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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

14-MD-2543 (JMF)

This Document Relates To:
Ward v. General Motors LLC, 14-CV-8317

ORDER

-----X
JESSE M. FURMAN, United States District Judge:

For the record, attached as Exhibit 1 are the final versions of the jury instructions and verdict forms for trial in this matter.

SO ORDERED.

Dated: July 18, 2017
New York, New York



JESSE M. FURMAN
United States District Judge

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DENNIS WARD, :
 :
 :
 Plaintiff, : 14-CV-8317 (JMF)
 :
 -v- :
 :
 GENERAL MOTORS LLC, :
 :
 Defendant. :
 :
-----X

JURY CHARGE

July 18, 2017

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I. GENERAL INTRODUCTORY CHARGES

Members of the jury, you have now heard all of the evidence in the case. It is my duty at this point to instruct you as to the law. My instructions to you will be in four parts.

First, I will give you general instructions about, for example, your role as the jury, what you can and cannot consider in your deliberations, and the burden of proof.

Second, I will describe the law to be applied to the facts as you find them to be established by the evidence.

Third, I will explain to you the process for calculating and awarding any damages should you find that the Plaintiff is entitled to damages.

Finally, I will give you some instructions with respect to your deliberations.

I am going to read my instructions to you. It is not my favorite way to communicate — and not the most scintillating thing to listen to — but because there is a need for precision, it is important that I get the words just right, and so that is why I will be reading.

Because my instructions cover many points, I have given you a copy of my instructions to follow along. (Please limit yourself to following along; that is, do *not* read ahead in the instructions.) If you find it easier to listen and understand while you are following along with me, please do so. If you would prefer, you can just listen and not follow along. Either way, you may take your copy of the instructions with you into the jury room so you can consult it if you want to re-read any portion of the charge to facilitate your deliberations.

For now, listen carefully and try to concentrate on the substance of what I'm saying. Also, you should not single out any instruction as alone stating the law, but you should consider my instructions as a whole when you retire to deliberate in the jury room.

Role of the Court and the Jury

You, the members of the jury, are the sole and exclusive judges of the facts. You must weigh and consider the evidence without regard to sympathy, prejudice, or passion for or against any party. It is your duty to accept my instructions as to the law and to apply them to the facts as you determine them. If either party has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow.

The Parties

As you know, the Plaintiff in this case is Dennis Ward and the Defendant is General Motors LLC (which has also been called GM LLC and New GM — to distinguish it from General Motors Corporation or Old GM). The mere fact that GM LLC is a company does not mean it is entitled to any greater or lesser consideration by you. All litigants are equal before the law, and companies, big or small, are entitled to the same fair consideration as you would give any other individual party.

Conduct of Counsel

It is the duty of a lawyer to object when the other side offers testimony or other evidence that the lawyer believes is not properly admissible. Therefore, you should draw no inference from the fact that there was an objection to any evidence. Nor should you draw any inference from the fact that I sustained or overruled an objection. Simply because I have permitted certain evidence to be introduced does not mean that I have decided on its importance or significance. That is for you to decide.

From time to time, the lawyers and I had sidebar conferences and other conferences out

of your hearing. Those conferences involved procedural and other matters, and none of the events relating to these conferences should enter into your deliberations at all.

Finally, the personalities and the conduct of counsel are not in any way in issue. If you formed opinions of any kind about any of the lawyers in the case, favorable or unfavorable, whether you approved or disapproved of their behavior, those opinions should not enter into your deliberations.

What Is and What Is Not Evidence

As I have told you many times, in reaching a verdict, you must consider only the evidence you have seen and heard in this courtroom. What, then, is evidence?

The evidence in this case is the sworn testimony of the witnesses, including any excerpts of deposition testimony that were read into the record or introduced by video, the exhibits received into evidence, and any stipulations of fact made by the parties.

A stipulation of facts, as I told you at the beginning of trial, is an agreement among the parties that a certain fact is true. You must regard such agreed facts as true.

What is not evidence? The questions posed to a witness are not to be considered by you as evidence. It is the witnesses' answers that are evidence, not the questions.

Testimony that has been stricken or excluded by me is not evidence and may not be considered by you in rendering your verdict.

