UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NEW YORK STATE TEACHERS' RETIREMENT SYSTEM, Individually and on Behalf of All Other Persons Similarly Situated, Plaintiff, v. GENERAL MOTORS COMPANY, DANIEL F. AKERSON, NICHOLAS S. CYPRUS, CHRISTOPHER P. LIDDELL, DANIEL AMMANN, CHARLES K. STEVENS, III, MARY T. BARRA, THOMAS S. TIMKO, and GAY KENT Defendants.	Civil Case No. 4:14-cv-11191 Honorable Linda V. Parker

SUPPLEMENTAL DECLARATION OF SALVATORE J. GRAZIANO

I, SALVATORE J. GRAZIANO, declare as follows:

1. I am a partner in the law firm of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), the Court-appointed Lead Counsel in this Action.[1] BLB&G represents the Court-appointed Lead Plaintiff, the New York State Teachers' Retirement System ("New York Teachers"). I respectfully submit this

[1] Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement, dated November 11, 2015. ECF No. 94-2.

Supplemental Declaration in further support of: (1) Lead Plaintiff's Motion for Final Approval of Settlement and Approval of Plan of Allocation; and (2) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses. I have personal knowledge of the matters set forth herein based on my active supervision of and participation in the prosecution and settlement of the claims asserted in the Action.

SUPPLEMENTAL FRAGA DECLARATION

2. The Supplemental Declaration of Jose C. Fraga Regarding (A) Mailing of the Notice Packet; and (B) Report on Requests for Exclusion Received is attached hereto as Exhibit 1.

OBJECTION OF DONALD C. MARRO

3. The objection of Donald. C. Marro to the proposed Settlement dated March 9, 2016 (ECF No. 105) states that Mr. Marro contacted me after receiving Notice of the Settlement to ask why GM warrants were not covered by the Settlement and that I told Mr. Marro "that plaintiffs simply hadn't thought of it." ECF No. 105, at 2. While I have no precise recollection of this conversation with Mr. Marro, this is not something that I would have said because it is not accurate. Lead Counsel, with the assistance of experts it consulted, carefully considered claims that could be brought with respect to GM securities but decided that only common stock should be included in the Action.

4. We received Mr. Marro's March 9, 2016 objection on March 15, 2015. That day, my partner James Harrod and I called Mr. Marro to discuss the substance of his objection and address the inconsistency between what was stated in his objection and what occurred in our extensive pre-filing investigation of numerous GM securities. At the outset of this call, which lasted approximately a few minutes, I informed Mr. Marro that he was under no obligation to speak with me but that his characterization that I would have told him that New York Teachers did not consider including claims on behalf of GM warrants was not correct and could not be correct. When the issue of the inconsistency in the objection was raised, Mr. Marro stated that there was no need for clarification and abruptly terminated the call.

5. Lead Counsel recommended to Lead Plaintiff that claims in this action be brought on behalf of investors that purchased or acquired GM common stock and not to include other GM securities. Many considerations supported that conclusion, including concerns about the strength of such claims, and our analysis, based on the advice of experts in the areas of market efficiency, loss causation and damages, that the market for other GM securities was less liquid, possibly less efficient and that such limitations would exacerbate existing risks relating to class certification, loss causation and damages.

6. For example, the GM warrants at the center of Mr. Marro's objection have trading volume that is very small relative to the trading volume of GM common

stock. The median daily trading volumes of GM Warrant A (CUSIP 37045V118) and Warrant B (CUSIP 37045V126) from the date they were issued to the end of the Settlement Class Period (July 24, 2014) were 140,311 and 198,010, respectively. In contrast, the median daily trading volume of GM common stock during the Settlement Class Period was 11,792,800. Thus, daily trading volume in each series of warrants was 1.2% and 1.7% of the daily trading volume in GM common stock.[2] The potential damages on the warrant claims were concomitantly small compared to class-wide damages on the GM common stock claims.

7. As discussed in my previous Declaration (ECF No. 102), the Plan of Allocation for the Net Settlement Fund was based on an event study conducted by Lead Plaintiff's damages expert that calculated the amount of estimated artificial inflation in the per share closing prices of GM common stock that allegedly was proximately caused by Defendants' alleged false and misleading statements and omissions by measuring price changes in GM common stock in reaction to certain public announcements in which the alleged misrepresentations and omissions were alleged to have been revealed to the market, adjusting for price changes that were

[2] Similar numbers apply if the average daily trading volume is considered rather than median daily trading volume. The average daily trading volume for the two sets of warrants was 311,958 and 354,236 and the average daily trading volume for GM common stock during the Settlement Class Period was 15,074,596, so that the warrants each compromised 2.1% and 2.3% of the average daily trading volume of the common stock.

attributable to market or industry forces. *See* ECF No. 102, at ¶ 98. The Plan of Allocation was based on these neutral criteria and was designed to be fair and equitable to all Settlement Class Members, not to disproportionately favor New York Teachers or any other plaintiff.

8. As discussed in my previous Declaration, the negotiations to achieve the Settlement were adversarial and at arm's length. ECF No. 102. at ¶¶ 4, 58-62. During the course of those negotiations, counsel for GM advised Lead Plaintiff that a best-and-final demand should be submitted through GM's counsel, who would make a recommendation to GM's Board of Directors regarding that demand. A detailed demand was prepared by Lead Counsel after discussions with and approval from the Lead Plaintiff, and submitted on September 13, 2015. On September 16, 2015, the demand was accepted and a term sheet reflecting the parties' agreement to settle the litigation for $300 million was signed. *See* ECF No. 102, at ¶ 62. Neither Lead Plaintiff nor Lead Counsel knew how GM's Board of Directors would decide and whether the demand would be accepted.

9. Mr. Marro is a frequent *pro se* litigant. For example, a search of the PACER nationwide case locator for civil cases in federal district courts, https://pcl.uscourts.gov/search, reveals that Donald C. Marro was a *pro se* plaintiff in 12 such cases. *See, e.g., Marro v. Crosscheck, Inc.*, No. 1:04-CV-00147-LMB, 2004 WL 3688137 (E.D. Va. Aug. 6, 2004) (dismissing defamation case brought by

Mr. Marro arising out of his refusal to pay a $227 dental bill), *aff'd*, 155 Fed. App'x 168 (2004). Mr. Marro also filed an objection in GM's bankruptcy proceeding in 2009 contending that certain aspects of GM's reorganization violated due process, equal protection and the takings clause. *See In re General Motors Corp.*, Case No. 09-5006 (REG) (Bankr. S.D.N.Y. June 26, 2009), ECF No. 2881 (attached hereto as Exhibit 2). A search of the electronic docket for the Circuit Court of Fauquier County, Virginia, http://ewsocis1.courts.state.va.us/CJISWeb/MainMenu.do, reveals that Mr. Marro is or was a *pro se* plaintiff in 47 cases in that court. (There may be some overlap between the Virginia state court cases and the federal cases because of cases removed to federal court and/or remanded to state court.) A search of the Supreme Court of Virginia's Appellate Case Management System, https://eapps.courts.state.va.us/acms-public, reveals that Mr. Marro was the *pro se* appellant or petitioner in 18 cases seeking review by the Supreme Court of Virginia. A search of the United States Supreme Court's docket, https://www.supremecourt.gov/docket/ docket.aspx, reveals that Mr. Marro has filed four unsuccessful *pro se* petitions for writ of certiorari seeking the Supreme Court's review of decisions of the Virginia state courts. The most recent of these petitions filed by Mr. Marro notes that a Virginia state trial court has twice determined him to be a "vexatious litigant" and has imposed sanctions on him for his conduct in two separate cases, and that these sanctions were sustained on appeal. *See* Petition for

Writ of Certiorari, *Marro v. Fauquier Cnty Bd. of Supervisors*, No. 11-160, 2011 WL 3488941, at *5-*6 (Apr. 21, 2011) (attached hereto as Exhibit 3).

OBJECTION OF THE KAYSER TRUST

10. The objection filed by David Wagner as Trustee of the Charles Francis Kayser Revocable Trust (the "Kayser Trust") and Charles Francis Kayser on March 23, 2016 (ECF No. 107) references a letter dated February 6, 2016 addressed to me from counsel for the Kayser Trust and Mr. Kayser requesting copies of all insurance policies produced to plaintiffs in this Action (the "February 6 Letter"). The February 6 Letter is attached hereto as Exhibit 4. I and my firm have no record of receiving the February 6 Letter until it was faxed to me by Mr. Kayser's counsel on March 22, 2016, and Mr. Kayser's counsel never inquired or followed-up regarding the February 6 Letter prior to March 22, 2016. My partner James Harrod and I spoke with Mr. Kayser's attorney on March 22, 2016 (as soon as we received a fax of his February 6 Letter) but were not at liberty to share documentation received from GM with him under the terms of the confidentiality order entered into with Defendants in this Action

OBJECTION OF MARK McCRATE

11. The objection of Mark McCrate to the Settlement, Plan of Allocation and request for attorneys' fees and expenses, dated March 14, 2016 and received by BLB&G on or about March 22, 2006 is attached hereto as Exhibit 5.

I declare, under penalty of perjury under the laws of the United States, that the foregoing facts are true and correct.

Date: April 13, 2016
New York, New York

/s/ Salvatore J. Graziano
SALVATORE J. GRAZIANO

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2016 I caused the foregoing Supplemental Declaration of Salvatore J. Graziano to be served on all counsel of record via the ECF filing system and on the following individuals by FedEx overnight delivery service:

Donald C. Marro 3318 Bust Head Road The Plains, VA 20198	Larry F. Woods, Esq. 24 North Frederick Avenue Oelwein, IA 50662 ***Counsel for Objectors Charles Francis Kayser Revocable Trust and Charles Francis Kayser***
Jack Orava 6607 Shadydale Drive Shelby Township, MI 48316	Animesh Khemka 281 East Warren Avenue Fremont, CA 94539
Stephen Schoeman 101 Jefferson Avenue Westfield, NJ 07090	Mark McCrate 641 Stoneybrook Dr. Dayton, OH 45429

Date: April 13, 2016
New York, New York

/s/ Salvatore J. Graziano
SALVATORE J. GRAZIANO

#975901

INDEX OF EXHIBITS TO SUPPLEMENTAL DECLARATION OF SALVATORE J. GRAZIANO

Exhibit	**Description**
1	Supplemental Declaration of Jose C. Fraga Regarding (A) Mailing of the Notice Packet; and (B) Report on Requests for Exclusion Received.
2	Motion for Leave to File Out of Time an Unsecured Creditor's Objection to Sale filed by Donald C. Marro, *In re General Motors Corp.*, Case No. 09-5006 (REG) (Bankr. S.D.N.Y. June 26, 2009), ECF No. 2881.
3	Petition for Writ of Certiorari, *Marro v. Fauquier Cnty Bd. of Supervisors*, No. 11-160, 2011 WL 3488941 (April 21, 2011).
4	February 6, 2016 Letter from Larry F. Woods to Salvatore J. Graziano (with March 22, 2016 fax cover page).
5	Objection of Mark McCrate to the Settlement, Plan of Allocation and request for attorneys' fees and expenses, dated March 14, 2016. (For privacy and security reasons, Lead Counsel have redacted Mr. McCrate's telephone number, email address, social security number and financial account number from this document.)

Exhibit 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NEW YORK STATE TEACHERS' RETIREMENT SYSTEM, Individually and on Behalf of All Other Persons Similarly Situated,

Plaintiff,

v.

GENERAL MOTORS COMPANY, DANIEL F. AKERSON, NICHOLAS S. CYPRUS, CHRISTOPHER P. LIDDELL, DANIEL AMMANN, CHARLES K. STEVENS, III, MARY T. BARRA, THOMAS S. TIMKO, and GAY KENT

Defendants.

Civil Case No. 4:14-cv-11191

Honorable Linda V. Parker

SUPPLEMENTAL DECLARATION OF JOSE C. FRAGA REGARDING (A) MAILING OF THE NOTICE PACKET; AND (B) REPORT ON REQUESTS FOR EXCLUSION RECEIVED

I, JOSE C. FRAGA, declare as follows:

1. I am a Senior Director of Operations for Garden City Group, LLC ("GCG"). I have personal knowledge of the facts stated herein, and if called on to do so, I could and would testify competently thereto. Pursuant to the Court's November 20, 2015 Order Preliminarily Approving Settlement and Providing for Notice (the "Preliminary Approval Order"), GCG was authorized to act as Claims

Administrator in connection with the Settlement of the above-captioned action.[1] I submit this Declaration as a supplement to my earlier declaration, the Declaration of Jose C. Fraga Regarding (A) Mailing of the Notice Packet; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date dated March 9, 2016 (ECF No. 102-2) (the "March Mailing Declaration").

MAILING OF THE NOTICE PACKET

2. Since the execution of my March Mailing Declaration, GCG has continued to disseminate copies of the Notice and Proof of Claim (the "Notice Packet") in response to additional requests from potential members of Settlement Class, brokers, and nominees. From March 9, 2016 through April 13, 2016, GCG has disseminated an additional 15,121 Notice Packets to potential members of the Settlement Class and nominees by first-class mail. In addition, GCG has remailed 1,566 Notice Packets to those persons who requested a packet to be remailed or for those whose original mailing was returned by U.S. Postal Service and for whom updated addresses were provided to GCG by the Postal Service. Including the Notice Packets previously disseminated, as set forth in my March Mailing Declaration, GCG has mailed a total of 1,196,822 Notice Packets to potential Settlement Class Members and nominees (not including remailed Notice Packets).

[1] All terms with initial capitalization not otherwise defined herein have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated November 11, 2015 (the "Stipulation").

TELEPHONE HELPLINE AND WEBSITE

3. GCG continues to maintain the toll-free telephone number (1-866-459-1720) and interactive voice response system to accommodate any inquiries from potential members of the Settlement Class. GCG also continues to maintain the dedicated website for the Action (www.gmsecuritieslitigation.com) in order to assist potential members of the Settlement Class. On March 9, 2016, GCG posted copies of the papers filed in support of the motion for final approval of the Settlement and in support of Lead Counsel's motion for fees and expenses to the website. GCG will continue maintaining and, as appropriate, updating the website and toll-free telephone number until the conclusion of the administration.

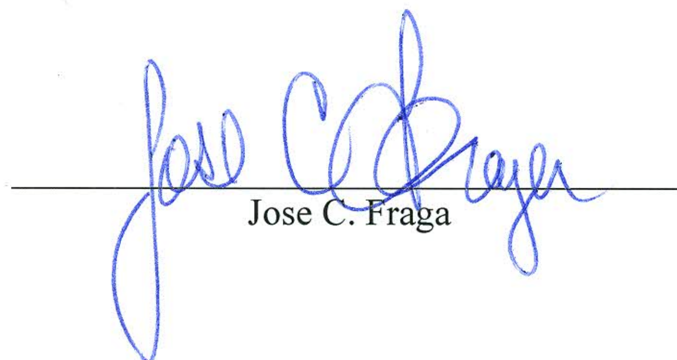
REPORT ON REQUESTS FOR EXCLUSION RECEIVED

4. The Notice informed potential members of the Settlement Class that requests for exclusion from the Settlement Class were to be mailed or otherwise delivered, addressed to *New York State Teachers' Retirement System v. General Motors Company,* EXCLUSIONS, c/o Garden City Group, LLC, P.O. Box 10262, Dublin, OH 43017-5762, such that they were received by GCG no later than March 23, 2016. GCG has been monitoring all mail delivered to that Post Office Box. As of the date of this Declaration, GCG has received a total of 82 timely requests for exclusion and four (4) late requests for exclusion. Attached hereto as Exhibit 1 is a

list of all persons and entities who submitted requests for exclusion or on whose behalf requests for exclusion were submitted.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed in Lake Success, New York on April 13, 2016.



