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Return Date and Time:  
March 25, 2010 at 9:45 a.m

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re MOTORS LIQUIDATION COMPANY,  
f/k/a GENERAL MOTORS CORP., *et al.*,

Debtors,

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.

Chapter 11  
09-50026 (REG)  
Jointly Administered

Adv. Proc. No. 09-00509

**NOTICE OF FILING SUPPLEMENTAL EVIDENCE IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PARTIAL SUMMARY JUDGMENT AND IN OPPOSITION TO  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Plaintiffs previously submitted evidence (Doc. 31, Ex. W) involving the substitution of New GM into a Palm Beach County, Florida case, No. 09-CA-011174, alleging breach of express warranty. Plaintiffs now submit Exhibit Y—a true and correct copy of a pleading from

the Florida case entitled “Defendant General Motors, LLC’s Answer and Defenses to Count II of Plaintiff’s Amended Complaint”—which Plaintiffs first received on February 4, 2010. In its answer, New GM admits that it “assumed responsibility” under the ARMSPA for breach of express warranty claims *even where* New GM asserts affirmative defenses that the defects complained of “are not defects covered by the written New Vehicle Warranty” and that there “has been no breach of the written New Vehicle Warranty because the Subject Vehicle’s alleged defects have been corrected”—the very arguments made by New GM in this matter. *Ex. Y, Aff. Def. ¶¶ 3-4.*

Dated: February 9, 2010

Respectfully submitted,

By: /s/ Mark L. Brown

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**Attorneys for Plaintiffs**

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Defendant.

Chapter 11  
09-50026 (REG)  
Jointly Administered

Adv. Proc. No. 09-00509

**CERTIFICATE OF SERVICE**

I hereby certify that on February 9, 2010, I electronically filed Notice of Filing Supplemental Material in Support of Plaintiffs' Motion for Partial Summary Judgment and in Opposition to Defendant's Motion For Summary Judgment with the Clerk of Court using the CM/ECF system, which will send notification of such filings(s) to the following:

Gregory Oxford  
[goxford@icclawfirm.com](mailto:goxford@icclawfirm.com)

By: /s/ Mark L. Brown

Robert W. Schmieder II  
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# EXHIBIT

Y

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR  
PALM BEACH COUNTY, FLORIDA

SHERIF RAFIK KODSY,

Plaintiff,

vs.

CASE NO.: 09-CA-011174

GENERAL MOTORS COMPANY  
and MOTORS LIQUIDATION COMPANY,

Defendants.

FILED  
10 JAN - 8 PM 1:45  
REGINA R. BOCCIA  
PALM BEACH COUNTY  
CIRCUIT CIVIL

**DEFENDANT GENERAL MOTORS, LLC'S ANSWER  
AND DEFENSES TO COUNT II OF PLAINTIFF'S AMENDED COMPLAINT**

Pursuant to the Court's December 17, 2009 Order Granting Defendant's Motion for Substitution of Party, Defendant General Motors, LLC ("GM") f/k/a General Motors Company, hereby files this Answer and Defenses to Count II of Plaintiff's Amended Complaint and states the following:

1. GM admits that General Motors Corporation was the manufacturer of the 2008 Hummer H2 vehicle, bearing Vehicle Identification Number 5GRGN23878H107653 which is the subject of this litigation ("Subject Vehicle").
2. GM admits that Plaintiff purchased the Subject Vehicle from Coral Cadillac, Inc., an independent dealership authorized to sell and service GM vehicles.
3. GM admits that General Motors Corporation issued a written New Vehicle Limited Warranty applicable to the Subject Vehicle. The terms of the warranty speak for themselves. On July 10, 2009, GM assumed responsibility for General Motors Corporation's written New Vehicle Limited Warranty.

4. GM admits that Plaintiff brought the Subject Vehicle to an independent dealer authorized to service Hummer vehicles under General Motors Corporation's written New Vehicle Limited Warranty and that work was performed as reflected on the dealer's repair invoices.

5. GM denies all remaining allegations of the Amended Complaint not specifically admitted herein.

#### AFFIRMATIVE AND OTHER DEFENSES

GM demands judgment in its favor based upon the following affirmative and other defenses:

1. Based on the final and binding decision of the Florida New Motor Vehicle Arbitration Board in favor of General Motors Corporation, Plaintiff's breach of warranty claim is barred by the rule against splitting causes of action.

2. Based on the final and binding decision of the Florida New Motor Vehicle Arbitration Board in favor of General Motors Corporation, Plaintiff's breach of warranty claim is barred by the doctrine of collateral estoppel.

3. The alleged problems with the Subject Vehicle are not defects covered by the written New Vehicle Limited Warranty.

4. There has been no breach of the written New Vehicle Limited Warranty because the Subject Vehicle's alleged defects have been corrected.