Arguments by the advocates are not evidence. What you heard during the opening statements and summations is merely intended to help you understand the evidence to reach your verdict. If, however, your recollection of the facts differs from the statements, you should rely on your recollection.

At times, I may have admonished a witness or directed a witness to be responsive to questions or to keep his or her voice up. At times, I may have asked a question myself. Any questions that I asked, or instructions that I gave, were intended only to clarify the presentation of evidence and to bring out something that I thought might be unclear. You should draw no inference or conclusion of any kind, favorable or unfavorable, with respect to any witness or any party in the case, by reason of any comment, question, or instruction of mine. Nor should you infer that I have any views as to the credibility of any witness, as to the weight of the evidence, or as to how you should decide any issue that is before you. That is entirely your role.

To constitute evidence, exhibits must first be received in evidence. Exhibits marked for identification but not admitted (including demonstrative exhibits, which I will discuss more in a moment) are not evidence. Nor are materials brought forth only to refresh a witness's memory.

It is for you and you alone to decide the weight, if any, to be given to the testimony you have heard and the exhibits you have seen.

Demonstratives

During trial, the parties showed you what are called "demonstratives" — illustrations or reproductions of what the parties consider relevant information in this case, such as animations of the accident or the ignition switch. The demonstratives were shown to you in order to make the other evidence more meaningful and to aid you in considering the evidence. They are no better than the evidence upon which they are based, and are not themselves independent evidence. Therefore, you are to give no greater consideration to these demonstratives than you would give to the evidence upon which they are based.

It is for you to decide whether the demonstratives correctly present the information

contained in the exhibits on which they were based. You may consider the demonstratives if you find that they are of assistance to you in analyzing and understanding the evidence.

Direct and Circumstantial Evidence

There are two types of evidence that you may properly use in reaching your verdict. One type of evidence is direct evidence. One kind of direct evidence is a witness's testimony about something he or she knows by virtue of his or her own senses, something he or she has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit.

The other type of evidence is circumstantial evidence. Circumstantial evidence is evidence that tends to prove one fact by proof of other facts. There is a simple example of circumstantial evidence that is often used in this courthouse.

Assume that when you came into the courthouse this morning the sun was shining and it was a nice day. Assume also that there are no windows in this courtroom. As you are sitting here, someone walks in with an umbrella that is dripping wet. Someone else then walks in with a raincoat that is also dripping wet. Now, because there are no windows in our hypothetical, you cannot look outside the courtroom and see whether or not it is raining. So you have no direct evidence of that fact. But on the combination of the facts that I have asked you to assume, it would be reasonable and logical for you to conclude that between the time you arrived at the courthouse and the time these people walked in, it had started to rain.

That is all there is to circumstantial evidence. You can infer on the basis of reason, experience, and common sense from an established fact the existence or the nonexistence of some other fact. Many facts, such as a person's state of mind, can only rarely be proved by direct evidence. Circumstantial evidence is of no less value than direct evidence; the law makes

no distinction between direct and circumstantial evidence, but simply requires that you, the jury, decide the facts in light of all the evidence, both direct and circumstantial.

Limited Purpose Evidence

If certain testimony or evidence was received for a limited purpose, you must follow the limiting instructions I have given.

The '423 Switch Versus the '190 Switch

As you know, you have heard and seen evidence about at least two different kinds of ignition switches that were installed in General Motors cars — the so-called '423 switch and the so-called '190 switch (the latter of which was in Mr. Ward's car). As I've told you many times, it is for you to determine what weight, if any, to give evidence concerning the '423 switch. In determining the weight to give that evidence, you may consider the degree to which the '423 switch is similar or not similar to the '190 switch that was installed in Mr. Ward's car.

Relatedly, during trial, you heard evidence of other accidents or incidents involving vehicles manufactured by Old GM. You may consider that evidence solely for the purpose of determining whether Old GM or GM LLC (that is, New GM) had notice or knowledge of a potential defect in the ignition switch in certain vehicles, including the 2009 Chevrolet HHR. You may not consider evidence regarding other accidents or incidents in evaluating whether the ignition switch in Mr. Ward's vehicle was defective; whether his accident was caused by any alleged defect; or whether Mr. Ward suffered any injuries as a result of any alleged defect.

