



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

KELLY CASTILLO, NICHOLE BROWN,  
BRENDA ALEXIS DIGIANDOMENICO,  
VALERIE EVANS, BARBARA ALLEN,  
STANLEY OZAROWSKI, and DONNA  
SANTI,

Plaintiffs,

v.

GENERAL MOTORS COMPANY, f/k/a NEW  
GENERAL MOTORS COMPANY, INC.,

Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiffs Kelly Castillo, Nichole Brown, Brenda Alexis Digiandomenico, Valerie Evans, Barbara Allen, Stanley Ozarowski, and Donna Santi, by and through their undersigned attorneys, and for their Complaint for declaratory judgment pursuant to 10 Del.C. §6501, *et seq.*, state as follows:

**Case Overview**

1. This action arises from a judgment in a certified class action involving approximately 150,000 Saturn consumers against General Motors Corp. ("Old GM") prosecuted in the United States District Court for the Eastern District of California (Case No. 2:07-CV-02142 WBS-GGH, the "Class Action"), in which it was alleged that Old GM manufactured, sold, and/or distributed certain Saturn vehicles containing VTi transmissions that were inherently prone to premature failure.

2. On April 14, 2009, United States District Judge William B. Shubb entered final judgment ("Final Judgment") certifying the class (the "Class Members") and approving the

parties' settlement agreement (the "Agreement"). A copy of the Final Judgment is attached as Exhibit A. A copy of the Agreement is attached as Exhibit B.

3. This action seeks a declaration that Defendant General Motors Company, f/k/a New General Motors Company, Inc. ("New GM") expressly assumed liability under the Agreement and Final Judgment pursuant to the Amended and Restated Master Sale and Purchase Agreement ("ARMSPA") executed between Old GM and New GM dated June 26, 2009 as part of Old GM's bankruptcy proceedings. In short, the Agreement and Final Judgment are "Liabilities" as defined by the ARMSPA that arose under express written warranties provided by Old GM and, therefore, were expressly assumed by New GM pursuant to the ARMSPA. A copy of the ARMSPA is attached as Exhibit C.

4. In addition, Plaintiffs seek a declaration that New GM impliedly assumed liabilities under the Agreement and Final Judgment attendant to its customer service programs in connection with the corporate restructuring and attempted refurbishing of the GM and Saturn brands.

#### **Jurisdiction**

5. Plaintiff Kelly Castillo is an appointed class representative in the Class Action and a citizen of the State of California.

6. Plaintiff Nichole Brown is an appointed class representative in the Class Action and a citizen of the State of Georgia.

7. Plaintiff Brenda Alexis Digiandomenico is an appointed class representative in the Class Action and a citizen of the State of Virginia.

8. Plaintiff Valerie Evans is an appointed class representative in the Class Action and a citizen of the State of Missouri.

9. Plaintiff Barbara Allen is an appointed class representative in the Class Action

and a citizen of Oklahoma.

10. Plaintiff Stanley Ozarowski is an appointed class representative in the Class Action and a citizen of the State of Illinois.

11. Plaintiff Donna Santi is an appointed class representative in the Class Action and a citizen of the State of Michigan.

12. Defendant New GM is a Delaware corporation with its principal place of business in Michigan and is a citizen of the States of Michigan and Delaware.

13. Non-party General Motors Corporation ("Old GM") is the original judgment debtor in the action underlying this lawsuit, and is a debtor in bankruptcy. Since the bankruptcy, Old GM has changed its name to Motors Liquidation Company.

14. Personal jurisdiction over New GM is proper because New GM is incorporated in Delaware, transacts substantial business within this State, has made or assumed contracts or promises substantially connected with this State, and has otherwise subjected itself to the general jurisdiction of this Court and the other courts in this State. 10 Del.C. §3104.

15. Venue is proper in this county because New GM resides herein.

#### **The Defective VTi Transmission**

16. Many Saturn owners experienced multiple VTi transmission failures during their vehicle's first 100,000 miles, and the average repair cost to the consumer was at least \$3,989.00, with many repairs costing in excess of \$5,500 for a transmission replacement.

17. The defectively designed/manufactured VTi transmissions are contained in 4-cylinder Model Year 2002-2005 Saturn Vues and Model Year 2003-2004 Saturn Ions.