Jose C. Fraga

Exhibit 1

Requests for Exclusion Received

1. Ronald R. Anderson
   Lincoln, NE

2. Estate of Nancy C. Ballowe
   by David R. Lee, Executor
   Williamsburg, VA

3. Stephen Baumann
   Las Vegas, NV

4. Roger Lee Beavers and
   Linda Marie Beavers
   The Villages, FL

5. Brian Bennefeld and
   Kelly Bennefeld
   Pace, FL

6. Jeffrey Joseph Biegas
   Woodhaven, MI

7. Ronald A. Boldt
   Buffalo, NY

8. George R. Bott IV
   Lancaster, VA

9. Diana S. Briner
   Dallas, TX

10. Eugene H. Bulriss
    Harlingen, TX

11. Robert M. Cacic
    Norfolk, VA

12. Clifford M. Carlin
    Charlotte, NC

13. College Retirement Equities Fund
    TIAA-CREF Enhanced Large-Cap Value Index Fund
    TIAA-CREF S&P 500 Index Fund
    TIAA-CREF Large-Cap Value Fund
    TIAA-CREF Equity Index Fund
    TIAA-CREF Growth & Income Fund
    TIAA-CREF Life Large-Cap Value Fund
    TIAA-CREF Life Stock Index Fund
    TIAA-CREF Life Growth & Income Fund
    TIAA Separate Account VA-1 and
    TIAA-CREF Large-Cap Value Index Fund
    New York, NY

14. Margaret A. Corley
    Seattle, WA

15. Alfred C. Cramer
    North East, PA

16. Daniel Dobbin and Kathleen Dobbin
    Aston, PA

17. Bernhard Donath
    Hamburg
    GERMANY

18. James E. Edgar IRA
    Frankfort, MI

19. Phillip J. Edwards
    San Jose, CA

20. Elliott Associates, L.P.
    Gatwick Securities LLC
    The Liverpool Limited Partnership
    Springfield Associates, L.L.C. and
    Elliott International, L.P.
    c/o Elliott Management Corp.
    New York, NY

21. Thomas A. Filla
    Pocono Lake, PA

22. David Thomas Fisher
    New York, NY

23. Richard D. Fleming
    Naperville, IL

24. Jacqueline N. Foreman
    Bradenton, FL

25. Carlo Forest
    Rochester Hills, MI

26. Harry L. Fowler and
    Charlotte A. Fowler
    Fairview, TX

27. Richard E. Gagnon and
    Diane L. Gagnon
    Apache Junction, AZ

28. Iris Gallaway
    Heber Springs, AR

29. Karl Gibson
    Kingsport, TN

30. Ashley Halloran
    Atlanta, GA

31. Marcia E. Hearn and
    Robert J. Hearn
    Hamilton, NJ

32. Richard Russell Hillman and
    Susan Diane Hillman
    Roseville, CA

33. David D. Horchler
    Tierra Verde, FL

34. Thom Isensee,
    Successor Trustee
    Isensee Family Trust dated
    10/9/06
    Huntington Beach, CA

35. John Isso
    Northridge, CA

36. S. Robert Italia
    Glastonbury, CT

37. Jim Johnson
    Danville, KY

38. Nathan Kennedy
    Ithaca, NY

39. Gary Kuhn
    Allen Park, MI

40. Stephen M. Lawless
Lake Orion, MI

41. Betty H. Lawrence and
Russell T. Lawrence
Antioch, CA

42. Debra J. Lawson
Beaverton, OR

43. Barbara J. Leah
Micco, FL

44. Charles N. Lindsay and
Carol A. Lindsay
Washington, PA

45. Peter J. Lorenzo
Callicoon Center, NY

46. Edith Mackler
Philadelphia, PA

47. James D. Moss
Lake Cormorant, MS

48. Victor A. Mulhall
Red Deer, Alberta
CANADA

49. Jeanette Nix
Buford, GA

50. North River Insurance
Company
c/o Hamblin Watsa Investment
Counsel Ltd.
Toronto, Ontario
CANADA

51. Dorothy M. Novotniak
McKeesport, PA

52. Gerald L. Noyes, Sr.
East China, MI

53. The Terry O'Dell SIPP
by Terry O'Dell, Trustee
Manchester, UK

54. Eva Odze
Yonkers, NY

55. Richard Petersen TTEE and
Mary Alice Peterson TTEE
Castro Valley, CA

56. Wanda Pfieffer
Dover, DE

57. Charles Piccirillo
Boston, MA

58. Marvin Recht
Carmel, IN

59. Mamie L. Reed
Dayton, OH

60. Brian J. Saviola
Williamsville, NY

61. Martin W. Schmidt and
Marcele D. Schmidt
Minden, NE

62. Seneca Insurance Company
c/o Hamblin Watsa Investment
Counsel Ltd.
Toronto, Ontario
CANADA

63. Darrell James Simoneaux
Buda, TX

64. Thomas W. Starinshak
Murrells Inlet, SC

65. Richard W. Stofle, Trustee
Marjorie E. Stofle, Trustee and
Stofle Living Trust
Whittier, CA

66. Lisa A. Straub
Selinsgrove, PA

67. Summers Fuel, Inc.
Towson, MD

68. Diane Sutton
Shipshewana, IN

69. Richard L. Swingler
Whitby, Ontario
CANADA

70. Sandra H. Symonds
Natick, MA

71. Michael A. Telesca,
    Successor Trustee
    Sharon E. Howson Revocable
    Trust
    Rochester, NY

72. Nancy J. Temske
    Seneca, SC

73. Michael C. Timmerman
    Dayton, NV

74. Anne Catherine Topic
    Falls Church, VA

75. Joanne Tremblay
    Saint-Sauveur, Quebec
    CANADA

76. George S. Wallace
    East Bend, NC

77. Susan Nicholson Walmsley and
    Estate of Kevin Walmsley
    Walnut Creek, CA

78. Andrew J. Weisner
    Englewood, OH

79. Thomas S. Wilson IRA
    Canton, MI

80. Ronald L. Wolford
    Brighton, MI

81. Richard F. Yindra and
    Mary Lou Yindra
    Ivoryton, CT

82. Peter Zeller
    Roseville, MN

83. Charles de Kunffy
    Palm Springs, CA

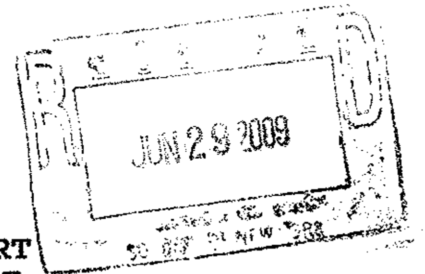
84. Linda B. Kirchman Trust
    by Linda B. Kirchman, Trustee
    Framingham, MA

85. Mien Ly
    Laval, Quebec
    CANADA

86. Mervin Sprague
    Canyon Country, CA

Exhibit 2

Donald C. Marro, *pro se*
3318 Bust Head Road
The Plains, VA 20198
540-253-5309 (tel)
540-253-5607 (fax)
dmarro@crosslink.net



**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re: **GENERAL MOTORS CORP., et al** Debtors	Chapter 11 Case No. 09-50026 (REG) (Jointly Administered) Hearing: 06/30/09 Motion For Leave; Affidavit In Support; Objections To Sale; Oral Argument Waiver; Service List

Motion For Leave to File Out of Time
an Unsecured Creditor's Objections To Sale

Unsecured creditor Donald C. Marro, *pro se*, moves for leave to object out of time to the sale of debtor's assets, and states:

1. I am an unsecured bondholder of General Motors Corp., with bonds exceeding $1,000,000 in face value, purchased at various times in 2006, 2007 and 2008.

2. These bonds are held in a custodial account at Charles Schwab & Co. ("Schwab")

3. Notice of Sale of Debtor's Assets dated June 2, 2009, (the "Sale") did not reach me until June 22, 2009.

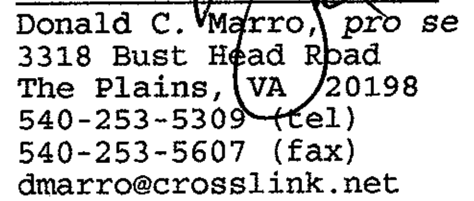
4. Schwab claims such notice(s) as it received did not arrive until June 15, 2009, and were forwarded to its accountholders within 3 business days.

5. I object to the Sale, and wish to do so formally.

WHEREFORE, I respectfully do so move.

Dated: June 26, 2009

by:



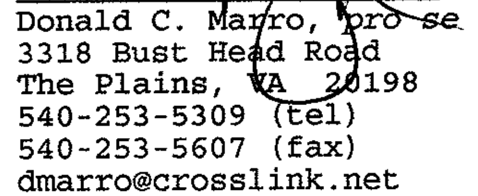
Donald C. Marro, *pro se*
3318 Bust Head Road
The Plains, VA 20198
540-253-5309 (tel)
540-253-5607 (fax)
dmarro@crosslink.net

Waiver Of Oral Argument

Movant hereby gives notice of waiver of oral argument and waives oral argument.

Dated: June 26, 2009

by:



Donald C. Marro, *pro se*
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: GENERAL MOTORS CORP., et al Debtors	Chapter 11 Case No. 09-50026 (REG) (Jointly Administered) Hearing: 06/30/09 Affidavit In Support

Affidavit In Support of Motion for Leave To Object Out of Time

1. I am Donald Marro and I prepared this affidavit based on personal knowledge and, if required, could and would testify competently under oath thereto.

2. I am an unsecured bondholder of General Motors Corp., with bonds exceeding $1,000,000 in face value, purchased at various times in 2006, 2007 and 2008.

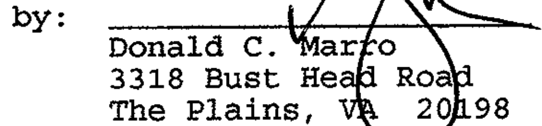
3. These bonds are held in a custodial account at Charles Schwab & Co. ("Schwab")

4. Notice of Sale of Debtor's Assets dated June 2, 2009, (the "Sale") came to me from Schwab but not until June 22, 2009.

5. Schwab claims such notice(s) as it received did not arrive until June 15, 2009, and were forwarded to its accountholders within 3 business days.

I declare under penalty of perjury under the laws of the United States and of the Commonwealth of Virginia that all of the foregoing is true and correct.

DATED: June 26, 2009

by: 

Donald C. Marro
3318 Bust Head Road
The Plains, VA 20198

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11 Case No. 09-50026 (REG) (Jointly Administered)
GENERAL MOTORS CORP., et al	
Debtors	Hearing: 06/30/09
	Objections To Sale; Oral Argument Waiver Paper Filing Affidavit Service List

Unsecured Creditor's Objections To Sale

Unsecured creditor Donald C. Marro, *pro se*, objects to the sale of debtor's assets, and states:

I. Introduction and Background

The sale of debtor's assets herein (and indeed this entire proceeding) is framed by debtor and its U.S Treasury sponsor as a matter of public policy.

Certain of debtor's other assets, not subject to the herein Chapter 363 transaction, have proceeded expeditiously.

Matters having a profound financial impact upon debtor and by extension its unsecured creditors are being regularly negotiated by the Congress and the States with the debtor outside the Bankruptcy Courts, to wit, the closure of plants, the cancellation of dealer franchises, and termination of product liabilities, among others.

Debtor and its U.S. Treasury Chapter 363 purchase sponsor both acknowledge debtor's bankruptcy is a consequence of U.S. regulatory failures resulting in the elimination of credit and sharply reduced demand for the automotive products relied upon by debtor.

II. <u>Unsecured Creditor's Objections To the Sale</u>

Insufficient time was available to prepare a more completely argued set of objections hereto. The objections herein are both to make the objections and to preserve such objections for review.

A. Flagrant impairment of contractual obligations as here, in the face of unsecured creditor approval, is forbidden by the Due Process Article of the Constitution. *Armstrong v. Fairmont Com. Hosp.* (D. Minn 1987) 659 F. Supp 1524

B. Federal government valuations of invested capital at lower levels than bargained for obligations denies due process.

The U.S. Treasury sponsor of the Chapter 363 purchase valued the unsecured creditors holdings at much less than the bargained for obligations of the UAW.

There is no basis in law for this disparity.

C. Such valuations are also an unconstitutional taking.

The U.S. Treasury sponsor of the Chapter 363 purchase valued the unsecured creditors holdings at much less than the bargained for obligations of the UAW, ostensibly to protect UAW jobs, a public policy consideration.

The difference in valuation represents thereby a taking, and is unconstitutional.

D. Such valuations when made for the public policy purposes that are operative herein also deny equal protection.

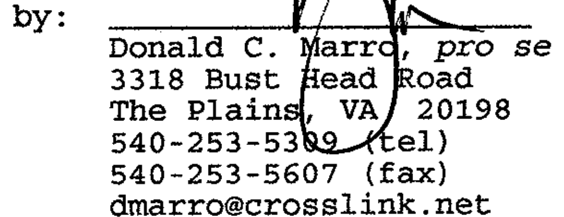
The U.S. Treasury sponsor of the Chapter 363 purchase valued the unsecured creditors holdings at much less than the bargained for obligations of the UAW, ostensibly to protect UAW jobs, a public policy consideration.

There is no basis in law for this posture.

III. **Conclusion**

For the foregoing reasons, this Court is respectfully requested to decline to conclude Sale of Debtor's Assets as proposed and order an auction of these assets and strict *pro rata* ownership.

Dated: June 26, 2009 by: ______________________



Donald C. Marro, *pro se*
3318 Bust Head Road
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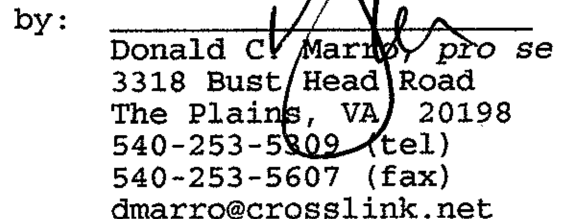
540-253-5607 (fax)
dmarro@crosslink.net

Waiver Of Oral Argument

Objector hereby gives notice of waiver of oral argument and waives oral argument.

Dated: June 26, 2009 by: ______________________



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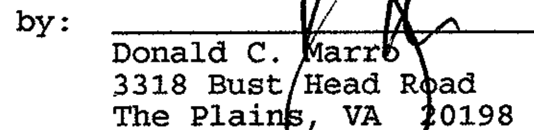
Paper Filing Affidavit

1. I am Donald Marro and I prepared this affidavit based on personal knowledge and, if required, could and would testify competently under oath thereto.

2. I am presently without the means of electronic filing.

I declare under penalty of perjury under the laws of the United States and of the Commonwealth of Virginia that all of the foregoing is true and correct.

DATED: June 26, 2009 by: ______________________



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Proof of Service

DONALD C. MARRO, *pro se*, herewith files Proof of Service upon debtor and parties to this case.