It is for you to determine what weight, if any, to give this evidence. In determining the weight to give the evidence, you may consider not only the degree to which the '423 switch was

similar to the '190 switch in Mr. Ward's car, but also the degree to which the other accident or incident you are considering was similar to Mr. Ward's accident.

In considering the evidence, however, you should not allow sympathy for people involved in another accident or incident to color your judgment about the issues you are to decide in this case.

Preponderance of the Evidence

Before I instruct you on the issues you must decide, I want to define for you the standard under which you will decide whether a party has met its burden of proof on a particular issue. The standard that applies to almost every issue in this case is the preponderance of the evidence. (In a few instances that I will explain to you, a higher standard applies.) As I told you at the beginning of the trial, proof beyond a reasonable doubt, which is the proper standard of proof in a criminal trial, does not apply to a civil case such as this and you should put it out of your mind.

To establish by a preponderance of evidence means that the evidence of the party having the burden of proof must be more convincing and persuasive to you than that opposed to it. The difference in persuasiveness need not be great: So long as you find that the scales tip, however slightly, in favor of the party with the burden of proof — that what the party claims is more likely than not true — then that element will have been proved by a preponderance of evidence. And here it is important for you to realize that this refers to the quality of the evidence and not to the number of witnesses, the number or variety of the exhibits, or the length of time spent on a subject. In determining whether any fact has been proved by a preponderance of evidence, you may consider the testimony of all of the witnesses and all of the exhibits.

Credibility of Witnesses

How do you evaluate the credibility or believability of the witnesses? The answer is that you use your common sense. You should ask yourselves: Did the witness impress you as honest, open, and candid? How responsive was the witness to the questions asked on direct examination and on cross-examination?

If you find that a witness is intentionally telling a falsehood, that is always a matter of importance you should weigh carefully. Yet, a witness may be inaccurate, contradictory, or even untruthful in some respects and entirely believable and truthful in other respects. It is for you to determine whether such inconsistencies are significant or inconsequential, and whether to accept or reject all or to accept and reject a portion of the testimony of any witness. You are not required to accept testimony even though the testimony is uncontradicted and the witness's testimony is not challenged. You may decide because of the witness's bearing or demeanor, or because of the inherent improbability of the testimony, or for other reasons sufficient to yourselves that the testimony is not worthy of belief.

There is no magic formula by which you can evaluate testimony. You determine for yourself in many circumstances the reliability of statements that are made by others to you and upon which you are asked to rely and act. You may use the same tests here that you use in your everyday life.

In evaluating the credibility of the witnesses, you should take into account any evidence that a witness may benefit in some way from the outcome of the case. Such interest in the outcome creates a motive to testify falsely and may sway a witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor

in mind when evaluating the credibility of his testimony, and accept it with great care.

Keep in mind, though, that it does not automatically follow that testimony given by an interested witness is to be disbelieved. There are many people who, no matter what their interest in the outcome of the case may be, would not testify falsely. It is for you to decide, based on your own perceptions and common sense, to what extent, if at all, the witness's interest has affected his or her testimony.

Preparation of Witnesses

You have heard evidence during the trial that certain witnesses, including expert witnesses, have discussed the facts of the case and their testimony with the lawyers before the witnesses appeared in court. Although you may consider that fact when you are evaluating a witness's credibility, there is nothing either unusual or suspect about a witness meeting with lawyers before testifying so that the witness can be aware of the subjects he or she will be questioned about, focus on the subjects, and have the opportunity to review relevant exhibits before being questioned about them. In fact, it would be unusual for a lawyer to call a witness without such consultation. Again, the weight you give to the fact or the nature of the witness's preparation for his or her testimony and what inferences you draw from such preparation are matters completely within your discretion.

Expert Witnesses

You have heard expert testimony in this case from both the Plaintiff and GM LLC. As I have told you, when a case involves a matter requiring special knowledge or skill not ordinarily possessed by the average person, an expert is permitted to state his opinion for the information of

the Court and jury. Such testimony is presented to you on the theory that someone who is experienced and knowledgeable in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

The opinion stated by each expert who testified before you was based on particular facts as the expert himself observed them and testified to them before you, or as he was told by somebody else or as appeared to him from some record, photograph, or video. You may reject an expert's opinion if you find, from the evidence in this case, that the underlying facts are different from those that formed the basis of the opinion. You may also reject an expert's opinion if, after careful consideration of all the evidence in the case, including expert and other testimony, you disagree with that opinion. In other words, you are not required to accept an expert's opinion to the exclusion of the facts and circumstances disclosed by other evidence. Such an opinion is subject to the same rules concerning reliability as the testimony of any other witness, and it is allowed only to aid you in reaching a proper conclusion.