18. In April of 2003, Old GM recognized excessive durability problems with the VTi transmission when it authorized its retailers to perform full off-vehicle warranty repairs of the VTi.

19. In early 2004, Old GM again recognized durability problems with the VTi transmission when it voluntarily extended the warranty on vehicles containing the VTi from 3 years / 36,000 miles to 5 years / 75,000 miles. However, this temporary remedy was inadequate.

### The Class Action

20. On October 10, 2007, the Class Action was filed in the United States District Court for the Eastern District of California based on, among other theories, breach of express warranty. A copy of the original Class Action Complaint is attached as Exhibit D. A copy of the First Amended Class Action Complaint is attached as Exhibit E. A copy of the Second Amended Class Action Complaint is attached as Exhibit F.

21. Plaintiffs' Class Action Complaint, particularly "Count II – Breach of Express Warranties" (Exhibit D, p. 14), states explicitly that it arises under the express written warranty provided by Old GM with the sale of the Saturn vehicles at issue:

- a. "***GM expressly warranted the vehicles*** at issue to be free of defects in factory materials and workmanship at the time of sale and for a period of ***three years or 36,000 miles*** and, further, that GM would, at no cost, correct any vehicle defect related to materials or workmanship during the warranty period. Such warranties are express warranties within the meaning of Section 2-313 of the Uniform Commercial Code (UCC) in each of the Class States at issue in the class action and are further governed by the Magnuson-Moss Warranty Act. 15 U.S.C. §§ 2301, *et seq.*" Exhibit D, p. 14, para. 71 (emphasis added).
- b. "More specifically, ***GM's 'New Car Limited Warranty'*** promises that GM 'will provide for repairs to the vehicle' during the warranty period and that '[t]his warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring' during the warranty period." Exhibit D, p. 14, para. 72 (emphasis added).
- c. "At the time of sale and forward, GM has ***breached these express warranties*** by

selling to Plaintiffs and the Class vehicles equipped with defective VTi transmissions that are, by design, unsafe, subject to extreme premature wearing and failure, and likely to cause serious injury to Plaintiffs and Class members – if the vehicles are even operable at all—and/or by refusing to adequately repair or replace their transmissions.” Exhibit D, p. 15, para. 77 (emphasis added).

- d. “As a direct and proximate cause of ***GM’s breach of express warranties***, Plaintiffs and the Class have suffered actual damages and are threatened with irreparable harm by virtue of an elevated and unreasonable risk of serious bodily injury.” Exhibit D, p. 15, para. 78 (emphasis added).
- e. “Any ***limitation on the duration of GM’s express warranties*** is unconscionable within the meaning of Section 2-302 of the UCC, and therefore is unenforceable in that, among other things, vehicles with VTi transmissions contain a latent defect of which GM was actually or constructively aware at the time of sale, and purchasers lacked a meaningful choice with respect to the terms of the warranty due to unequal bargaining power and a lack of warranty competition.” Exhibit D, p. 15, para. 79 (emphasis added).
- f. “Any attempt by GM to repair a defective VTi transmission or to replace one defectively designed VTi transmission with another defectively designed VTi transmission within the warranty period could not satisfy ***GM’s obligation to correct defects under the warranty***. The design defect in the VTi transmission – which unreasonably elevates the risk of premature failure, immobility and/or dangerous loss of operability of the vehicle – cannot be remedied through the continued use of a defective VTi transmission.” Exhibit D, p. 22, para. 81 (emphasis added).

22. Old GM filed a Declaration (the “Declaration”) swearing that the warranty relied upon in Plaintiffs’ complaint was, indeed, the Saturn Express Limited Warranty Booklet for 2003 Saturn Vue and provided a copy of the warranty for the Class Action file. A copy of the Declaration is attached as Exhibit G.