DATED: June 26, 2009 by: ______________________

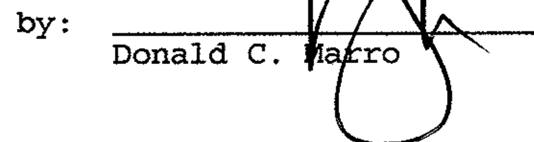

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Exhibit 3

2011 WL 3488941 (U.S.) (Appellate Petition, Motion and Filing)
Supreme Court of the United States.

Donald C. MARRO, Petitioner,
v.
FAUQUIER COUNTY BOARD OF SUPERVISORS, Respondent.

No. 11-160.
April 21, 2011.

On Petition For Writ of Certiorari to the Supreme Court of Virginia and the Fauquier County (VA) Circuit Court

Petition for Writ of Certiorari

Donald C. Marro, pro se, 3318 Bust Head Road, The Plains, VA 20198, 540-253-5309 (tel), 540-253-5607 (fax), dmarro@crosslink.com.

***i** QUESTIONS PRESENTED

1. Did judicial prejudice and irrationality account for dismissal of an otherwise proper First Amended Complaint from a Petitioner called vexatious repeatedly by the: trial judge, and did that produce equal protection and due process deprivations, when: (a) dismissal was for being filed one day late though (b) leave had been granted to ***extend*** first amended complaint filing time by 10 days to permit further amendment; (c) service on Respondent was timely and there was no prejudice; (d) the subject complaint was received by the trial court on a date that under Virginia Supreme Court Rule 1:7 was timely; (e) such dismissal violates public policy favoring adjudication of disputes; (f) dismissals are never granted by Virginia courts in circumstances which obtained, and (g) the proceedings were still in their early stages.

2. Was the result of dismissal a taking when there were compelling statutory provisions and decisional law to support the contention that the assessment and collection were erroneous.

3. Are constitutional protections denied to a litigant in state courts only to be secured by a 42 USC 1983 action and not by review.

***ii** TABLE OF CONTENTS

QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
JURISDICTIONAL BASIS	vii
OPINIONS BELOW	vii
CONSTITUTIONAL PROVISIONS AND STATUTES	viii
STATEMENT OF THE CASE	1
ARGUMENT	7
Summary	7
Elaboration	9
CONCLUSION	17
APPENDIX	19

***iii** TABLE OF AUTHORITIES

Cases

Alliance of Descendants v. U.S. (Fed Cir. 1994) 37 F. 3d 1478	15
Angell v. Zinsser (D. Conn. 1979) 473 F. Supp 488	16

Barnes Foundation v. Township (E.D. Pa 1996) 927 F. Supp 874 13
Bluth v. Laird (4th Cir. 1970) 435 F.2d 1065 11
Bouie v. City of Columbia 84 S.Ct. 1697, 378 US 347 11
Brinkerhoff Trust v. Hill 50 S.Ct. 451, 281 US 673 16
Carey v. Population Services Int'l. 97 S.Ct. 2010, 431 U.S. 678 12
Ciechon v. City of Chicago (7th Cir 1982) 686 F.2d 511 16
***iv** *City of Martinsville v. Commonwealth Boulevard Assoc* (2004) 268 Va 697, 604 S.E.2d 69 14
Cleveland Board of Education v. LaFleur 94 S.Ct. 791, 414 US 632 13
Collins v. Wolfson (5th Cir. 1974) 496 F.2d 1100 12
Cotnoir v. University of Maine Systems (1st Cir. 1994) 35 F.3d 6 10
Dickie v. Sewer Improvement District (8th Cir. 1964) 328 F.2d 296 14
Fuentes v. Shevin 92 S.Ct. 1983, 407 US 67 14
Galazo v. City of Waterbury (D. Conn. 2004) 303 F. Supp 2d 213 11
Gamble v. Eau Claire County (7th Cir 1993) 5 F.3d 285 9
***v** *Giaccio v. State of Pennsylvania* 86 S.Ct. 518, 382 US 399 10
Glicker v. Michigan Liquor Control Commission (6th Cir. 1946) 160 F.2d 96 13
Harper v. VA Taxation 113 S.Ct. 2510, 509 US 86 15
Hartford Steam Boiler v. Harrison 57 S.Ct. 838, 301 US 459 9
Hilliard v. Scully (S.D.NY 1982) 537 F. Supp 1084 9
In re: Asbestos (3rd Cir. 1987) 829 F. 2d 1233 10
Lindsey v. Normet 92 S.Ct. 862, 405 US 56 16
Marshall v. Jerrico 100 S.Ct. 1610, 446 US 238 13
Natural Gas v Slattery 58 S.Ct. 199, 302 US 300 13
No. Georgia Finishing Inc. v. DiChem 95 S. Ct. 1983, 419 US 601 14
Paul v. Davis 96 S.Ct. 1155, 424 US 693 10
Robison v. Wichita Falls (5th Cir. 1975) 507 F.2d 245 17
San Filippo v. Bongiovanni (3rd Cir. 1992) 961 F.2d 1125 12
Shelley v. Kraemer, 68 S.Ct. 836, 334 US 1 14
State of Missouri v. Chicago, B&O Ry 36 S.Ct. 715, 241 US 533 9
Tinsley v. Andersen 8 S.Ct. 805, 171 US 101 10
U.S. ex rel: Siegal v. Fillete (S.D.NY 1968) 290 F.Supp 632 15
West v. State Of Louisiana 24 S.Ct. 650, 194 US 258 15

***VII JURISDICTIONAL BASIS**

This Petition for Certiorari is brought under 28 USC 1257. Constitutional deprivations were raised in the trial court in a Motion for Reconsideration following First Amended Complaint dismissal and in the Petitions For Review and Rehearing, (excerpts appended)

Petitioner contends a state trial court acted out of bias and irrationally, and allowed an unjust taking by a "state actor", Respondent County Board of Supervisors, and denied procedural and substantive due process, equal protection and access to the courts.

The Virginia Supreme Court declined to review a Circuit Court final Order of April 21, 2010. An application for Rehearing was denied on January 21, 2011.

OPINIONS BELOW

There were no published official reports or express opinions issued below.

***viii Constitutional Provisions/Virginia Statutes (in pertinent part)**

U.S. Constitutional Amendments, Amendment I "the right of the people to petition the Government for a redress of their grievances"

U.S. Constitutional Amendments, Amendment XIV "nor shall any State deprive any person of life, liberty or property without due process nor deny … equal protection of the laws"

Virginia Statutes

8.01 - 184: "circuit courts….have power to make binding adjudications of right, whether or not consequential relief is…claimed"

8.01 - 186: "further relief..on declaratory Judgment whenever necessary or proper"

58.1-3984: "any person assessed with local taxes, aggrieved by such assessment, may….apply for relief to the circuit court"

Virginia Supreme Court Rules

Rule 1:7: "Whenever a party is required or permitted under these Rules, or by direction of the court, to do an act within a prescribed period of time after service of a paper upon counsel of record, three (3) days shall be added to the prescribed time when the paper is served by mail…

***1 STATEMENT OF THE CASE**

Two suits underlie this Petition.

CL08-875, the original suit below, had Declaratory Judgment Counts (I-II) *and* Counts III and IV seeking relief from a property tax assessment. Counts III-IV were nonsuited to see if resolution was possible but resolution failed. Counts III-IV were then refiled as CL09-386 when Respondent refused consent to amend CL08-875 to restore the Counts.

Marro promptly moved to consolidate CL09-386 with CL08-875 but was denied.

CL09-386 alleged a 2006 assessment later became erroneous and sought refunds. Count I of CL09-386 (old Count III of CL08-875) asked correction of the 2006 assessment for 2007/2008, and Count II (old Count IV) asked refund of excess 2007/2008 taxes. At time of filing CL08-875, 2009 taxes had not yet been levied.

Both suits were challenged by demurrer, with Respondents also moving for sanctions on grounds Marro filed CL09-386 without having facts in support, and that CL09-386 was refiled as "retaliation".

Marro set these matters and issues for hearing when Respondent did not.

***2** On 3/5/10, a Hearing was held on the Demurrers in both CL08-875 and CL09-386. The demurrer in CL09-386 was sustained with leave to amend while CL08-875 was dismissed with prejudice.

Respondents then sent Marro their proposed Order, to which Marro promptly sent his corrections and objections, but Respondent ignored Marro's corrections and objections and tendered its proposed Order without Marro's changes (violating a local rule).

Marro moved in Opposition to this Order and for Reconsideration of the 3/5 rulings, in part to preserve objection to 2009 taxes, by now paid.

On 3/17, the trial court entered its Order for the 3/5 Hearing without Marro's objections and disposition of Marro's motion for Reconsideration. That Order was mailed by the trial court several days after entry, not reaching Marro until 3/23/10. The Order

gave Marro 21 days from 3/17 to file and serve his First Amended Complaint, but mailing an Order under Rule 1:7 gives 3 additional days to perform the act called for.

On 3/20, Marro moved for leave to amend CL09-386 to add 2009 tax year and taxes in the First Amended Complaint then pending.

***3** That motion was set by Marro for 4/6/10, the first Motions day before the First Amended Complaint was due on 4/7, measured by 21 days from 3/17 but *without* mailing time allowance.

Marro also asked Respondent for an agreed Order consenting to further amendment and an extension of time for the pending First Amended Complaint ("FAC") to accommodate it but Respondent never replied.

On 4/6, the Motion was heard and further leave to amend to add 2009 taxes was granted, to be in 10 days of 4/6. On 4/7, the FAC, with this further amendment, was served on Respondent and *mailed* to the trial court where it was filed on 4/8. On 4/8, Respondents moved to dismiss on grounds the FAC was untimely.

Marro Opposed dismissal since (a) the 4/6 order granted him 10 days more to file the FAC, (b) the 3/17 Order setting 21 days from 3/17 as the filing date was subject to addition of 3 more days to the filing date from being mailed to Marro (pursuant to Rule 1:7), (c) the FAC was timely mailed on 4/7 to the trial court and timely filed on 4/8, and (d) Respondent was both timely served under any criteria (in 21 days, on 4/7) and there was no prejudice, as shown conclusively by Respondent's 4/12 filing of responsive pleadings and 4/8 Motion To Dismiss.

***4** However, the trial court granted Respondent's Motion To Dismiss with prejudice. Marro objected, noted his objections on the Order and renewed the objections by Motion For Reconsideration on 5/7/10.

Marro's Motion For Reconsideration again stated conditions sufficient in law to explain and/or excuse a "late" filing, i.e., 10 days more granted on 4/6 to include the 2009 tax year in the FAC, the Rule 1:7 allowance of 3 extra days for a mailed order, no prejudice and timely service on Respondent, and a FAC mailed to the trial court on 4/7/10 and received and filed on 4/8.

Marro provided the authorities explaining and/or excusing late filing in the circumstances and contended that dismissal in such circumstances denied due process and constituted a taking, all the more so since 2009 tax year relief was foreclosed unless Marro brought yet another new suit, an option Marro was expressly warned against exercising by the trial court.

Reconsideration was denied and Notice of Appeal timely followed.

***5** The trial court had previously declared Marro a "vexatious litigant" and twice sanctioned him for bringing otherwise meritorious actions. Both were unsuccessfully petitioned for review in Virginia and to this Court.

In the first case, *Marro v. Virginia Power,* involving Virginia Power power lines on Marro's property without easement, Marro's prosecution of suit was made virtually impossible by a trial court ruling that prohibited Marro from propounding discovery (even before any discovery was made) except by order of the court.

This and other improvident rulings resulted in three separate suits but still left the question of easement unresolved, where it is to this day. By the third suit in this suite, the trial court wearied of Marro and the controversy, characterized Marro as vexatious for the filing of multiple suits and motions (many necessary to permit or compel discovery), awarded sanctions to Virginia Power without giving Marro an opportunity to be heard, and ordered no motion for reconsideration of its final order, all without resolving the easement question.

Not surprisingly, review petitions in Virginia and to this Court were denied.

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***6** That vexatious label was again applied to Marro by the same trial judge in a later suit against property sellers who disavowed an oral contract. Again, sanctions were granted, and again, review petitions in Virginia and to this Court were denied.

That vexatious characterization colored this same trial judge's conduct in this suit as well, though here sanctions were denied, albeit with the chilling commentary that denial of sanctions was a "close call".

***7 Argument: Summarized**

Q. 1. Did judicial prejudice and irrationality account for dismissal of an otherwise proper First Amended Complaint ("FAC") from a litigant repeatedly called vexatious by the trial judge, when dismissal was for being filed 1 day late though leave had been granted to ***extend*** FAC filing time 10 days to permit further amendment, when service on Respondent was timely and there was no prejudice, when the FAC was timely filed in trial court under VA Sup.Ct Rule 1:7, when dismissal violates public policy favoring adjudication of disputes, when dismissals are never granted by Virginia courts in the same circumstances, and when proceedings were in early stages.

1. A dismissal defying decisional law and the public policy favoring adjudicating of disputes is improvident.

2. Dismissal of the instant action on the grounds herein and without a decision on the merits denies equal protection, procedural and substantive due process, and the right to petition.

3. When dismissal is improvident and no express opinion announces or illustrates the cause, the appearance of prejudice or actual prejudice is present.

4. When a trial court called a pro se litigant "vexatious" multiple times and rules irrationally, the appearance of prejudice or actual prejudice is conclusively present.

***8** Q. 2. Was the result of dismissal a taking when there were compelling statutory provisions and decisional law to support the contention that the assessment and collection were erroneous.

5. Respondent is a state actor, and improvident dismissal of an action for erroneous tax collection by a state actor is a taking.

Q. 3. Are constitutional protections denied to a litigant in state courts only to be secured by a 42 USC 1983 action and not by review.

6. When an avenue for review is provided, including to the Supreme Court, there is no basis for forcing a 42 USC 1983 action on a litigant to exercise constitutional protections merely because review is rarely granted, particularly to a pro se.

7. It is no excuse for constitutional deprivations that review is rarely granted or a litigant is pro se.

***9 Argument: Elaborated**

1. A dismissal defying decisional law precluding such dismissal and the public policy favoring adjudicating of disputes is improvident.

All the circumstances, Rules and authorities in the Statement of the Case, taken together or separately, preclude dismissal, leaving only trial judge bias as its basis. Further, it is public policy in Virginia to adjudicate disputes on their merits, dismissal

being viewed as a severe penalty. A state cannot by severe penalties burden resort to courts, even in doubtful cases. *State of Missouri v. Chicago, B&O Ry Co.,* 36 S.Ct. 715, 241 US 533

What makes dismissal conclusively deprivation is this and the following. When statutory or common law controlling is ignored as here, the state has improperly burdened process. (effective access to courts includes whatever is required for a fair hearing of grievances, *Hilliard v. Scully,* 537 F. Supp 1084 (S.D.NY 1982)

Also, state violates equal protection when it irrationally treats those similarly situated, including for taxes. *Hartford Steam Boiler v. Harrison,* 57 S.Ct. 838, 301 US 459 And statutes or other exertions of government that lack a rational basis violate due process if someone is deprived thereby of liberty or property. *Gamble v Eau Claire County,* 5 F.3d 285 (7th Cir 1993)

***10** Dismissal here, given its basis and consequences, is improvident and conclusively a deprivation. Further, whatever the rubric for dismissal, it must be unconstitutionally vague if judges are free to decide without legally fixed standards of what is prohibited and what isn't. *Gioccio v. State of Pennsylvania,* 86 S.Ct. 518, 382 US 399

2. Dismissal of the instant action on the grounds herein and without a decision on the merits denies equal protection, procedural and substantive due process and the right to petition.