In weighing an expert's testimony, you may consider the expert's qualifications, opinions, reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness's testimony. You may give the expert testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not, however, accept a witness's testimony merely because he is an expert. Nor should you substitute an expert's opinion for your own reason, judgment, and common sense. The determination of the facts in this case rests solely with you.

Charts and Summaries

Certain charts and summaries were admitted into evidence to help explain or summarize

the facts disclosed by other documents, many of which are also in evidence. These charts and summaries purport to summarize other documents, but if you decide that any chart or summary does not correctly reflect the facts shown by the other documents, you should disregard the summary or chart and determine the facts from the underlying evidence itself.

All Available Evidence Need Not Be Produced

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

You are not to rest your decision on what some absent witness who was not brought in might have testified to, or what he or she might not have testified to. No party has an obligation to present cumulative testimony.

Knowledge and Conduct of GM LLC Employees

A company can act only through its agents. Consequently, when you are considering the substantive rules of law about which I will instruct you, you should understand that a company is generally responsible for the conduct and knowledge of its agents who are acting in the course of and within the scope of their duties as agents for the company.

More specifically, a company can “know” things only through its agents and employees. As a general matter, the knowledge of an individual employee is “imputed” or attributed to his or her employer if the employee acquired the knowledge when he or she was acting within the scope of his or her employment and authority. That is true even if the employee did not formally

communicate the information to his or her employer.

Thus, knowledge of a GM LLC employee that was acquired while he or she was working at GM LLC can be imputed to GM LLC itself if the knowledge was related to the subject matter of the relevant individual's employment and if the knowledge was acquired by the GM LLC employee while acting in the scope of his or her employment and authority while employed by GM LLC. Additionally, knowledge of information contained in a document can be imputed to GM LLC if the document was created or read by a GM LLC employee acting within the scope of his or her employment and authority.

An employee or agent is acting within the scope of his or her employment and authority if (1) he or she is engaged in the transaction of business that has been assigned to him or her by his or her employer or (2) he or she is doing anything that may reasonably be said to have been contemplated as part of his or her employment. It is not necessary that an act or failure to act was expressly authorized by the employer.

GM LLC Versus Old GM

As I've told you, there is an important distinction between Old GM and GM LLC, which is the sole defendant in this case. When Old GM filed for bankruptcy in June 2009, GM LLC purchased some of its assets and assumed some — but not all — of its liabilities. The two companies are distinct entities as a matter of law and fact. For some purposes, GM LLC can be held liable for the conduct of Old GM. For other purposes, GM LLC can be held liable only for its own conduct. The instructions that I give you in a minute will explain the distinction further.

As you have heard, some of Old GM's employees began working at GM LLC after the bankruptcy, and some of Old GM's documents and data were transferred over to GM LLC.

Knowledge of an Old GM employee who went to work at GM LLC or knowledge of information contained in an Old GM document or data that was transferred to GM LLC can be imputed or attributed to GM LLC under certain circumstances.

Specifically, knowledge that a GM LLC employee acquired while working at Old GM can be imputed to GM LLC if you conclude that the GM LLC employee had the knowledge in his or her mind when he or she was working at GM LLC. Similarly, knowledge of information contained in an Old GM document can be imputed to GM LLC if you conclude that a GM LLC employee had that knowledge in his or her mind while working at GM LLC. In considering whether knowledge can be imputed to GM LLC, you may consider, among other things, the nature of the information involved and when the employee acquired it.

II. NATURE OF THE SUBSTANTIVE CLAIMS

That completes your general instructions. Let me turn, then, to the law that applies to the claim in this case. Mr. Ward brings a claim against GM LLC for negligence under Arizona law. As I told you at the beginning of the case, the Plaintiff's claim is governed by Arizona law because the accident in this case took place in Arizona. As I told you, the fact that the case is being tried here in New York City should not affect your views or deliberations in any way.