5. There has been no breach of the written New Vehicle Limited Warranty if Plaintiff has failed to report the alleged defects to a dealer authorized to perform repairs under the written New Vehicle Limited Warranty and allowed the dealer a reasonable opportunity to correct the defects.

6. To the extent that the problems complained of were the result of misuse, abuse, accident, neglect, unauthorized modifications, or improper maintenance by persons other than GM or General Motors Corporation, the problems are not covered by the written New Vehicle Limited Warranty and GM is not responsible for the damages alleged by Plaintiff and may not be held liable for same.

7. The written New Vehicle Limited Warranty applicable to the Subject Vehicle disclaims and excludes liability for incidental and consequential damages.

8. Plaintiff cannot pursue a cause of action for breach of implied warranty against GM because GM did not assume responsibility for any breach of implied warranty allegations against General Motors Corporation. See pages 30-32 of the Amended and Restated Master Sale and Purchase Agreement and the approval order attached to GM's Motion for Substitution of Party as Exhibits "C" and "D" respectively.

9. No implied warranty arose between Plaintiff and GM because Plaintiff did not purchase the Subject Vehicle from GM and no sales or transactional privity exists between Plaintiff and GM.

10. Plaintiff cannot maintain a cause of action for breach of an implied warranty against GM if the alleged defects did not exist when the Subject Vehicle was first sold. Alternatively, if the alleged defects existed at the time of sale, no implied warranty arose to the extent that Plaintiff either refused to examine the Subject Vehicle before the purchase or examined it as fully as desired, and an examination ought to have revealed the alleged defects.

11. The written New Vehicle Limited Warranty displaces any alleged implied warranty to the extent that the alleged implied warranty is inconsistent with the written warranty.

12. To the extent that Plaintiff has failed to use reasonable care to mitigate any alleged damages by taking reasonable measures to prevent and/or minimize the losses being claimed as damages in the instant matter, Plaintiff's claim for damages in this case is barred or diminished.


13. GM is entitled to a setoff for monies received through a judgment, settlement or otherwise by Plaintiff from any party or non-party to this action in relation to the damages alleged in the Complaint.

14. GM reserves the right to plead any and all additional affirmative and other defenses that may become known during discovery.

WHEREFORE, General Motors Company, respectfully requests this Court to enter judgment in its favor.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to Sherif R. Kodsy, 15968 Laurel Oak Circle, Delray Beach, Florida 33484, this 6<sup>th</sup> day of January, 2010.

  
\_\_\_\_\_  
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**Tammy Pichee**

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**From:** nysbinfo@nysb.uscourts.gov  
**Sent:** Tuesday, February 09, 2010 4:52 PM  
**To:** courtmail@nysb.uscourts.gov  
**Subject:** 09-00509-reg Motion for Summary Judgment

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**U.S. Bankruptcy Court**

**Southern District of New York**

Notice of Electronic Filing

The following transaction was received from Mark L. Brown entered on 2/9/2010 at 5:52 PM and filed on 2/9/2010

**Case Name:** Castillo et al v. General Motors Company

**Case Number:** 09-00509-reg

**Document Number:** 35

**Docket Text:**

Motion for Summary Judgment *Notice of Filing Supplemental Evidence in Support of Plaintiffs' Motion for Partial Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment* (related document(s)[23], [20]) filed by Mark L. Brown on behalf of Barbara Allen, Nichole Brown, Kelly Castillo, Brenda Alexis DiGiandomenico, Valerie Evans, Stanley Ozarowski, Donna Santi. (Attachments: # (1) Exhibit Y) (Brown, Mark)

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**J:\LLF\Saturn Transmission(Product Defect)\Notes\2010-02-09\2010-02-09 NOF Supp Material in Support of P MSJ and in Opp D MSJ.pdf

**Electronic document Stamp:**

[STAMP NYSBStamp\_ID=842906028 [Date=2/9/2010] [FileNumber=7503172-0] [b24b1d3e0f94932704dd3d91a51a368a8a702bcd9b7909299bec67da2129fe1a7488d07520045ccf628f843ba51df8a6f7a0e684c1008756ae1834092a8df7e5]]

**Document description:**Exhibit Y

**Original filename:**J:\LLF\Saturn Transmission(Product Defect)\Notes\2010-02-09\Exhibit Y.pdf

**Electronic document Stamp:**

[STAMP NYSBStamp\_ID=842906028 [Date=2/9/2010] [FileNumber=7503172-1] [2eb336f08bbe678f4483e34e354cbbda6405f449e73945fd39535cbb9d2566b5c58f1086ce95fdd48e1dc3a2dcdcd8393a17323f92b980d3a1f99296845215aa]]

**09-00509-reg Notice will be electronically mailed to:**

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Gregory Oxford on behalf of Counter-Claimant General Motors Company  
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S. Alyssa Young on behalf of Plaintiff Barbara Allen  
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**09-00509-reg Notice will not be electronically mailed to:**

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Mark L. Brown

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LakinChapman LLC

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Robert W. Schmieder

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