.S.C. § 105

DECLARATION OF JEREMIAH SHIVES IN SUPPORT OF THE MOTION OF REMY INTERNATIONAL, INC. FOR AN ORDER EXTENDING THE AUTOMATIC STAY IMPOSED UNDER 11 USC §362(a) TO REMY INTERNATIONAL TO INCLUDE LITIGATION FILED AGAINST REMY INTERNATIONAL, OR ALTERNATIVELY ENJOINING SUCH LITIGATION PURSUANT TO 11 USC §105

ORDER GRANTING MOTION OF REMY INTERNATION FOR AN ORDER EXTENDING AND ENFORCING THE STAY IMPOSED UNDER 11 U.S.C. § 362 (a) TO COVER CERTAIN LITIGATION RELATING TO REMY INTERNATIONAL, OR ALTERNATIVELY, ENJOINING SUCH LITIGATION PURSUANT TO 11 U.S.C. § 105

Date: September 16, 2009

Respectfully submitted,

_/S/ Stephan Choo____________________
Stephan Choo

SERVICE LIST

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