As to equal protection, the common law is within equal protection, *In re: Asbestos,* 829 F 2d 1233 (3d Cir. 1987), and equal protection is denied when a course of procedure is not applicable to all. *Tinsley v. Andersen,* 18 S.Ct. 805, 171 US 101 The common law here should have precluded dismissal, and didn't.

As to procedural due process, that guarantees fair procedures, *Cotnoir v. University of Maine Systems,* 35 F.3d 6 (1st Cir. 1994), which guarantee applies whenever state seeks to remove or significantly alter property interests, *Paul v. Davis,* 96 S.Ct. 1155, 424 US 693.

Procedures here were both unfair and novel.

***11** Improvident dismissal in the circumstances here denied such procedural due process. *Biuth v Laird,* (4th Cir. 1970) 435 F 2d 1065 [when sovereign sets procedure then deviates, that violates procedural process]

Even if the trial court only misapprehended statutory language or misapplied common law, its error was still deprivation by being so unforeseeable so as to deny fair warning. *Bouie v. City of Columbia,* 84 S.Ct. 1697, 378 US 347

Finally, it violates court access if legitimate efforts at redress are obstructed. *Galazo v. City of Waterbury,* (D. Conn 2004) 303 F. Supp 2d 213

For a trial judge to exhibit often and plainly a view of Petitioner that is so frankly hostile, and to defy both common law and Rule, is patently obstructionist.

3. When dismissal is improvident, and no express opinion illuminates the cause, the appearance of prejudice or actual prejudice is present.

No opinion was issued by the trial court, no express reasoning given to justify dismissal in the circumstances.

What is certain is the trial judge threatened sanctions, sanctioned Petitioner twice previously and called Petitioner a vexatious litigant, all of which are at least indicia of the appearance of bias, if not the real thing.

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***12** *Carey v. Pop. Svc,* 97 S.Ct, 2010, 431 U.S. 678, holds "when the state burdens exercise of fundamental right, justification must be more than unsupported assertion.

4. When a trial court called a pro se litigant "vexatious" multiple times and rules irrationally, the appearance of prejudice or actual prejudice is conclusively present.

Government labeling someone with a badge of disgrace is a liberty deprivation. *Collins v. Wolfson,* 496 F.2d 1100 (5th Cir 1974); [whenever reputation, good name, honor or integrity is at stake because of what government is doing, a property interest is involved and due process applies] *Son Filippo v. Bongiovonni,* 961 F.2d 1125 (3rd Cir. 1992)

The trial judge had a pro se litigant it previously and repeatedly called vexatious now challenging a duly authorized tax authority and became more concerned with appearing to coddle this "vexatious litigant" than with the "vexatious litigant's" constitutional protections.

Consequently, the trial judge dismissed CL09-386, notwithstanding that such dismissal is against public policy and has never happened in Virginia in the same circumstances, particularly so early in the proceedings.

***13** The details set forth above show there is no better explanation for this other than trial judge bias or perhaps an overbearing concern for efficiency or efficacy. If that latter is so, the XIV Amendment is there to protect against such overbearing concern for efficiency and efficacy. *Cleveland Board of Education v. LaFleur,* 94 S.Ct. 791, 414 US 632

The greater likelihood is this trial judge by the third Virginia Power suit had completely or almost completely lost impartiality as to Marro, and the facts show the trial judge thereafter saw Marro as vexatious.

Such trial judge bias is a procedural due process violation. *Marshall v. Jerrico,* 100 S.Ct. 1610, 446 US 238

Equal protection should have protected Marro from arbitrary and intentional discrimination occasioned by express statutory provisions or improper execution by its duly constituted agents, *Glicker v. Michigan Liquor Control Commission,* 160 F.2d 96 (6th Cir. 1946)

Finally, penalties for seeking access to the courts is denial of due process. *Natural Gas v. Slattery,* 58 S. Ct. 199, 302 US 300 By a biased (and otherwise irrational) dismissal, Marro was denied his right to petition, a right which is not conditioned on his motive. *Barnes v. Township,* (E.D. Pa 1996) 927 F. Supp 874.

***14 5. Respondent is a state actor, the action is a state action and improvident dismissal of an action for erroneous tax collection is a taking.**

Respondent is a state actor and the action is a state action. "An action of state judges and state courts is a state action." *Shelley v. Kraemer,* 68 S.Ct. 836, 334 US 1.

Erroneous tax collection by a state actor is a taking. Any significant taking of property is a taking within this clause. *Fuentes v. Shevin,* 92 S.Ct. 1983, 407 US 67 Different kinds of property will not be distinguished in applying the due process clause. *No. Georgia Finishing Inc. v. DiChem,* 95 S.Ct. 1983, 419 US 601

Further, refund of an erroneous tax is a right conferred by statute (58.1-3894) with support in Virginia common law. *City of Martinsville v. Commonwealth Blvd.Assoc.* (2004), 268 Va. 697, 604 S.E.2d 69

"Construction of state common law is of federal concern when the state action denies recognition to and vindication of plainly vested legal rights". *Dickie v. Sewer Improvement District,* 328 F 2d 296 (8th Cir. 1964)

***15** Dismissal of CL08-875 also denied substantive due process and was a taking. Statutory relief was available for 2009 taxes had there been a favorable rights declaration. (Code of VA 8.01-186, 187) *U.S. ex rel: Siegal v. Follette,* (S.D. NY 1968) 290 F. Supp. 632 [right given by state legislature protected from arbitrary denial]; as to taking, *Alliance of Descendants v. U.S.,* (Fed Cir. 1978) 37 F. 3d 1478 [cause of action is property subject to taking]

Improvident dismissal before deciding a property right allowed a taking. That no evidence had been allowed to challenge or support the assessment underscores the deprivation. *Saunders v. Shaw,* 37 S.Ct. 638, 244 US 317

6. When an avenue for review is provided, including to the Supreme Court, there is no basis for forcing a 42 USC 1983 action on a litigant to exercise constitutional protections merely because review is rarely granted or the litigant is pro se.

It denies equal protection to confine Petitioner to the lesser remedy of a 42 USC 1983 suit (*Harper v. VA Dept. of Taxation,* 509 U.S. 86) The limit to full control a state has in proceedings of its courts is such procedures must not deny fundamental rights or conflict with specific and applicable provisions of the Federal Constitution. *West v. State of Louisiana,* 24 S. Ct. 650, 194 U.S. 258

***16** If an appeal process is created, it must conform to due process. *Lindsey v. Normet,* 92 S.Ct. 862, 405 U.S. 56

Further, when state Supreme Court decides a case by not deciding a case but letting a trial court dismissal stand in such a way that a party has been denied proper opportunity to present evidence, there is no due process. *Sounders v. Shaw,* 37 S.Ct. 638, 244 US 317 State courts must accord parties due process in determining adjective and substantive law of state. *Brinkerhoff Trust v. Hill,* 50 S.Ct. 451 281 US 673

7. It is no excuse for constitutional deprivations that review is rarely granted or a litigant is pro se.

Law must be applied in a rational and non-arbitrary way to rationally further some legitimate purpose and not constitute invidious discrimination. *Ciechon v. City of Chicago,* 686 F.2d 511 (5th Cir. 1980). The Statement of the Case shows law was not applied in a rational or non-arbitrary way, with the purpose of the erroneous tax relief statute (58.1-3984) roundly defeated.

Invidious discrimination is shown by discriminatory impact, sequence of events, departure from normal procedure, and history. *Angell v. Zinsser,* 473 F. Supp 488 (D. Conn 1979) The Statement of the Case with the history of this Petitioner and trial judge satisfies this test.

***17** Further, a trial judge with an unfavorable/previous impression who acts on it violates due process, *Robison v. Wichita Falls et al,* 507 F.2d 245 (5th Cir 1975).

Conclusion

It will come as no surprise to this Court that a pro se litigant is unwelcome in the courts by and large, and an active pro se is even more unwelcome.

Exercising constitutional protections is difficult enough in these circumstances that access to the courts for a pro se may be characterized as a proposition at odds with First and Fourteenth Amendments, and when dockets are crowded and other matters thereon appear more weighty and profound, the difficulty is enlarged.

That notwithstanding, the merits of this Petition speak for themselves and are sufficiently compelling to warrant being granted.

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Exhibit 4

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FAX: 212-554-1444 Date 3/22/16

Phone: Pages

RE: NY Teachers vs. GM. CC:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

*Comments: The "aspen" objection is the same document I proved to you as a part of the objection.

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February 6, 2016

Mr. Salvatore J. Graziano, Esq.
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RE: New York State Teachers Retirement System vs. General Motors, et. al.

TO WHOM IT MAY CONCERN:

I am an attorney who represented a person who had a personal injury claim that has been involved in the General Motors Bankruptcy. I have been attempting to obtain some documents from General Motors (Motors Liquidation) that I believe exists. Since your litigation dove tails into the area where the document should be present, I am wondering if General Motors has produced it in your litigation. If they have not, I believe the document is necessary for the Plaintiffs in your case to have obtained.

discovery Stay

The document I have been trying to locate is an insurance policy that General Motors had in place at the time the company filed bankruptcy. It is my belief that General Motors had a policy in force and effect at the time of the filing of the bankruptcy and at all times thereafter covering damages as a result of products liability. Since much of your client's claim is based on the misleading statements and omission of material information related to the ignition switches, I would presume that the issue of product liability insurance which would or may cover the defect product would have been fully examined by your firm. (Note: My client's defective item was the fuel system, and not the ignition switches). I believe it would have been relevant to your client's claim if there was an insurance policy in force and effect for a defective product. Thus, if you have obtained

client's claim if there was an insurance policy in force and effect for a defective product. Thus, if you have obtained a copy of such a policy, I would appreciate a copy of the policy. If you have not been made aware of such a policy, I am providing a copy of a couple of documents that, to me, strongly suggest that such a policy exists, and was in force and effect during and after the bankruptcy. In my case, General Motors specifically represented to the Federal and Iowa District Courts that there was not any insurance coverage of any kind in my client's case.

I watched part of the hearings that the U. S. Senate held on the ignition issues with General Motors. I became frustrated by watching the Senators who were questioning the General Motors executives. Even the Senators got the same kind of stone walling that I got from GM. I wrote a letter to the 3 U.S. Senators to made them aware of the insurance issue, as well as facts that had occurred in my client's case. I am enclosing a copy of the letter for your review. After my letter to the Senators, I also came across an newspaper article that seems to confirm the contents of my letter. The pleading in the General Motors Bankruptcy seem to confirm some insurance policies with its non-debtor affilate GENERAL INSURANCE LIMITED.

There pleadings in the GM bankruptcy clearly show some type of insurance for products liability. There was a pleading filed by General Motors that sought to have General Motors pay a bill for products liability insurance. What was strange is that is was a bill for reinsurance. For there to be reinsurance, there must be an insurance policy. I have never found an application in the bankruptcy for General Motors to pay an insurance bill for products liability insurance. The company that General Motors apparently buys its products liability insurance from is a non-debtor affiliate of General Motors. The company is located in the Bahamas. However, the last time I was able to find the name of the CEO of the company, he lived in Dearborn, Michigan. The name of the insurance company is GENERAL INTERNATIONAL LIMITED.

Returning to the pleadings of the Bankruptcy, counsel for the Aspen, the reinsurance company, filed a Resistance to

the Application. It set forth that General Motors did not owe the bill. The issue ended up being resolved and disappearing, when General Motors withdrew its Motion to pay the Reinsurance bill.

One of the reasons I believe that the insurance issue may be germane to your case, has to deal with General Motors attorneys fees. During the bankruptcy proceedings, we initially dealt with the bankruptcy lawyers. However, when we elected not to accept the settlement by Motors Liquidation, the lawyers who represented GM until it filed bankruptcy again appeared. There are several other facts that I have set forth in my letter to U.S. Senator Amy Klobuchar, that indicates to me that the insurance company was paying for the initial defense of GM in my client's products case. However, significant costs were incurred by the bankruptcy lawyers in defending a case, when another entity may have been responsible for those costs. Thus, there the pot for the unsecured creditors should be larger than what was being paid out, if the correct entity was paying the correct attorneys fees.

I am attaching copies of the pleadings set forth herein from the bankruptcy. I am also enclosing a copy of the newspaper article, for your review. Also attached is one of the 3 letters I mailed to the U. S. Senators who were conducting the hearings with General Motors and Motors Liquidation.

Returning to the main purpose of my letter, I would appreciate a copy of any insurance and/or reinsurance policies which have been produced by General Motors in your New York teachers case. If I can be of assistance to locate those documents in your proceedings, please contact me. At this time, whether my client will be in agreement with the proposed settlement will depend on first, whether the insurance and reinsurance policy(ies) have been produced, and second, how those policy(ies) impact the settlement. Also, I wonder if the policies have not been produced, whether the Court will approve the settlement when there is a strong indication of insurance policies being present, and there being nothing in the Notice or claim about insurance policies.

Thank you for your time and attention in this matter. If you have any questions, please contact me. I will be looking forward to receiving copies of all insurance policies provided by General Motors and Motors Liquidation. I will gladly reimburse you for your costs of providing the copies.

Very truly yours,

Larry F. Woods

Enc: GM Bankruptcy documents
Application
Resistance
Dismissal
Letter to Senator Klobuchar
Newspaper Article

LFW/km

4:14-cv-11191-LVP-MKM Doc # 119-5 Filed 04/13/16 Pg 7 of 28 Pg ID 4201

GM may have trouble collecting money from insurers for ignition defect claims

Long-term nature of ignition defects raises concerns

BI By Douglas McLeod

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Photo by AP PHOTOS

GM CEO Mary Barra takes the heat last month at a Senate subcommittee hearing on the massive recall of faulty ignition switches.

General Motors Co., the world's second-largest automaker, faces potential coverage disputes if it seeks liability insurance or reinsurance contributions to a fund that would settle mounting legal claims over ignition switch defects in millions of its cars.

GM hired lawyer Kenneth Feinberg to study establishing such a fund, even as the company last week asked a bankruptcy judge to bar dozens of ignition defect claims under the terms of its 2009 bankruptcy reorganization.

If the automaker sets up a fund and seeks insurance recoveries, insurers — or reinsurers of its Bermuda captive, General International Ltd. — could argue GM's settlements are voluntary or that it knew about potential ignition switch liabilities for years and failed to disclose them to underwriters, legal experts say.

"What's in the public record suggests a significant degree of intentional wrongdoing (on GM's part), such that insurers are unlikely to rush to contribute to any such fund," said Barry R. Ostrager, senior partner at Simpson, Thacher & Bartlett L.L.P. in New York.

A GM spokesman said Mr. Feinberg, who managed BP P.L.C.'s Deepwater Horizon oil spill fund, is expected to make recommendations to GM about a compensation fund within six weeks. The spokesman would not comment on insurance coverage or whether GM has discussed coverage with insurers or reinsurers.

GM's first-quarter results, announced last week, include a $1.3 billion pretax charge for repairs to [illegible] million recalled vehicles, including $700 million for 2.6 million vehicles with faulty ignition switches and cylinders. The defect — which can cause cars to shut off while being driven, disabling power steering, brakes and airbags — has been linked to at least 13 deaths.