Negligence: Burden of Proof

Mr. Ward claims that both Old GM and New GM were negligent. In order to prevail on his claim for negligence, Mr. Ward must prove the following three elements by a preponderance of the evidence:

1. Old GM or GM LLC was negligent;

2. Mr. Ward was injured as a result of that negligence; and
3. Mr. Ward sustained damages as a result of that negligence.

GM LLC also claims that Mr. Ward was negligent. If you find that Mr. Ward has proved that Old GM or GM LLC was negligent, then you will be asked to decide if Mr. Ward was negligent too. In order to prove that Mr. Ward was negligent, GM LLC must prove by a preponderance of the evidence the following three elements:

1. Mr. Ward was negligent;
2. Mr. Ward was injured as a result of his negligence; and
3. Mr. Ward sustained his damages as a result of that negligence.

Negligence: Definition

Negligence is the failure to use reasonable care. Negligence may consist of action or inaction. Negligence is the failure to act as a reasonably careful person would act under the circumstances.

Reasonable care is the care a reasonably prudent person would have used under the circumstances to avoid risk of harm to another. If Old GM and/or GM LLC failed to use reasonable care, Old GM and/or New GM were negligent. If Mr. Ward failed to use reasonable care, Mr. Ward was negligent. You are to decide what is reasonable based upon your common experience.

Mr. Ward claims that Old GM was negligent in the manufacture of his 2009 Chevrolet HHR. Old GM was negligent if you find that Old GM failed to exercise reasonable care in the manufacture of his car. Old GM failed to exercise reasonable care in the manufacture of the car if Old GM should have recognized that the product, unless made with care, involved an

unreasonable risk of causing physical harm to those who used it for a purpose for which Old GM should have expected it to be used. If Old GM failed to perform this duty, Old GM was negligent.

Additionally, Mr. Ward claims that Old GM was negligent in the design of his 2009 Chevrolet HHR. A manufacturer has a duty to use ordinary care to design a product that is reasonably safe for its intended purpose and for any other reasonably foreseeable purpose. If Old GM failed to perform this duty, Old GM was negligent.

Finally, Mr. Ward claims that Old GM and GM LLC (that is, New GM) were negligent in failing to warn him that his car was defective. A manufacturer has a duty to use ordinary care to warn a purchaser of a defect in the product if the product would be unreasonably dangerous for its reasonably foreseeable use without an adequate warning. If Old GM or GM LLC failed to perform this duty, that entity was negligent. Note that you may find GM LLC (that is, New GM) negligent for failure to warn if the above standard was proved by Mr. Ward, even though New GM did not manufacture Mr. Ward's 2009 Chevrolet HHR.

GM LLC claims that Mr. Ward was negligent in the operation of his vehicle. A driver has a duty to operate his vehicle as a reasonably prudent driver would do under the same or similar circumstances. If Mr. Ward failed to perform this duty, he was negligent.

Compliance with Regulatory Standards

The Federal Motor Vehicle Safety Standards are minimum standards set by the federal government. Vehicle manufacturers are required to comply with them, but compliance with such standards does not by itself excuse any party from liability.

Negligence Per Se

I am now going to instruct you on certain laws. If you find from the evidence that the party bearing the burden of proof has shown by a preponderance of the evidence that the other party violated any of these laws, then that party is negligent. (Note that, to the extent that these laws pertain to Mr. Ward's claims, they relate solely to the conduct of GM LLC (that is, New GM), not to Old GM.) You should then determine whether that negligence was a cause of injury to Mr. Ward.

Notification of a Defect

First, to the extent relevant here, federal law requires the manufacturer of a motor vehicle to notify the owners and purchasers of the vehicle if the manufacturer "learns the vehicle . . . contains a defect and decides in good faith that the defect is related to motor vehicle safety." If you find that GM LLC (that is, New GM) violated that requirement, you should find that GM LLC was negligent. You should then determine whether that negligence was a cause of injury to Mr. Ward. Note that you may find GM LLC (that is, New GM) violated this standard even though New GM did not manufacture Mr. Ward's 2009 Chevrolet HHR.