23. Along with Old GM's Motion to Dismiss the complaint filed in the Class Action, Old GM filed its Memorandum And Points Of Authority In Support Of Motion To Dismiss. A copy of that pleading is attached as Exhibit H. While disputing the merits of the Plaintiffs' claim, Old GM consistently acknowledged that Plaintiffs were asserting a claim under the Saturn Express Limited Warranty provided with the sale of a new vehicle, specifically, the warranty referenced in the Declaration, *supra*:

- a. "Contrary to Plaintiffs' allegations (Complaint, ¶¶ 30, 71), the *Limited New Vehicle Warranty for the 2003 Saturn VUE* did not warrant a 'defect-free' vehicle." Exhibit H, p. 2 (emphasis added).
- b. "Plaintiffs have chosen not to attach *the Saturn warranty* to their complaint. In ruling on the motion, however, the Court may judicially notice and consider this warranty *because the complaint refers to and relies upon this document* and it is indisputably authentic." Exhibit H, p. 2, fn. 2 (emphasis added).

24. In response to Old GM's Motion to Dismiss, Plaintiffs' Brief In Opposition To Defendant's Motion To Dismiss was filed in the Class Action. A copy of the Plaintiffs' brief is attached as Exhibit I. Plaintiffs' brief continued to assert a claim arising under the written warranty provided with the purchase of a new vehicle:

- a. "Plaintiffs' Complaint alleges that *GM provided an express warranty*, states the terms of the warranty, alleges that GM breached it, and claims that Plaintiffs suffered damages." Exhibit I, p. 29 (emphasis added).
- b. "GM's express warranty covers the defects the Plaintiffs allege. . . . Any ambiguity in the scope of the warranty should be construed against *GM as the drafter of the written warranty* and as the party with superior bargaining power." Exhibit I, p. 5 (emphasis added).

### The Settlement Agreement and Final Judgment

25. In July of 2008, Plaintiffs and Old GM entered into the Agreement to resolve the Class Action Relief under the Agreement is both retrospective and prospective. Class Members who purchased their vehicles new will receive 100% reimbursement for expenses incurred at 100,000 miles or less, and 75% reimbursement for expenses incurred between 100,001 and 125,000 miles. Class Members who purchased used vehicles will receive 75% reimbursement for expenses incurred at 100,000 miles or less, and 30% reimbursement for expenses incurred between 100,001 and 125,000 miles.

26. The Agreement executed by Old GM expressly acknowledged that the Class Action asserted a claim for breach of warranty: “[plaintiffs] claim that GM is liable to alleged class members for damages under state consumer protection statutes and *on breach of warranty* and unjust enrichment theories.” Exhibit B, p. 2, para. 2 (emphasis added).

27. According to the Agreement, Old GM entered into the settlement, at least in part, to promote customer satisfaction: “GM has concluded, however, that it is desirable to settle the Action upon the terms and conditions set forth herein because it will (i) fully resolve all claims that were or could have been raised in the Action; (ii) avoid the expense, burdens and uncertainties of continued litigation; and (iii) promote customer satisfaction with Saturn vehicles.” Exhibit B, p. 4, para. 5.

28. The definition of “Released Claims” in the Agreement executed by Old GM (a) included a broad class of claims related to VTi transmissions sufficient to include warranty claims in general and (b) specifically released the legal claims asserted in the Class Action:

“Released Claims” means any and all past present, and future claims, demands, causes of actions or liabilities, including but not limited to those for alleged violations of any state or federal statutes, rules or regulations,

and all common law claims, including Unknown Claims as defined herein, based on or related in any way to (a) the operation, design, durability, reliability, repair, value or performance of VTi transmissions in Class Vehicles or (b) the factual allegations and *legal claims that were made or could have been made in the Action*. Released Claims do not include any claim, demand or cause of action against GM for property damage or personal injury in connection with a VTi transmission.

Exhibit B, p. 6, para. 14 (emphasis added).

29. On September 8, 2008, Judge Shubb preliminarily approved the Agreement and ordered that notice be provided to the Class Members. A copy of the Memorandum and Order is attached as Exhibit J.

30. On January 12-13, 2009, the Notice of Proposed Class Action Settlement sent to Class Members, under the heading "DESCRIPTION OF THE LAWSUIT," advised the Class Members that the Class Action claimed that Old GM, among other things, "breached express . . . warranties." A copy of the Notice of Proposed Settlement is attached as Exhibit K.

31. On February 27, 2009, Plaintiffs filed their Memorandum In Support of Final Approval of Class Settlement, wherein the obligations created by the Agreement and Final Judgment were explained in terms of the original warranty provided with the vehicles. *See* Memorandum in Support of Final Approval, attached as Exhibit L.