"If you are installing a product that has a known defect and you've been put on notice of that defect multiple times and you don't do anything about it, it seems unreasonable to expect (liability) insurers to pay for your knowing disregard of a known hazard," Mr. Ostrager said.

GM historically had a large self-insured retention for general and products liability, along with high excess limits. At its reorganization, GM retained $35 million per occurrence for product liability claims, with $10 million in primary liability coverage fronted by an American International Group Inc. unit to Bermuda-based General International; and $835 million in excess limits led by AIG's Lexington Insurance Co. At least part of the excess program flowed through General International to reinsurers, court records show.

If liability coverage is through GM's captive, much would depend on provisions of its reinsurance contracts, said Lawrence I. Brandes, a reinsurance lawyer based in New York. Because reinsurance typically reimburses losses paid by a ceding company, "any contribution to a (compensation) fund like that could be viewed as voluntary," he said.

It's possible reinsurers may contribute if they have a longstanding profitable relationship with General International on GM's risks or could negotiate concessions such as lower liability caps or payback provisions in future contracts, he said.

On the other hand, if GM and General International knew of the exposure and failed to notify underwriters, "that's a great recission claim," unless reinsurance contracts specifically waive such claims, Mr. Brandes said.

GM, meanwhile, is financially strong enough to bear costs associated with the recalls, analysts say. Fitch Ratings, for example, has maintained a positive outlook on the company's BB+ credit rating, noting that it had more than $38 billion in liquidity at the end of 2013. The main risk to

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July 27, 2014

THE HONORABLE SENATOR AMY KLOBUCHAR
SENATOR FROM MINNESOTA
302 HART SENATE OFFICE BUILDING
WASHINGTON, D.C. 20510

RE: GENERAL MOTORS TESTIMONY ON JULY 17, 2014
BEFORE THE SENATE COMMITTEE ON PROTECTION,
PRODUCT SAFETY AND INSURANCE

TO THE HONORABLE SENATOR AMY KLOBUCHAR:

I am an attorney who represented an claimant named Charles Kayser in the General Motors Bankruptcy. I watched with great interest your committee's questioning of General Motors executives on July 17, 2014 regarding the ignition switch problem in the Cobalt and similar automobiles. I also noted that your committee is named Protection, Product Safety and Insurance. There is one issue that I have never felt was resolved in the bankruptcy proceeding, and which affect the now pending claims. I am sure that there was not any member of your committee who was aware of the issue. I would like to bring it to your attention. It relates to both product liability issues related to the ignition switch problem and insurance.

In the bankruptcy proceeding, I believe that there was some deliberate misinformation, if not some flat out deceit or fraud provided or undertaken by General Motors. It is my feeling that there was false information provided originally by General Motors at the initial meeting of creditors. Further, I believe that Motors Liquidation continued to provide us false information in the proceedings that occurred after the bankruptcy petition was filed. I hope that your committee may want to examine the following facts and then ask further questions of general counsel or other executive from General Motors. I would be willing to assist, and provide any

07/29/2015 20:28 3192831838 LARRY WOODS LAW OFFI PAGE 09/27

additional information I have in the matter. Since this information may or would be relevant to at least some of the more serious new claims that relate to the switch issues and products liability claims, I believe you will find the information and questions I have as quite germane to inquiries your committee is making of General Motors regarding both the bankruptcy and product liability issues.

So you may have a better understanding of my concerns, I will give you some background as to the case I handled in the bankruptcy. My client's name is Charles Kayser. Mr. Kayser's claim arose when Charles was critically injured in an truck accident that occurred. His S-15 GMC pickup was struck broad side by a car that ran a stop sign. A fire ensured, in which he sustain burns over most of his body from a few inches above his knees to the top of his head. He does not have any ears, and his left hand has numbs for fingers. We have been furnished information that he has incurred over a $1,000,000.00 in medical bills.

As a result of the fire, suit was filed against General Motors prior to the bankruptcy. It was proceeding to trial, and we were in the discovery stages when the General Motors bankruptcy petition was filed.

During the bankruptcy proceedings, certain information was provided to me that there was "reinsurance" in my client's case. Further information was provided to me that there huge reserves set by the by what I interpreted to be the reinsurance company. We proceeded in the ADR proceedings of the bankruptcy. At the time mediation was scheduled, Motors Liquidation suddenly terminated those proceedings, and then requested the matter proceed to trial. During the proceedings after being removed from ADR portion of the bankruptcy, one of the requirements was the disclosure of any insurance coverage. The response we got from Motors Liquidation Company is that there was not any insurance, including the fact there was not any reinsurance.

To make a long story short, after significant litigation and litigation expenses we ended up settling the matter. However, after the settlement documents were signed, I found some documents in the bankruptcy proceeding that makes me question the truthfulness of answers propounded at the initial

meetings of creditors by General Motors about insurance. Also, I now believe that the information provided during the discovery process as to whether General Motors did have insurance was false. I had information from a very reliable source that there was reinsurance in this matter. In speaking with the source in the last few months, he know informs me that the people he spoke with at General Motors told him that there was both insurance and reinsurance.

There are documents that support that General Motors did have insurance in addition to reinsurance. Those documents have been filed in the General Motors Bankruptcy. I located those documents after settlement of Mr. Kayser's case. The first document I would direct your attention to is entitled a "Limited Objection to Motion by GM to Assume Certain Reinsurance Contracts issued by Aspen Insurance." This is document number 4209 in the General Motors Bankruptcy Proceeding. Also, later in the proceedings there is a Withdrawal of the Limited Objection by Aspen Reinsurance. (Document No. 4263) I have enclosed a copy of the Objection for your reference. I would note to you that General International Limited is noted to be a non-debtor affiliate of GM in 2007 and 2008 of the bankruptcy proceedings.

Research I have done showed that General International Limited is a corporation organized in the Bahamas, and had a corporate president or chief operating officer that was located in Dearborn, Michigan. The Objection filed by Aspen Insurance goes to the fact that Aspen's policy is a reinsurance policy. The reinsurance policy is between Aspen and General International, not Aspen and General Motors. For there to be any interest in the bankruptcy proceedings, that means that General Motors must have had an insurance policy with General International Limited. I have attempted to find any mention or motion related to an insurance policy that General Motors has with General International in any part of the General Motors bankruptcy. To date I have not found any documents, or any request by General Motors to the Court to pay for a premium to General International Limited. Yet the objection specifically notes that "GM has its own separate insurance polices with GIL." From what I can determine those policies may have never been disclosed during the bankruptcy proceedings, the ADR proceedings, or at the meeting or creditors. I did find one or two cases in the bankruptcy proceeding where the pending

products liability case was removed from the bankruptcy proceeding because of what I interpreted was General Motors having insurance for the products liability issues.

The reason I do not believe that the policies that GM had with General International Limited were disclosed comes from a conversation I had with one of the attorneys who attended the Meeting of Creditor hearing. He specifically told me that at the meeting of creditors, GM stated that any insurance policies in effect for product liability claims had a $25,000,00 threshold requirement, with either a $40,000,000 or $50,000,000 maximum. When I review the "Limits" provision - Item 11 of the Aspen Reinsurance Policy, those are the amounts that appear to be the terms of the reinsurance policy. In speaking with some local agents, it is the customary practice, to not have the reinsurance policy to be issued from the same limits that the policy to the insured is issued for in the policy between the insured and the initial insurer.

I have been trying to make sense of this information. It is my belief there is evidence as shown above that General Motors had an insurance policy for product liability cases with its non-debtor affiliate, General International Limited. General International Limited then had a reinsurance policy with an insurance company named Aspen. At the Meeting of Creditor's General Motors disclosed the terms of the reinsurance policy, but did not disclose the fact it had an insurance policy with its non-debtor affiliate, General International Limited for most of its product liability cases. General Motors also did not disclose the terms of the policy it directly held with its affiliate in the bankruptcy proceeding or in my civil case on behalf of Mr. Kayser. Motors Liquidation told the court that there was not any insurance.

One other item has puzzled me about the bankruptcy proceedings. All of the payment for the Kayser settlement came from the bankruptcy fund. The fund was to pay somewhere between 20 and 30 per cent on the total approved claim, and it was paid from the amount old GM placed in the Willmington Trust. When we restarted the litigation after the bankruptcy, the Defendant seem to have unlimited funds available for defense. I have tried to determine the source of these funds. It would be my impression that the funds should have came from the Willmington Trust, and/or from the bankruptcy estate.

However, I have never found any documents requesting or authorizing payment of funds for defense litigation in this case or other pending litigation. This fact fits with something else that I found unusual. When the bankruptcy was filed, the court reporter that had been providing services had not yet been paid by GM for its copy of the transcripts of the depositions that had been taken. He and I talked about it at the time of General Motors filing for bankruptcy. When I filed the claim on behalf of Charles Kayser, I called him to see if he needed a claim form. He informed me that he had been paid by counsel for General Motors some 3 to 4 months after the bankruptcy petition had been filed by General Motors. I have a copy of the check he received. These facts, together with what I perceived as an unlimited source of funds for defense in our litigation, again indicates to me that the costs of defense litigation was being paid for by some entity other that the normal bankruptcy proceedings. Thus, it is my belief that General Motors had an insurance policy with is non-debtor affiliate General International Limited that has not been appropriately disclosed to the creditors or the bankruptcy court.

Thank you for your time and attention in this matter. If you have any questions or want any additional information that you may be helpful to further inquiry into General Motors, kindly advise. I understand that what I have written is based somewhat on speculation. However, I hope you believe it is worthy of your time to look into the matter. There are certain questions raised by General Motors conduct that do not make sense to me. I believe that this letter should raise some questions for your office, and that further investigation should be initiated by your committee. I would be willing to devote some time and resources to help investigate the situation. I would be willing to meet with any investigators to provide them any information I have at this time. I have also written two other members of your committee this same letter, in hopes that some office has enough interest to make further inquiry of GM, and perhaps issue congressional subpoenas for relevant insurance and bankruptcy information.

Very truly yours,

Larry F. Woods

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

LIMITED OBJECTION TO THE MOTION BY GM TO ASSUME CERTAIN REINSURANCE CONTRACTS ISSUED BY ASPEN INSURANCE UK LIMITED TO GENERAL INTERNATIONAL LIMITED

Nixon Peabody LLP represents Aspen Insurance UK Limited ("Aspen") and files this limited objection to the motion of General Motors Corporation ("GM") to assume certain reinsurance contracts issued by Aspen to General International Limited ("GIL"), a Bermuda based non-debtor affiliate of GM, in 2007 and 2008. Aspen is a company organized and existing under English law.

Objection

On the GM website two reinsurance policies issued by Aspen to GIL under ID #5716-01227088 and #5716-01227089 are listed as executory contracts which GM intends to assume in this bankruptcy action. They are mistakenly referred to as GM "Excess Liability Insurance" policies. (A copy of the website page and Reinsurance Agreement are annexed as Exhibit A.)

However, these policies, which are reinsurance policies, are not subject to assumption since the counterparty to these reinsurance policies is GIL, a non-debtor GM affiliate. As set forth in the reinsurance documents, Aspen (as a reinsurer) only entered into the reinsurance contracts with GIL (its reinsured). Also, as referenced in the reinsurance contracts, GM has its own separate insurance policies with GIL. According to the express terms of the contracts, they

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DECISION ON NEW GM'S MOTION TO
ENFORCE SECTION 363 ORDER WITH
RESPECT TO PRODUCT LIABILITY CLAIM OF
ESTATE OF BEVERLY DEUTSCH

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By: Melissa Peña, Esq.

07/29/2015 20:28 3192831838 LARRY WOODS LAW OFFI PAGE 15/27

ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE

In this contested matter in the chapter 11 case of Motors Liquidation Company (formerly, General Motors Corp., and referred to here as **"Old GM"**) and its affiliates, General Motors LLC (**"New GM"**) seeks a determination from this Court that New GM did not assume the liabilities associated with a tort action in which a car accident took place before the date (**"Closing Date"**) upon which New GM acquired the business of Old GM, but the accident victim died thereafter.[1] The issue turns on the construction of the documents under which New GM agreed to assume liabilities from Old GM—which provided that New GM would assume liabilities relating to "accidents or incidents" "first occurring on or after the Closing Date"—and in that connection, whether a liability of this character is or is not one of the types of liabilities that New GM thereby agreed to assume.

Upon consideration of those documents, the Court concludes that the liability in question was not assumed by New GM. However, if a proof of claim was not previously filed against Old GM with respect to the accident in question, the Court will permit one to be filed within 30 days of the entry of the order implementing this Decision, without prejudice to rights to appeal this determination.

The Court's Findings of Fact and Conclusions of Law in connection with this determination follow.

[1] Technically speaking, the motion is denominated as one to Enforce the 363 Sale Order, which protects New GM from liabilities it did not assume. The Court here speaks to the motion's substance.

07/29/2015 20:28 3192831838 LARRY WOODS LAW OFFI PAGE 16/27

Findings of Fact

In June 2007, Beverly Deutsch was severely injured in an accident while she was driving a 2006 Cadillac sedan. She survived the car accident, but in August 2009, she died from the injuries that she previously had sustained.[2]

In January 2010, the Estate of Beverly Deutsch, the Heirs of Beverly Deutsch, and Sanford Deutsch (collectively **"Deutsch Estate"**) filed a Third Amended Complaint against New GM (and others) in a state court lawsuit in California (the **"Deutsch Estate Action"**), claiming damages arising from the accident, the injuries which Beverly sustained, and her wrongful death. The current complaint superseded the original complaint in the Deutsch Estate Action, which was filed in April 2008, before the filing of Old GM's chapter 11 case.

In July 2009, this Court entered its order (the **"363 Sale Order"**) approving the sale of Old GM's assets, under section 363 of the Bankruptcy Code, to the entity now known as New GM. The 363 Sale Order, among other things, approved an agreement that was called an Amended and Restated Master Sale and Purchase Agreement (the **"MSPA"**).

The MSPA detailed which liabilities would be assumed by New GM, and provided that all other liabilities would be retained by Old GM. The MSPA provided, in its § 2.3(a)(ix), that New GM would not assume any claims with respect to product liabilities (as such term was defined in the MSPA, **"Product Liability Claims"**) of the Debtors except those that "arise directly out of death, personal injury or other injury to Persons or damage to property caused by *accidents or incidents* first occurring on or after

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[2] There is no contention by either side that her death resulted from anything other than the earlier accident.

the Closing Date [July 10, 2009] … "[3] Thus, those Product Liability Claims that arose from "accidents or incidents" occurring before July 10, 2009 would not be assumed by New GM, but claims arising from "accidents or incidents" occurring on or after July 10, 2009 would be.

Language in an earlier version of the MSPA differed somewhat from its final language, as approved by the Court. Before its amendment, the MSPA provided for New GM to assume liabilities except those caused by "accidents, incidents, *or other distinct and discrete occurrences*."[4]

The 363 Sale Order provides that "[t]his Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order" and the MSPA, including "to protect the Purchaser [New GM] against any of the Retained Liabilities or the assertion of any … claim … of any kind or nature whatsoever, against the Purchased Assets."[5]

Discussion

The issue here is one of contractual construction. As used in the MSPA, when defining the liabilities that New GM would assume, what do the words "accidents or incidents," that appear before "first occurring on or after the Closing Date," mean? It is undisputed that the accident that caused Beverly Deutsch's death took place in June 2007, more than two years prior to the closing. But her death took place after the closing. New GM argues that Beverly Deutsch's injuries arose from an "accident" and an "incident"

[3] Amended Master Sale and Purchase Agreement, at § 2.3(a)(ix) (as modified by First Amendment) (emphasis added).