Reporting Requirement

Second, to the extent relevant here, federal regulations require the manufacturer of a motor vehicle to provide a report to the National Highway Traffic Safety Administration "for each defect in [its] vehicles . . . that [it] . . . determines to be related to motor vehicle safety, and for each noncompliance with a motor vehicle safety standard in such vehicles . . . which [it] . . . determines to exist." Each such report must be submitted "not more than 5 working days after a defect in a vehicle . . . has been determined to be safety related, or a noncompliance with a motor vehicle safety standard has been determined to exist." If you find that GM LLC (that is, New

GM) violated that requirement, you should find that GM LLC was negligent. You should then determine whether that negligence was a cause of injury to Mr. Ward. Note that, again, you may find GM LLC (that is, New GM) violated this standard even though New GM did not manufacture Mr. Ward's 2009 Chevrolet HHR.

Reasonable and Prudent Speed

Third, Arizona has a law describing the “reasonable and prudent speed” for drivers on Arizona roads. That law reads as follows: “A person shall not drive a vehicle on a [road] at a speed greater than reasonable and prudent under the circumstances, conditions, and actual and potential hazards then existing. A person shall control the speed of a vehicle as necessary to avoid colliding with any object, person, vehicle or other conveyance on, entering or adjacent to the [road] in compliance with legal requirements and the duty of all persons to exercise reasonable care for the protection of others.” If you find that Mr. Ward violated that standard of conduct, you should find that Mr. Ward was negligent. You should then determine whether that negligence was a cause of injury to Mr. Ward.

Following Too Closely

Finally, Arizona has a law prohibiting one driver from “following too closely” another vehicle on Arizona roads. That law reads as follows: “The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent and shall have due regard for the speed of the vehicles on, the traffic on, and the condition of the [road].” If you find that Mr. Ward violated that standard of conduct, you should find that Mr. Ward was negligent. You should then determine whether that negligence was a cause of injury to Mr. Ward.

Causation

The second element of a negligence claim is causation. That is, before you can find any party at fault, you must find that that party's negligence was a proximate cause of Mr. Ward's injuries, if any. Negligence causes an injury if it helps produce the injury, and if the injury would not have happened without the negligence. There may be more than one cause of an injury.

An act is a *proximate* cause of an injury if it was a substantial factor in bringing about that injury and if the injury was a reasonably foreseeable consequence of that act.

Determining Relative Degrees of Fault

As noted, if you find that Mr. Ward has proved that Old GM or GM LLC is at fault, you will be asked to decide if GM LLC has proved that Mr. Ward was also at fault. On GM LLC's claim that Mr. Ward was at fault, you must decide whether GM LLC has proved that Mr. Ward was at fault (that is, whether he was negligent and whether his negligence was a proximate cause of his injuries) and, under all the circumstances of this case, whether any such fault should reduce Mr. Ward's full damages. These decisions are left to your sole discretion.

If you decide that Mr. Ward was at fault, and that his fault should reduce his damages, you must then determine the relative degrees of fault of all those whom you find to have been at fault. I will later reduce Mr. Ward's damages by the percentage of fault you have assigned to him.

The relative degrees of fault of each party are to be entered on the Verdict Form as percentages of the total fault for Mr. Ward's injury.

The fault of one party may be greater or lesser than that of another, but the relative

degrees of all fault must add up to 100%. This will be clear from the Verdict Form.

Negligence: Statement of Liability

In sum, if you find that neither Old GM nor GM LLC (that is, New GM) was at fault, then your verdict must be for GM LLC. That means that if you find that neither Old GM nor GM LLC was negligent, or if you find that their negligence was not a cause of Mr. Ward's injuries, then your verdict must be for GM LLC.

If you find that either or both GM LLC and Old GM were negligent, and that that negligence was a cause of Mr. Ward's injuries, then your verdict must be for Mr. Ward. You should then determine the full amount of Mr. Ward's damages, in accordance with the instructions I'll give you in a moment, and enter that amount on the verdict form.

You should then consider GM LLC's claim that Mr. Ward was at fault (that is, that he was negligent and that his negligence was a proximate cause of his injuries) and decide whether any such fault should reduce Mr. Ward's full damages.

III. DAMAGES

Damages Generally

If you conclude that Mr. Ward has met his burden of proving liability, then you must determine the damages, if any, to which Mr. Ward is entitled. You should not infer that Mr. Ward is entitled to recover damages merely because I am instructing you on how to calculate damages. It is exclusively your function to decide upon both liability and damages; I am instructing you on damages only so that you will have guidance should you decide that damages are warranted.