32. A Final Fairness Hearing was held March 30, 2009, and Final Judgment approving the Agreement was entered by Judge Shubb on April 14, 2009.

33. Old GM was to mail claim forms to class members, but, instead, Old GM filed for bankruptcy protection on June 1, 2009.

#### **The GM Bankruptcy**

34. In its bankruptcy proceeding, Old GM sought and obtained authority to honor

customer service programs during the bankruptcy, including warranty obligations, via the filing of a motion entitled Motion Of Debtors For Entry Of An Order Pursuant To 11 U.S.C. §§ 105(A) And 363 Authorizing Debtors To Honor Prepetition Obligations To Customers, Dealers, And Trade Customers And To Otherwise Continue Warranty, Credit Card, Other Customer, Dealer, And Trade Customer Programs In The Ordinary Course Of Business (“GM’s Warranty Motion”). A copy of GM’s Warranty Motion is attached as Exhibit M.

35. GM’s Warranty Motion alleged repeatedly and in the strongest possible terms that customer satisfaction was essential to the success of its business and that honoring prepetition warranties was an essential component of customer satisfaction, and was ultimately imperative to ensure the successful sale of the GM assets, brands, and goodwill, to wit:

- a. “The Debtors’ customers are the lifeblood of their business. In this highly competitive business, customer satisfaction is the key to survival.” Exhibit M, p. 11, para. 30.
- b. “The Debtors believe that the assurance to the consumer public that all vehicle and parts warranties (whether pre- or postpetition) will be honored on an uninterrupted basis is crucial to their ongoing business operations and goodwill, and absolutely essential to maintaining customer loyalty.” Exhibit M, p. 13, para. 36.
- c. “The aggregate cost to the Debtors to honor and continue the Customer Programs is insignificant when compared to the irreparable harm and detrimental impact on their businesses that will be suffered if these programs are abandoned. Maintenance of the Customer Programs is essential to the ability of the Debtors to effectively compete in the market and to the continued viability of the Debtors’ business enterprise.” Exhibit M, p. 14, para. 36.
- d. “It is self-evident that continuation of the Warranty and Service Programs is essential to the Debtors’ ongoing business operations, to the maintenance of

customer goodwill and loyalty, and to efforts to preserve the residual value of GM-branded products in the marketplace. Any risk that these programs will not continue in accordance with past practice would irreparably damage the GM enterprise and its reputation in the marketplace, to the detriment and prejudice of all parties in interest. Indeed, if existing and future consumers cannot rely on the continued availability and honoring of warranty claims, GM's entire customer base would likely erode." Exhibit M, p. 16, para. 42.

- e. "The Debtors submit, and it can hardly be legitimately disputed, that the continuing support of their customers is imperative to their ongoing operations and the viability of the enterprise, and the uninterrupted continuance of Customer Programs is critical to maintaining and preserving such support." Exhibit M, p. 23, para. 62.
- f. "The failure to maintain the Customer Programs will completely undermine the Debtors' sales efforts and place the Debtors at a severe, and perhaps insurmountable, competitive disadvantage. This is particularly true with respect to the Warranty and Service Programs which, if not honored and continued, would have a devastating impact on the Debtors' credibility in the market and its ability to effectively and competitively sell vehicles." Exhibit M, pp. 24-25, para. 65.

36. As part of the bankruptcy proceedings, Old GM and New GM entered into a contract for the sale and purchase of assets and selected liabilities, the ARMSPA.

37. The ARMSPA defines certain terms, including the following:

- a. "'Claims' means all rights, claims . . . causes of action, . . . rights of recovery, . . . litigation, . . . or proceedings by or before any Governmental Authority or any other Person, of any kind or nature, whether known or unknown, accrued, fixed, absolute, contingent or matured, liquidated or unliquidated, due or to become due, and all rights and remedies with respect thereto." Exhibit C, p. 4.
- b. "'Contracts' means all purchase orders, sales agreements, supply agreements,

distribution agreements, sales representatives agreements, employee or consulting agreements, leases, subleases, licenses, *product warranty or service agreements* and *other binding commitments, agreements, obligations* and undertakings of any nature (whether *written* or oral, and whether *express or implied*)." Exhibit C, p. 5 (emphasis added).