[4] Amended Master Sale and Purchase Agreement, at § 2.3(a)(ix) (prior to modification by First Amendment) (emphasis added) (typographical error corrected).

[5] 363 Sale Order ¶ 71.

07/29/2015 20:28 3192831838 LARRY WOODS LAW OFFI PAGE 18/27

that took place in 2007, and that her death did likewise. But the Deutsch Estate argues that while the "accident" took place in 2007, her death was a separate "incident"—and that the latter took place only in August 2009, after the closing of the sale to New GM had taken place.

Ultimately, while the Court respects the skill and fervor with which the point was argued, it cannot agree with the Deutsch Estate. Beverly Deutsch's death in 2009 was the *consequence* of an event that took place in 2007, which undisputedly, was an accident and which also was an incident, which is a broader word, but fundamentally of a similar type. The resulting death in 2009 was not, however, an "incident[] first occurring on or after the Closing Date," as that term was used in the MSPA.

As usual, the Court starts with textual analysis. The key provision of the MSPA, § 2.3(a)(ix), set forth the extent to which Product Liability Claims were assumed by New GM. Under that provision, New GM assumed:

> (ix) all Liabilities to third parties for death, personal injury, or other injury to Persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold or delivered by Sellers (collectively, "Product Liabilities"), *which arise directly out of death, personal injury or other injury to Persons or damage to property caused by accidents or incidents first occurring on or after the Closing Date and arising from such motor vehicles' operation or performance* (for avoidance of doubt, Purchaser shall not assume or become liable to pay, perform or discharge, any Liability arising or contended to arise by reason of exposure to materials utilized in the assembly or fabrication of motor vehicles manufactured by Sellers and delivered prior to the Closing Date, including

07/29/2015 20:28 3192831838 LARRY WOODS LAW OFFI PAGE 19/27

> asbestos, silicates or fluids, regardless of when such alleged exposure occurs).[6]

The key words, of course, are "accidents" and "incidents," neither of which are defined anywhere else in the MSPA, and whose interpretation, accordingly, must turn on their common meaning and any understandings expressed by one side to the other in the course of contractual negotiations. Also important are the words "first occurring on or after the Closing Date," which modify the words "accidents" and "incidents," and shed light on the former words' meaning.

The word "accidents," of course, is not ambiguous. "Accidents" has sufficiently clear meaning on its own, and in any event its interpretation is not subject to debate, as both sides agree that Beverly Deutsch's death resulted from an accident that took place in 2007, at a time when, if "accidents" were the only controlling word, liability for the resulting death would not be assumed by New GM. The ambiguity, if any, is instead in the word "incidents," which is a word that by its nature is more inclusive and less precise.

But while "incidents" may be deemed to be somewhat ambiguous, neither side asked for an evidentiary hearing to put forward parol evidence as to its meaning. Though it is undisputed that "incidents" remained in the MSPA after additional words "or other distinct and discrete occurrences," were deleted, neither side was able, or chose, to explain, by evidence, why the latter words were dropped, and what, if any relevance the dropping of the additional words might have as to the meaning of the word "incidents" that remained. The words "or other distinct and discrete occurrences" could have been deleted as redundant, to narrow the universe of claims that were assumed, or for some

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6 Amended Master Sale and Purchase Agreement, at § 2.3(a)(ix) (as modified by First Amendment) (emphasis added).

other reason. Ultimately, the Court is unable to derive sufficient indication of the parties' intent as to the significance, if any, of deleting the extra words.

So the Court is left with the task of deriving the meaning of the remaining words "accidents or incidents" from their ordinary meaning, the words that surround them, canons of construction, and the Court's understanding when it approved the 363 Sale as to how the MSPA would deal with prepetition claims against Old GM. Ultimately these considerations, particularly in the aggregate, point in a single direction—that a death resulting from an earlier "accident[] or incident[]" was not an "incident[] first occurring" after the closing.

Starting first with ordinary meaning, definitions of "incident" from multiple sources are quite similar. They include, as relevant here,[7] "an occurrence of an action or situation felt as a separate unit of experience";[8] "an occurrence of an action or situation that is a separate unit of experience";[9] "[a] discrete occurrence or happening";[10] "something that happens, especially a single event";[11] "a definite and separate occurrence; an event";[12] or, as proffered by the Deutsch Estate, "[a] separate and definite occurrence: EVENT."[13] In ways that vary only in immaterial respects, all of the

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7 The word "incident" has other meanings, in other contexts, which most commonly follow definitions of the type quoted here. Particularly since the definition proffered by the Deutsch Estate is so similar to the others, the Court does not understand either side to contend that definitions of "incident" in other contexts are relevant here.

8 Webster's Third New International Dictionary Unabridged (1993) at 1142.

9 Merriam-Webster's Collegiate Dictionary (11th ed. 2003) at 629.

10 Black's Law Dictionary (8th ed. 2004) at 777.

11 Encarta Dictionary: English (North America), http://encarta.msn.com/encnet/features/dictionary/dictionaryhome.aspx (query word "incident" in search field).

12 American Heritage College Dictionary (4th ed. 2004) at 700.

13 Deutsch Estate Reply Br. at 4 (quoting Webster's II New College Dictionary (1999) at 559).

07/29/2015 20:28 3192831838 LARRY WOODS LAW OFFI PAGE 21/27

definitions articulate the concept of a separate and identifiable event. And, and of course, from words that follow, "arising from such motor vehicles' operation or performance," the event must be understood to relate to be one that that involves a motor vehicle. Accidents, explosions or fires all fit comfortably within that description. Deaths or other consequences that result from earlier accidents, explosions or fires technically might fit as well, but such a reading is much less natural and much more strained.

Turning next to words that surround the words "accidents or incidents," these words provide an interpretive aid to the words they modify. The word "incident[]" is followed by the words "first occurring." In addition to defining the relevant time at which the incident must take place (*i.e.*, after the closing), that clause inserts the word "first" before "occurring." That suggests, rather strongly, that it was envisioned that some types of incidents could take place over time or have separate sub-occurrences, or that one incident might relate to an earlier incident, with the earliest incident being the one that matters. Otherwise it would be sufficient to simply say "occurring," without adding the word "first." This too suggests that the consequences of an incident should not be regarded as a separate incident, or that even if they are, the incident that first occurs is the one that controls.

Canons of construction tend to cut in opposite directions, though on balance they favor New GM. The Deutsch Estate appropriately points to the canon of construction against "mere surplusage," which requires different words of a contract or statute to be construed in a fashion that gives them separate meanings, so that no word is superfluous.[14] The Court would not go as far as to say that the words "accident" and

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[14] *See, e.g.*, *Sprietsma v. Mercury Marine*, 537 U.S. 51, 63 (2003) (a statute's preemption clause, which applied to "a [state or local] law or regulation" did not preempt common law tort claims,

07/29/2015 20:28 3192831838 LARRY WOODS LAW OFFI PAGE 22/27

"incident" cannot *ever* cover the same thing—or, putting it another way, that they *always* must be different.[15] But the Court agrees with the Deutsch Estate that they cannot *always* mean the same thing. "Incidents" must have been put there for a reason, and should be construed to add something in at least some circumstances.

But how different the two words "accidents" and "incidents" can properly be understood to be —and in particular, whether "incidents" can be deemed to separately exist[16] when they are a foreseeable consequence, or are the resulting injury, from the accidents or incidents that cause them—is quite a different matter. A second canon of construction, "*noscitur a sociis,*" provides that "words grouped in a list should be given related meaning."[17] Colloquially, "a word is known by the company it keeps ..."[18] For instance, in *Dole*, in interpreting a phrase of the Paper Work Reduction Act, the Supreme Court invoked *noscitur a sociis* to hold that words in a list, while meaning different things, should nevertheless be read to place limits on how broadly some of those words might be construed. The *Dole* court stated:

> [t]hat a more limited reading of the phrase "reporting and recordkeeping requirements" was intended derives some further support from the words surrounding it. The traditional canon of

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because if "law" were read that broadly, it might also be interpreted to include regulations, which would render the express reference to "regulation" in the preemption clause superfluous). *See also* Gustafson v. Alloyd Co., 513 U.S. 561, 574 (1995) ("*Alloyd*") (in statutory construction context, "the Court will avoid a reading which renders some words altogether redundant.").

15 As previously noted, "incident" is a word that is inherently broader than "accident." Every accident could fairly be described as an incident. But not every incident could fairly be described as an accident.

16 It is important to note that to prevail on this motion, the Deutsch Estate must show that the alleged "incident" that is the resulting death was a wholly separate "incident." Even if the death took place after the Closing Date, if the death was an incident that was part of an earlier incident, it could not be said to be "*first* occurring" after the Closing Date.

17 *Dole v. United Steelworkers of America*, 494 U.S. 26, 36 (1990).

18 *Alloyd*, 513 U.S. at 575 (applying *noscitur a sociis* in context of statutory interpretation).

07/29/2015 20:28 3192831838 LARRY WOODS LAW OFFI PAGE 23/27

> construction, *noscitur a sociis*, dictates that words grouped in a list should be given related meaning.[19]

Here application of the canon against surplusage makes clear, as the Deutsch Estate argues, that "incidents" must at least sometimes mean something different than "accidents"—but application of that canon does not tell us when and how. The second canon, *noscitur a sociis*, does that, and effectively trumps the doctrine of surplusage because it tells us that "accidents" and "incidents" should be given related meaning.

The Deutsch Estate argues that the Court should construe a death resulting from an earlier "accident" or "incident" to be a separate and new "incident" that took place at a later time. But ultimately, the Court concludes that it cannot do so. While it is easy to conclude that "accidents" and "incidents," as used in the MSPA, will not necessarily be the same in all cases, they must still be somewhat similar. "Incidents" cannot be construed so broadly as to cover what are simply the consequences of earlier "accidents" or other "incidents."

Applying *noscitur a sociis* in conjunction with the canon against "mere surplusage" tells us that the two words "accidents" and "incidents" must be understood as having separate meanings in at least some cases, but that these meanings should be conceptually related. At oral argument, the Court asked counsel for New GM an important question: if an "incident" would not necessarily be an "accident," what would it be? What would it cover? Counsel for New GM came back with a crisp and very

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[19] *Dole*, at 36. (internal quotations and citations omitted) (emphasis in original). *See also Massachusetts v. Morash*, 490 U.S. 107, 114-15 (1989) (quoting *Schreiber v. Burlington Northern Inc.*, 472 U.S. 1, 8 (1985)); *Alloyd*, 513 U.S. at 575 ("This rule we rely upon to avoid ascribing to one word a *meaning so broad that it is inconsistent with its accompanying words*, thus giving unintended breadth to the Acts of Congress." (emphasis added) (internal quotation marks deleted)).

logical answer; he said that "incident" would cover a situation where a car caught fire or had blown up, or some problem had arisen by means other than a collision.[20]

Conversely, the interpretation for which the Deutsch Estate argues—that "incidents" refers to *consequences* of earlier accidents or incidents—is itself violative or potentially violative, of the two interpretive canons discussed above. It is violative of *noscitur a sociis*, since a death or other particular injury is by its nature distinct from the circumstance—collision, explosion, fire, or other accident or incident—that causes the resulting injury in the first place. The Deutsch Estate interpretation also tends to run counter to the doctrine against mere surplusage upon which the Deutsch Estate otherwise relies, making meaningless the words "first occurring" which follow the words "accidents or incidents," in any cases where death or other particular injury is the consequence of an explosion, fire, or other non-collision incident that causes the resulting injury.

The simple interpretation, and the one this Court ultimately provides, is that "incidents," while covering more than just "accidents," are similar; they relate to fires, explosions, or other definite events that *cause* injuries and *result* in the right to sue, as contrasted to describing the *consequences* of those earlier events, or that relate to the resulting damages.

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[20] Counsel for New GM answered:

> Now, what's the difference between an accident or an incident, if it were relevant with respect to product liability claims? And I think there's an easy answer. You could have a car accident. Or you could have a car catching on fire; that's not necessarily an accident; that's an incident. Or a car could blow up with someone in the car. Or something else could happen; some other malfunction could cause a fire or injury to someone, not an accident with another vehicle necessarily; or an accident where you ran off the road. So I think that's easily explained.

Transcript, at 31.

Finally, this Court's earlier understanding of the purposes of New GM's willingness to assume certain liabilities of Old GM is consistent with the Court's conclusion at this time as well. When the Court approved GM's 363 Sale, this Court noted, in its opinion, that New GM had chosen to broaden its assumption of product liabilities.[21] The MSPA was amended to provide for the assumption of liabilities not just for product liability claims for motor vehicles and parts delivered after the Closing Date (as in the original formulation), but also, for "all product liability claims arising from *accidents or other discrete incidents* arising from operation of GM vehicles occurring subsequent to the closing of the 363 Transaction, regardless of when the product was purchased."[22] As reflected in the Court's decision at the time, the Court understood that New GM was undertaking to assume the liabilities for "accidents or other discrete incidents" that hadn't yet taken place.

Finally, the Deutsch Estate notes another interpretative canon, that ambiguities in a contract must be read against the drafter.[23] If the matter were closer, the Court might consider doing so.[24] But the language in question is not

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21 *See In Re General Motors Corp.*, 407 B.R. 463, 481-82 (Bankr. S.D.N.Y. 2009), *appeal dismissed and aff'd*, 428 B.R. 43 (S.D.N.Y. 2010), and 430 B.R. 65 (S.D.N.Y. 2010).

22 *Id.* (emphasis added and original emphasis deleted)

23 *See Jacobson v. Sassower*, 66 N.Y.2d 991, 993 (N.Y. 1985) ("In cases of doubt or ambiguity, a contract must be construed most strongly against the party who prepared it, and favorably to a party who had no voice in the selection of its language"); *Cf. Aetna Casualty & Surety Co. v. General Time Corp.*, 704 F.2d 80, 85 (2d Cir. 1983) ("Since the insurer is assumed to have control over drafting the contract provisions, it is fair to hold it responsible for ambiguous terms, and accord the insured the benefit of uncertainties which the insurer could have, but failed to clarify").

24 In that event, the Court would then have to consider the specifics of the negotiating environment at the time. The Deutsch Estate was of course not a party to those negotiations at all. But there was little in the record at the time of the 363 Sale, and there is nothing in the record now, as to who, if anybody, had control over the drafting of any MSPA terms.

that ambiguous, and the relevant considerations, fairly decisively, all tip in the same direction. While it cannot be said that the Deutsch Estate's position is a frivolous one, the issues are not close enough to require reading the language against the drafter.

Conclusion

The Deutsch Estate's interpretation of "accident or incident" is not supportable. Thus, the Debtor's motion is granted, and the Deutsch Estate may not pursue this claim against New GM.[25] New GM is to settle an order consistent with this opinion. The time to appeal from this determination will run from the time of the resulting order, and not from the date of filing of this Decision.

Dated: New York, New York
January 5, 2011

s/Robert E. Gerber
United States Bankruptcy Judge

[25] Under the circumstances, however, since the Deutsch Estate's issues were fairly debatable and plainly raised in good faith, the Court will provide the Deutsch Estate with 30 days from the resulting order to file a claim against Old GM if it has not already done so, without prejudice to its underlying position and any rights of appeal.