- c. "'Law' means *any and all applicable United States* or Non-United States *federal, national, provincial, state* or local laws, rules, regulations, directives, decrees, treaties, *statutes*, provisions of any constitution and principles (including principles of common law) of any Governmental Authority, *as well as any applicable Final Order*. Exhibit C, p. 11 (emphasis added).
- d. "'Liabilities' means *any and all liabilities and obligations of every kind and description whatsoever*, whether such liabilities or obligations are known or unknown, disclosed or undisclosed, matured or unmatured, accrued, fixed, absolute, contingent, determined or undeterminable, on or off-balance sheet or otherwise, or due or to become due, including Indebtedness *and those arising under any Law, Claim, Order, Contract* or otherwise." Exhibit C, p. 11 (emphasis added).
- e. "'Order' means any writ, *judgment*, decree, stipulation, agreement, determination, award, injunction or similar order of any Governmental Authority, whether temporary, preliminary or permanent." Exhibit C, p. 12 (emphasis added).

38. According to the ARMSPA, New GM, as Purchaser, agreed to "assume and thereafter pay or perform as and when due, or otherwise discharge, all of the Assumed Liabilities." Exhibit C, p. 23.

39. Included among the "Assumed Liabilities" as defined by the ARMSPA are "all *Liabilities arising under express written warranties* of Sellers that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts,

accessories, engines and transmissions) manufactured or sold by Sellers or Purchaser prior to or after the Closing.” Exhibit C, p. 29, Section 2.3(a)(vii)(emphasis added).

40. For the reasons set forth above, the Agreement and the Final Judgment fall within the definition of “Liabilities” under the ARMSPA as, among other things, “Claims,” “Contracts,” “Law,” and/or “Orders.” Further, because the claims asserted in the Class Action and resolved by the Agreement and Final Judgment were based upon Old GM’s alleged breach of its express new car warranty, the Agreement and Final Judgment are “Liabilities arising under express written warranties of Sellers [Old GM] that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles.” As such, the Agreement and Final Judgment are “Assumed Liabilities” of New GM under the express terms of the ARMSPA.

#### **Treatment of Fresh Failures**

41. Despite the various phases of the litigation, Saturn VTi transmissions continue to fail, and Class Members are faced with the costs associated with malfunctioning VTi transmissions. These malfunctions are described as “fresh failures” (i.e., recent transmission failures rendering the vehicles inoperable).

42. Shortly after preliminary approval of the Agreement and months prior to the bankruptcy, Old GM began honoring the terms of the settlement as to fresh failures. Old GM trained customer service representatives as to procedures to follow when contacted with claims within the terms of the Agreement, and Old GM provided Class Counsel with a customer service phone number class members experiencing fresh failures could use to contact Old GM for reimbursement. In addition, Old GM began to systematically reimburse Class Members according to the terms of the settlement for expenses incurred related to fresh failures of VTi transmissions.

43. Counsel for Old GM in the Class Action confirmed its treatment of fresh failures in correspondence of October 15, 2008: “As we discussed, customers who contact GM’s Customer Assistance Center concerning recent VTi transmission problems are being handled by customer relations personnel who have been instructed to provide goodwill repairs and assistance in accordance with the terms of the pending settlement.” A copy of this correspondence is attached as Exhibit N.

44. Old GM continued to honor the settlement as set forth in the foregoing paragraph even after filing bankruptcy, and did so until the closing with New GM of the Sale and Purchase Agreement.

45. Separate and apart from New GM’s agreement to satisfy the “Assumed Liabilities” in the ARMSPA, Section 6.15 of the ARMSPA provides as follows:

From and after the Closing, Purchaser shall be responsible for the administration, management and payment of all Liabilities arising under (i) express written warranties of Sellers that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by Sellers or Purchaser prior to or after the Closing and (ii) Lemon Laws. Exhibit C, p. 69.

46. Following the closing of the ARMSPA, New GM began providing reimbursement to Class Members experiencing fresh failures consistent with the terms of the Agreement, even causing Class Members to submit claims for failed VTi transmissions on claim forms created in connection with and attached to the Agreement.

47. In connection with the bankruptcy, Old GM and New GM have both stated publicly and repeatedly that GM customers’ warranties would be honored by New GM.

48. Since purchasing the Old GM assets, New GM has continued to honor the Agreement as to fresh failures as set forth above. By way of example, Plaintiffs attach the following service invoices showing Saturn customers being compensated for VTi transmission repairs according to the terms of the Agreement and Final Judgment:

- a. Saturn service invoice dated July 17, 2009 showing that the original owner of a 2004 Vue with 111,943 miles was required to pay only 25% of \$3,991.01 for VTi transmission repairs and New GM paid the remaining 75%. Exhibit O.
- b. Saturn service invoice dated July 20, 2009 showing second owner of 2003 Vue with 68,373 miles was required to pay only 25% of \$4,552.28 for VTi transmission repairs and New GM paid the remaining 75%. Exhibit P.
- c. Saturn service invoice dated July 22, 2009 showing original owner of 2003 Vue with 99,975 miles required to pay nothing for extensive transmission repair and New GM paid 100%. Exhibit Q.

49. During Old GM's bankruptcy, Old GM and New GM have communicated with their customers, including Class Members, via direct mail or e-mail regarding the sale of the Saturn brand to Penske Automotive Group and Old GM's sale of assets to New GM. Correspondence on Saturn letterhead and GM letterhead are attached as Exhibits R and S, respectively.

50. Via this correspondence, Old GM and New GM have assured Class Members that New GM would honor their obligations under new vehicle warranties:

- a. "Saturn has always been a brand you can trust and I want you to be assured your vehicle's Saturn warranty is absolutely safe and sound. There is no change in the new vehicle warranty for any Saturn." Exhibit R.
- b. "We would like to remind you that dealers of GM vehicles will continue to service vehicles and honor GM vehicle warranties." Exhibit S.

- c. "This email is being sent by New GM on behalf of both General Motors Corporation and New GM." Exhibit S.

51. While Old GM and New GM publicly claim to be putting customers first, GM's former CEO, Rick Wagoner, will receive a severance package reportedly worth over \$8.15 million, a \$2.5 million cash value life insurance policy, and a \$74,000 annual pension payment.

52. Although New GM fulfilled certain obligations under the Agreement and Final Judgment, other obligations under the Agreement and Final Judgment have not been performed and are past due to be performed, such as payment of each Plaintiff's incentive award of \$2,500 and reimbursement of their Past Reimbursable Expenses as defined by the Agreement and Final Judgment.

53. Plaintiffs are intended to be third-party beneficiaries under the ARMSPA.

#### **COUNT I – EXPRESS ASSUMPTION OF LIABILITY**

1. - 53. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 53 as if fully set forth herein.

54. By virtue of its ARMSPA with Old GM, New GM expressly agreed to assume the liability under the Agreement and Final Judgment pursuant to its warranty obligations.

55. Plaintiffs have performed all of their obligations under the terms of the Agreement and Final Judgment.

WHEREFORE, Plaintiffs request the following relief:

- A. A declaration that the Agreement and Final Judgment are "Assumed Liabilities" under the ARMSPA; and
- B. Such other and further relief as the Court deems appropriate under the circumstances.

**COUNT II – IMPLIED ASSUMPTION OF LIABILITY**

1. - 53. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 53 as if fully set forth herein.

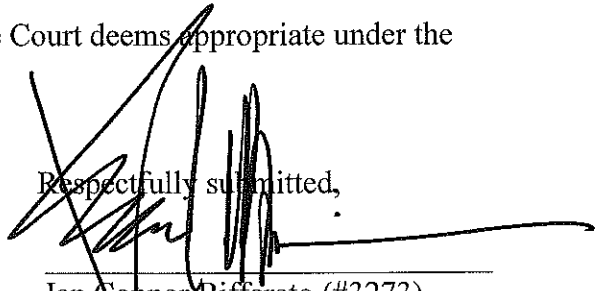
56. New GM has impliedly agreed to assume the Final Judgment liability by repeatedly and systematically honoring the terms of the Agreement by reimbursing Class Members who are outside any other warranty coverage for expenses related to malfunctioning VTi transmissions in amounts and via procedures consistent with the Agreement and Final Judgment.

WHEREFORE, Plaintiffs request the following relief:

- A. A declaration that Defendant assumed the liabilities under the Agreement and Final Judgment; and
- B. Such other and further relief as the Court deems appropriate under the circumstances.

Dated: August 26, 2009

Respectfully submitted,



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