Exhibit 5

Mark McCrate
641 Stoneybrook Dr.
Dayton, OH 45429

March 14, 2016

Bernstein Litowitz Berger & Grossmann LLP
Salvatore J. Graziano, Esq.
1251 Avenue of the Americas,
44th Floor
New York, NY 10020

To whom it may concern:

1. Yes, I object to several of the NEW YORK STATE TEACHERS' RETIREMENT SYTEM vs. GENERAL MOTORS notice of class action... and am submitting this letter as instructed in ¶7 and more convolutedly in ¶64 and ¶65. If I have errored in following any of the many requirements needed to object formally kindly inform me via a letter postmarked no more than seven (7) days after the receipt of this objection (let us informally call it objection attempt in case something needs amending) at the address provided in my header.
2. Using the formulae provided in the notice and my documents, that sufficiently prove membership in the Settlement Class, please do calculate my expected payout! I am an engineer, so I did. It is laughably little but those who get laughably little are more likely counting on the little they get. More on this later.
3. I object to the terms set forth in ¶5 detailing lead council will apply for "reimbursement of litigation expenses in an amount not to exceed 7% of the settlement fund" and recommend replacing it with "documented, audited and honest cost to prosecute + 10%."
4. I object to ¶7 - it is platitudes and weak arguments for seeking a settlement. No one ever mentions the loss of life directly related to the defects but only fixates on the loss of money. Granted perhaps civil or criminal or something else covers the loss of life portion of litigation however it would have been more humane to mention it in these ¶s as well. I recommend no settlement and this class action be fully litigated. If plaintiffs feel they have a strong case they should be comfortable with dismissing the settlement part.
5. I object to ¶46 §b) §c and recommend replacing all language seeking to minimize payments to class members such as "the lesser of" be replaced by language ensuring maximum benefit for class members unless lead plaintiffs are trolling (as it is understood by the internet in 2016) and simply seeking to maximize only their payout. If some independent entity discovers trolling at any time then I recommend the whole class be thrown out and everyone getting back to doing something useful.

6. ¶47 is abominable and I whole heartily object. My recommendation is Net Settlement Funds, or any court won funds, be allocated among all Authorized Claimants whose Distribution amount meets this new minimum threshold: the distribution amount is greater than the cost of postage, ink/toner and paper needed to issue the monies. This new threshold criteria is based on the fact that those who have less often need more and the resulting imbalance of monies left after cheating the "low payout" members would likely go to plaintiff, council or others and not to a valuable non-profit or needy individuals.
7. ¶51 is cunningly devious. Whereas ¶51 states, "the receipt of grant by gift, inheritance or operation of law of GM common stock during the Settlement Class Period will not be deemed a purchase, acquisition or sale of GM common stock..." and makes it appear as though stocks received from another under various circumstances or gifted to others are excluded from the Class however ¶51 makes no mention ¶71, where it is detailed much more clearly what actions need to be taken by parties to participate. It is basically a universal truth people do not read all instructions so it would have been more honest to transpose ¶51 and ¶71 or at least cite ¶71 within ¶51 since intra-paragraph citing is utilized quite often in other places in this notice.
8. ¶54 basically proves the closing point of my ¶6. It is a trick as old as the hills to shift money around and often into non-profit organization(s). All one needs to make this case it to read where it openly states, "any resulting imbalance of monies left in the fund will be redirected to not-for-profit organization(s) recommended by Lead Counsel." My first thought for rectifying this recommendation imbalance is to simply have both GM and Lead Council agree on a recommended organization however here is my revised plan: all unallocated funds should be used to remedy Flint, MI's water situation because one of my required triplicate objections packets is bound for Flint, MI and I am 100% confident if those people in Chicago or NY were equally encumbered they would be better occupied. Alternatively, just use the whole $300 million already in an escrow account to rebuild infrastructure within a ~30 mile radius of Detroit and have GM plead no contest and be out of court in five minutes. That is probably too simple, remember I think like an engineer!
9. The contents of ¶57 are objectionable for several reasons. First, as previously mentioned in my ¶3, I propose to cap award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed "documented, audited and honest cost to prosecute + 10%" in lieu of 7% of settlement. Second, I reject Lead Counsel's intention to apply for reimbursement of Litigation Expenses in an "amount not to exceed $1 million" and recommend the court to do the same, defaulting instead to the "documented, audited and honest cost to prosecute + 10%" which is often used in government contracts (except for the "honesty" part which I added). Third, I reject these payment schemes because they seek to dip into the settlement fund several times under several pretenses thereby depleting what can ultimately be payed to the settlement class and appears to be the standard reverse Robin Hood wherein the rich rob from the poor.

10. I do not like how ¶71 is worded, especially because this is an important caveat for the process and whoever wrote this is making it ridiculously hellishly convoluted. First, to mandate people who purchased or otherwise acquired shares for another person or organization "(a) with seven (7) calendar days of receipt of this Notice, request from the Claims Administrator sufficient copies of the Notice..." and "within seven (7) calendar days of receipt of those Notice Packets, forward [the newly received notice packets]..." is interesting because you never inform either party to retain proof that transactions occurred in a timely manner leaving the door wide open for objections of validity based on timings; cunning. Second, what is meant by within seven (7) calendar days "request" or "provide" because a more common phrase (used for example when filing taxes is "postmarked within seven (7) days"). Third, the time frame should be seven (7) business days not calendar days. Fourth, I propose most of ¶71 be tossed out and be replaced with, paraphrasing, as long as claims packets are properly filled out and postmarked on time they be accepted. Before closing with my remarks on ¶71 I do want to say, lest the reader think my whole letter negative, I do like where ¶71 gives two options for people associated with purchased or otherwise acquired shares.
11. My guess is very few people will read the whole notice, a subset of those will understand and a further subset of those will object. Therefore those who object logically have a strong case and should get a response, after all lead plaintiff already wrote 543 pages so why not a few more?

Mine is but one opinion. Thank you for your time.

Enjoy,

Mark McCrate

> Mark McCrate

REDACTED

Must be Postmarked No Later Than April 27, 2016

New York State Teachers' Retirement System
v. General Motors Company
c/o Garden City Group, LLC
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Dublin, OH 43017-5762
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GMT

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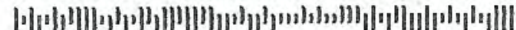

MARK MCCRATE TOD
SUBJECT TO STA TOD RULES
641 STONEYBROOK DR
KETTERING, OH 45429-5319

ID Number: L010771471
Control Number: 2692338948

PROOF OF CLAIM AND RELEASE FORM

TO BE ELIGIBLE TO RECEIVE A SHARE OF THE NET SETTLEMENT FUND IN CONNECTION WITH THE SETTLEMENT OF THIS ACTION, YOU MUST COMPLETE AND SIGN THIS PROOF OF CLAIM AND RELEASE FORM ("CLAIM FORM") AND MAIL IT BY PREPAID, FIRST-CLASS MAIL TO THE ABOVE ADDRESS, **POSTMARKED NO LATER THAN APRIL 27, 2016.**

FAILURE TO SUBMIT YOUR CLAIM FORM BY THE DATE SPECIFIED WILL SUBJECT YOUR CLAIM TO REJECTION AND MAY PRECLUDE YOU FROM BEING ELIGIBLE TO RECEIVE ANY MONEY IN CONNECTION WITH THE SETTLEMENT.

DO NOT MAIL OR DELIVER YOUR CLAIM FORM TO THE COURT, THE PARTIES TO THIS ACTION, OR THEIR COUNSEL. SUBMIT YOUR CLAIM FORM ONLY TO THE CLAIMS ADMINISTRATOR AT THE ADDRESS SET FORTH ABOVE.

TABLE OF CONTENTS **PAGE #**

PART I - CLAIMANT INFORMATION 2
PART II - GENERAL INSTRUCTIONS 3-4
PART III - SCHEDULE OF TRANSACTIONS IN GM COMMON STOCK (CUSIP 37045V100) 5
PART IV - RELEASE OF CLAIMS AND SIGNATURE 6-7

Important - *This form should be completed IN CAPITAL LETTERS using BLACK or DARK BLUE ballpoint/fountain pen. Characters and marks used should be similar in the style to the following:*

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z 1 2 3 4 5 6 7 0

PART I - CLAIMANT INFORMATION

The Claims Administrator will use this information for all communications regarding this Claim Form. If this information changes, you MUST notify the Claims Administrator in writing at the address above.

Claimant Name(s) (as the name(s) should appear on check, if eligible for payment; if the shares are jointly owned, the names of all beneficial owners must be provided):

MARK MCCRATE

Name of Person the Claims Administrator Should Contact Regarding this Claim Form (Must Be Provided):

MARK MCCRATE

Mailing Address - Line 1: Street Address/P.O. Box:

641 STONEYBROOK DR

Mailing Address - Line 2 (If Applicable): Apartment/Suite/Floor Number:

City:

KETTERING

State/Province: OH

Zip Code: 45429

Country:

Last 4 digits of Claimant Social Security/Taxpayer Identification Number:[1] REDACTED

Daytime Telephone Number: REDACTED

Evening Telephone Number: REDACTED

E-mail Address (E-mail address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim.):

To view GCG's Privacy Notice, please visit http://www.gardencitygroup.com/privacy

[1]The last four digits of the taxpayer identification number (TIN), consisting of a valid Social Security Number (SSN) for individuals or Employer Identification Number (EIN) for business entities, trusts, estates, etc., and telephone number of the beneficial owner(s) may be used in verifying this claim.

PART II - GENERAL INSTRUCTIONS

1. It is important that you completely read and understand the Notice of (I) Pendency of Class Action, Certification ' Settlement Class, and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees ıd Reimbursement of Litigation Expenses (the "Notice") that accompanies this Claim Form, including the Plan of Allocation of ıe Net Settlement Fund set forth in the Notice. The Notice describes the proposed Settlement, how Settlement Class Members 'e affected by the Settlement, and the manner in which the Net Settlement Fund will be distributed if the Settlement and Plan of llocation are approved by the Court. The Notice also contains the definitions of many of the defined terms (which are indicated y initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have ıad and that you understand the Notice, including the terms of the releases described therein and provided for herein.

2. By submitting this Claim Form, you will be making a request to share in the proceeds of the Settlement described the Notice. IF YOU ARE NOT A SETTLEMENT CLASS MEMBER (see the definition of the Settlement Class on page 4 of the otice, which sets forth who is included in and who is excluded from the Settlement Class), OR IF YOU, OR SOMEONE ACTING N YOUR BEHALF, SUBMITTED A REQUEST FOR EXCLUSION FROM THE SETTLEMENT CLASS, DO NOT SUBMIT CLAIM FORM. **YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENT IF YOU ARE NOT A ETTLEMENT CLASS MEMBER.** THUS, IF YOU ARE EXCLUDED FROM THE SETTLEMENT CLASS, ANY CLAIM FORM HAT YOU SUBMIT, OR THAT MAY BE SUBMITTED ON YOUR BEHALF, WILL NOT BE ACCEPTED.

3. **Submission of this Claim Form does not guarantee that you will share in the proceeds of the Settlement. he distribution of the Net Settlement Fund will be governed by the Plan of Allocation set forth in the Notice, if it is pproved by the Court, or by such other plan of allocation as the Court approves.**

4. Use the Schedule of Transactions in Part III of this Claim Form to supply all required details of your transaction(s) ncluding free transfers and deliveries) in and holdings of GM common stock. On this schedule, please provide all of the requested formation with respect to your holdings, purchases, acquisitions, and sales of GM common stock, whether such transactions ısulted in a profit or a loss. **Failure to report all transaction and holding information during the requested time period may ısult in the rejection of your claim.**

5. Please note: Only GM common stock purchased or otherwise acquired during the Settlement Class Period (*i.e.*, om November 17, 2010 through July 24, 2014, inclusive) is eligible under the Settlement.

Jan 13 2014 ✓

6. You are required to submit genuine and sufficient documentation for all of your transactions in and holdings of iM common stock set forth in the Schedule of Transactions in Part III of this Claim Form. Documentation may consist of copies f brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from your broker containing ıe transactional and holding information found in a broker confirmation slip or account statement. The Parties and the Claims dministrator do not independently have information about your investments in GM common stock. IF SUCH DOCUMENTS ARE IOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OR EQUIVALENT DOCUMENTS FROM YOUR BROKER. FAILURE O SUPPLY THIS DOCUMENTATION MAY RESULT IN THE REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL OCUMENTS. **Please keep a copy of all documents that you send to the Claims Administrator. Also, please do not ighlight any portion of the Claim Form or any supporting documents.**

7. Separate Claim Forms should be submitted for each separate legal entity (*e.g.*, a claim from joint owners should ot include separate transactions of just one of the joint owners, and an individual should not combine his or her IRA transactions ith transactions made solely in the individual's name). Conversely, a single Claim Form should be submitted on behalf of one ıgal entity including all transactions made by that entity on one Claim Form, no matter how many separate accounts that entity as (*e.g.*, a corporation with multiple brokerage accounts should include all transactions made in all accounts on one Claim Form).

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8. All joint beneficial owners must each sign this Claim Form and their names must appear as "Claimants" in Part I f this Claim Form. If you purchased or otherwise acquired GM common stock during the Settlement Class Period and held the hares in your name, you are the beneficial owner as well as the record owner and you must sign this Claim Form to participate ı the Settlement. If, however, you held, purchased or otherwise acquired GM common stock during the relevant time period and ıe securities were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial owner of ıese shares, but the third party is the record owner. The beneficial owner, not the record owner, must sign this Claim Form to be ligible to participate in the Settlement.

PART II - GENERAL INSTRUCTIONS (CONTINUED)

9. Agents, executors, administrators, guardians, and trustees must complete and sign the Claim Form on behalf of persons represented by them, and they must:

(a) expressly state the capacity in which they are acting;

(b) identify the name, account number, Social Security Number (or taxpayer identification number), address and telephone number of the beneficial owner of (or other person or entity on whose behalf they are acting with respect to) the GM common stock; and

(c) furnish herewith evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Authority to complete and sign a Claim Form cannot be established by stockbrokers demonstrating only that they have discretionary authority to trade securities in another person's accounts.)

10. By submitting a signed Claim Form, you will be swearing that you:

(a) own(ed) the GM common stock you have listed in the Claim Form; or

(b) are expressly authorized to act on behalf of the owner thereof.

11. By submitting a signed Claim Form, you will be swearing to the truth of the statements contained therein and the genuineness of the documents attached thereto, subject to penalties of perjury under the laws of the United States of America. The making of false statements, or the submission of forged or fraudulent documentation, will result in the rejection of your claim and may subject you to civil liability or criminal prosecution.

12. If the Court approves the Settlement, payments to eligible Authorized Claimants pursuant to the Plan of Allocation (or such other plan of allocation as the Court approves) will be made after any appeals are resolved, and after the completion of all claims processing. The claims process will take substantial time to complete fully and fairly. Please be patient.

13. **PLEASE NOTE:** As set forth in the Plan of Allocation, each Authorized Claimant shall receive his, her or its *pro rata* share of the Net Settlement Fund. If the prorated payment to any Authorized Claimant calculates to less than $10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

14. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or the Notice, you may contact the Claims Administrator, Garden City Group, LLC, at the above address or by toll-free phone at 1-866-459-1720, or you may download the documents from www.GMSecuritiesLitigation.com.

15. NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the mandatory electronic filing requirements and file layout, you may visit the settlement website at www.GMSecuritiesLitigation.com or you may email the Claims Administrator's electronic filing department at eclaim@gardencitygroup.com. Any file not in accordance with the required electronic filing format will be subject to rejection. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email to that effect after processing your file with your claim numbers and respective account information. **Do not assume that your file has been received or processed until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the electronic filing department at Garden City Group, LLC to inquire about your file and confirm it was received and acceptable.**

IMPORTANT: PLEASE NOTE

YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM FORM BY MAIL, WITHIN 60 DAYS. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, PLEASE CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT (866) 459-1720.

PART III - SCHEDULE OF TRANSACTIONS IN GM COMMON STOCK (CUSIP 37045V100)

Please be sure to include proper documentation with your Claim Form as described in detail in Part II – General Instructions, Paragraph 6, above. Do not include information regarding securities other than GM common stock (CUSIP 37045V100).

1. **PURCHASES/ACQUISITIONS DURING THE SETTLEMENT CLASS PERIOD -** Separately list each and every purchase/acquisition (including free receipts) of GM common stock from November 17, 2010 through and including the close of trading on July 24, 2014 (including purchases in GM's November 17, 2010 initial public offering). (Must be documented.)

IF NONE, CHECK HERE: ☐

Date of Purchase/Acquisition (List Chronologically) (Month/Day/Year)	Number of Shares Purchased/Acquired	Purchase/Acquisition Price Per Share	Total Purchase/Acquisition Price (excluding taxes, commissions and fees)	Confirm Proof of Purchase/Acquisition Enclosed
01/13/14	51	39.50	2014.50	✓
/ /		.	.	☐
/ /		.	.	☐
/ /		.	.	☐
/ /		.	.	☐

2. **SALES DURING THE SETTLEMENT CLASS PERIOD -** Separately list each and every sale/disposition (including free deliveries) of GM common stock from November 17, 2010 through and including the close of trading on July 24, 2014. (Must be documented.)

IF NONE, CHECK HERE: ✓

Date of Sale (List Chronologically) (Month/Day/Year)	Number of Shares Sold	Sale Price Per Share	Total Sale Price (excluding taxes, commissions and fees)	Confirm Proof of Sale Enclosed
/ /		.	.	☐
/ /		.	.	☐
/ /		.	.	☐
/ /		.	.	☐
/ /		.	.	☐

3. **ENDING HOLDINGS -** State the total number of shares of GM common stock held as of the close of trading on July 24, 2014. (Must be documented.) If none, write "zero" or "0."

51

Confirm Proof of Position Enclosed ✓

IF YOU REQUIRE ADDITIONAL SPACE FOR THE SCHEDULE ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER'S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX ☐

PART IV – RELEASE OF CLAIMS AND SIGNATURE

YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON PAGE 7 OF THIS CLAIM FORM.

I (we) hereby acknowledge that, pursuant to the terms set forth in the Stipulation, without further action by anyone, upon the Effective Date of the Settlement, I (we), on behalf of myself (ourselves) and my (our) heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Plaintiffs' Claim (including, without limitation, any Unknown Claims) against the Defendants and the other Defendants' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees.

CERTIFICATION

By signing and submitting this Claim Form, the claimant(s) or the person(s) who represent(s) the claimant(s) certifies (certify), as follows:

1. that I (we) have read and understand the contents of the Notice and this Claim Form, including the releases provided for in the Settlement and the terms of the Plan of Allocation;

2. that the claimant(s) is a (are) Settlement Class Member(s), as defined in the Notice, and is (are) not excluded by definition from the Settlement Class as set forth in the Notice;

3. that the claimant has **not** submitted a request for exclusion from the Settlement Class;

4. that I (we) own(ed) the GM common stock identified in the Claim Form and have not assigned the claim against any of the Defendants or any of the other Defendants' Releasees to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;

5. that the claimant(s) has (have) not submitted any other claim covering the same purchases/acquisitions of GM common stock and knows (know) of no other person having done so on the claimant's (claimants') behalf;

6. that the claimant(s) submit(s) to the jurisdiction of the Court with respect to claimant's (claimants') claim and for purposes of enforcing the releases set forth herein;

7. that I (we) agree to furnish such additional information with respect to this Claim Form as Lead Counsel, the Claims Administrator or the Court may require;

8. that the claimant(s) waive(s) the right to trial by jury, to the extent it exists, and agree(s) to the Court's summary disposition of the determination of the validity or amount of the claim made by this Claim Form;

9. that I (we) acknowledge that the claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and

10. that the claimant(s) is (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (a) the claimant(s) is (are) exempt from backup withholding or (b) the claimant(s) has (have) not been notified by the IRS that he/she/it is subject to backup withholding as a result of a failure to report all interest or dividends or (c) the IRS has notified the claimant(s) that he/she/it is no longer subject to backup withholding. **If the IRS has notified the claimant(s) that he/she/it is subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.**

PART IV – RELEASE OF CLAIMS AND SIGNATURE (CONTINUED)

NDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION PROVIDED BY ME (US) ON THIS LAIM FORM IS TRUE, CORRECT, AND COMPLETE, AND THAT THE DOCUMENTS SUBMITTED HEREWITH ARE TRUE ND CORRECT COPIES OF WHAT THEY PURPORT TO BE.

Mark McCrate
ignature of claimant

2016 March 14
Date

Mark McCrate
rint your name here

ignature of joint claimant, if any

Date

rint your name here

the claimant is other than an individual, or is not the person completing this form, the following also must be provided:

ignature of person signing on behalf of claimant

Date

rint your name here

apacity of person signing on behalf of claimant, if other than an ıdividual, *e.g.*, executor, president, trustee, custodian, etc. /lust provide evidence of authority to act on behalf of aimant – see paragraph 9 on page 4 of this Claim Form.)

REMINDER CHECKLIST:

1. Please sign the above release and certification. If this Claim Form is being made on behalf of joint claimants, then both must sign.

2. Remember to attach only **copies** of acceptable supporting documentation as these documents will not be returned to you.

3. Please do not highlight any portion of the Claim Form or any supporting documents.

4. Keep copies of the completed Claim Form and documentation for your own records.

5. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. **IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, PLEASE CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT 1-866-459-1720.**

6. If your address changes in the future, or if this Claim Form was sent to an old or incorrect address, please send the Claims Administrator written notification of your new address. If you change your name, please inform the Claims Administrator.

7. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at the above address or toll-free at 1-866-459-1720, or visit www.GMSecuritiesLitigation.com. Please DO NOT call GM, any other Defendants or their counsel with questions regarding your claim.

THIS CLAIM FORM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY PREPAID, FIRST-CLASS MAIL, **POSTMARKED NO LATER THAN APRIL 27, 2016**, ADDRESSED AS FOLLOWS:

New York State Teachers' Retirement System
v. General Motors Company
c/o Garden City Group, LLC
P.O. Box 10262
Dublin, OH 43017-5762
1-866-459-1720
www.GMSecuritiesLitigation.com

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before April 27, 2016 is indicated on the envelope and it is mailed First Class, and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to fully process all of the Claim Forms. Please be patient and notify the Claims Administrator of any change of address.

MARK MCCRATE
641 STONEYBROOK DR
KETTERING OH 45429-5319

SCOTTRADE, INC
2323 MIAMISBURG -
CENTERVILLE RD
DAYTON OH 45459
937-4349420

Symbol			Account #	Tax Lot #		AT*	Cap*	AI*	Trade Date	Settlement Date
GM			REDACTED			1	1	4	1/13/2014	1/16/2014
Buy/Sell	**Quantity**	**CUSIP Number**	**Security Description**						**Coupon**	**Execution Time**
Bought	51	37045V100	GENERAL MTRS CO							15:14:18

Price	Principal	Commission	State Tax	Misc. Fee*	MF Trans Fee*	Misc*	Interest	Net Amount
39.50	2014.50	7.00	0.00	0.00	0.00	0.00	0.00	2,021.50

ADDITIONAL INFORMATION:

UNSOLICITED ORDER

In accordance with your instructions we are confirming the transaction(s) reported on this document for your account, subject to the terms listed below. Please retain this confirmation for tax purposes. Notify Scottrade immediately if any information contained in this confirmation is not correct. This confirm will be deemed correct in all aspects unless written notice of any inaccuracy is promptly sent to us. Failure to notify us within ten (10) days constitutes your acceptance of this transaction. The agreement controlling this transaction and the explanation of the symbols is printed below.

AGREEMENT

It is agreed between Scottrade, Inc. ("Scottrade") and the Customer that:

1. All transactions are subject to the rules and regulations of the US Securities and Exchange Commission, the Federal Reserve Board, the Financial Industry Regulatory Authority, or any Market Center, Clearing Agency, or regulatory authority that may have jurisdiction over this transaction.
2. All securities carried in a margin account may at any time be hypothecated and commingled with securities carried for the account of other customers and loaned or pledged by Scottrade for a sum not to exceed 140% of the aggregate indebtedness of that margin account.
3. The Customer agrees to deliver securities sold and payment for securities bought to Scottrade no later than the settlement date. Otherwise, the securities may be bought in or sold out at the discretion of Scottrade. Failure to meet settlement may also result in the cancellation of this transaction or additional charges added to the account. Customer agrees to accept any liability resulting from any failure to complete the transaction. Pending full payment on purchase, securities may be hypothecated and commingled with other securities so purchased until payment is received.
4. On purchases the name of the seller, and on sales the name of the purchaser, date and time of transaction, as well as any additional remuneration received by Scottrade in connection with this transaction, will be provided upon request.
5. Should it become apparent that a dividend claim will be forthcoming after the settlement of this transaction, Scottrade reserves the right to withhold the claim amount from any proceeds or amount due.

EXPLANATION OF CODED SYMBOLS

AT* - Account Type
0. Broker Dealer
1. Cash
2. General Margin
3. Short
4. Special Subscription
7. Flexible Reinvestment Program™

CAP* - Capacity in which the firm acted:
1. As Agent for you we have sold or bought this security.
2. As Principal we have sold to you or bought from you this security.
3. As Agent for another we have sold to you or bought from you this security.
4. As Agent for both buyer and seller.
5. As Principal with commission equivalent charged.

AI* - Account Instructions
1. Transfer and mail security to customer
2. Hold security
3. Safekeep security in customer name
4. Safekeep security in street name
5. Special written instructions
J. Hold funds in account
K. Mail check to customer on receipt of security
L. Apply proceeds to purchase
M. Special written instructions

Misc. Fee* - A regulatory transaction fee levied to recover costs associated with fees assessed to the firm by self regulatory organizations. The fee is calculated as a percentage of sale proceeds, and fractional amounts may be rounded up to the next cent. If your confirmation indicates an average price was received, the fee shown is the sum of fees charged to multiple partial fills, rounded up to the next cent.

MF Trans Fee* - Fees charged related to Mutual Fund transactions

will display in this field, which may include the Contingent Deferred Sales Charge, short term redemption fee and/or transaction fees.

Misc* - Miscellaneous charges such as:
- Certificate Fees
- Postage and Handling
- Other

Average Price: For trades where an average price was used (due to multiple executions), the price of each individual execution is available by contacting your local branch office or registered investment advisor. The average price will be reported to the IRS when applicable.

Bond Ratings Disclosure: This confirmation may contain information obtained from third parties, including ratings from credit ratings agencies such as Standard & Poor's. Reproduction and distribution of third party content in any form is prohibited except with the prior written permission of the related third party. Third party content providers do not guarantee the accuracy, completeness, timeliness or availability of any information, including ratings, and are not responsible for any errors or omissions (negligent or otherwise), regardless of the cause, or for the results obtained from the use of such content. Third party content providers give no express or implied warranties, including but not limited to, any warranties of merchantability or fitness for a particular purpose or use. Third party content providers shall not be liable for any direct, indirect, incidental, exemplary, compensatory, punitive, special or consequential damages, costs, expenses, legal fees, or losses (including lost income or profits and opportunity costs) in connection with any use of their content, including ratings. Credit ratings are statements of opinions and are not statements of fact or recommendations to purchase, hold or sell securities. They do not address the suitability of securities or the suitability of securities for investment purposes, and should not be relied on as investment advice.

Call Features: If the trade confirmation notes that the security purchased has a call feature, or additional call features that may affect yield, please contact your local branch office (or registered investment advisor, if applicable) if you would like to receive further information regarding the security.

Canadian Securities: Orders in Canadian securities executed on a Canadian exchange may be subject to a Canadian floor brokerage fee, which is included in the price displayed on the confirmation. Information on the applicability of this fee can be found on our website or by contacting your local branch office (or registered investment advisor, if applicable).

Due Bill: A due bill will show on all sale confirmations for a stock when a split is pending, to identify the seller's obligation to deliver securities sold to the buyer. The ratio displayed represents the number of shares owed for the number of shares sold.

EMMA (Electronic Municipal Market Access): This MSRB website provides access to official statements and trade data for municipal securities transactions. The information can be viewed, downloaded or printed at http://emma.msrb.org/ by searching for the cusip number.

Financial Transaction Tax: The French government recently adopted a financial transaction tax ("FTT") on broker-dealers. The tax is imposed at 0.2% on the net purchases of a customer on the trading day with respect to purchases of eligible equity securities, ADRs and other securities issued by French-listed companies having a market capitalization in excess of €1bn on January 1st of the year during which the trade occurs. The French authorities have published a list of securities that are subject to the FTT. Scottrade intends to impose a fee equal to 0.2% of the purchase price for each transaction subject to the FTT to offset taxes/charges incurred by Scottrade as a result of these transactions. This fee is not a pass through of the tax to Scottrade's customers and may be greater than or less than the tax incurred with respect to a particular customer's trading activity.

Order Routing Disclosure: Scottrade receives remuneration for directing orders to particular broker/dealers or market centers for execution. Such remuneration is considered compensation to the firm and the source and amount of any compensation received by the firm in connection with your transaction will be disclosed upon request. The identity of the market center to which any customer order is routed during the previous six month period is available upon request.

Short Transactions: Should this trade, through the result of a short sale, option assignment or exercise result in a short transaction, you understand that you will be responsible for any resulting loss, short rebate expense or associated costs incurred by us in connection with this "short" transaction.

Requests for Additional Information: Information requested by a customer pursuant to statements required on the confirmation shall be provided within five business days following the date of receipt of a request for such information; provided however, that in the case of information relating to a transaction executed more than 30 calendar days prior to the date of receipt of a request, the information shall be given or sent to the customer within 15 business days following the date of receipt of the request.

For a full explanation, please contact your local branch office (or registered investment advisor, if applicable).

MEMBER FINRA/SIPC

2323 Miamisburg-Centerville Rd. Dayton OH 45459-3721
p: 937-434-9420 • f: 937-434-5202

February 12, 2016

Mark McCrate
641 Stoneybrook Drive
Kettering, OH 45429-539

Re: Scottrade Account Branch REDACTED

Dear Mark McCrate,

Per your request, this letter is to confirm you were a shareholder of 51 shares of GM (CUSIP 37045V100) on July 27, 2014.

Sincerely,

Todd Kowalski
Investment Consultant

Mark McCrate
641 Stoneybrook Dr
Dayton OH 45429

Bernstein Litowitz Berger & Grossmann LLP
Salvatore J. Graziano Esq.
1251 Avenue of the Americas
44th Floor
New York, NY 10020

10020$1104 C018