Compensatory Damages

Mr. Ward is seeking two types of damages in this case. First, he seeks what are known as “compensatory damages.” Compensatory damages seek to make a party whole — that is, to compensate him or her for injuries suffered. Compensatory damages are not intended to punish the party that you have found liable. The compensatory damages that you award, if any, must be fair and reasonable, neither inadequate nor excessive.

If you find GM LLC liable to Mr. Ward, you should decide the full amount of money that will reasonably and fairly compensate Mr. Ward for each of the following elements of damages proved to have resulted from the fault of Old GM or GM LLC.

1. The nature, extent, and duration of the injury;
2. The pain, discomfort, suffering, disability, disfigurement, and anxiety already experienced, and reasonably probable to be experienced in the future as a result of the injury;
3. Reasonable expenses of necessary medical care, treatment, and services rendered, and reasonably probable to be incurred in the future; and
4. Loss of the enjoyment of life — that is, the participation in life’s activities to the quality and extent normally enjoyed before the injury.

As with liability, Mr. Ward must prove his compensatory damages, if any, by a preponderance of the evidence. In awarding compensatory damages, if you decide to award them, you must be guided by dispassionate common sense. Computing compensatory damages may be difficult, but you must not let that difficulty lead you to engage in speculation or arbitrary guesswork. On the other hand, the law does not require that a party prove the amount of his

damages with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit. Nonetheless, compensatory damages must be established with reasonable certainty. In all instances, you are to use sound discretion in fixing an award of compensatory damages, drawing reasonable inferences where you deem appropriate from the facts and circumstances in evidence.

In determining compensatory damages, I caution you not to include anything for the payment of court costs and attorney fees; the law does not consider these as damages suffered by Mr. Ward. In other words, if you find that Mr. Ward is entitled to damages, the amount that you award should be the sum that you think will fully and fairly compensate him for his injuries, without regard to what he may pay his attorneys.

Pre-Existing or Subsequent Conditions and Aggravation of Conditions

Mr. Ward is not entitled to compensation for any physical or emotional condition that pre-existed the accident, or any physical or emotional condition that developed subsequent to the accident that was not caused by the accident. However, if Mr. Ward had any pre-existing physical or emotional condition that was aggravated or made worse by GM LLC's negligence, you must decide the full amount of money that will reasonably and fairly compensate Mr. Ward for that aggravation or worsening.

You must decide the full amount of money that will reasonably and fairly compensate Mr. Ward for all damages caused by the fault of GM LLC, even if Mr. Ward was more susceptible to injury than a normally healthy person would have been, and even if a normally healthy person would not have suffered similar injury.

Collateral Sources

The presence or absence of either party's insurance or benefits of any type — whether liability insurance, health insurance, or employment-related benefits — are not to be considered by you in any way in deciding the issue of liability or, if you return a verdict for Mr. Ward, in considering the issue of damages.

That is, the existence or lack of insurance or benefits shall not enter into your discussions or deliberations in any way in deciding the issues in this case. You shall decide this case solely on the basis of the testimony and evidence presented in the courtroom.

Punitive Damages

Second, Mr. Ward also seeks punitive damages. Punitive damages are intended to punish a wrongdoer for the conduct that harmed a plaintiff and to discourage similar conduct in the future. Punitive damages are recoverable based only on GM LLC's conduct and state of mind — *not* based on Old GM's conduct. Therefore, you may not consider the conduct of Old GM in determining whether punitive damages are warranted in this case.

As I instructed you earlier, the burden of proof with regard to the other aspects of this case is the preponderance of the evidence. However, with respect to Mr. Ward's claim for punitive damages — and only with respect to Mr. Ward's claim for punitive damages — the burden of proof is different. You may not award Mr. Ward punitive damages unless he has demonstrated that he is entitled to such damages by clear and convincing evidence. Proof by clear and convincing evidence means that Mr. Ward must persuade you that his punitive damages claim is highly probable. This burden of proof is more demanding than the

preponderance standard, which applies to all other claims in this case, but it is less demanding than the standard of proof beyond a reasonable doubt, which is used in criminal cases.

Mr. Ward is not entitled to punitive damages as a matter of right. To recover punitive damages, Mr. Ward has the burden of proving by clear and convincing evidence that GM LLC acted with an evil hand guided by an evil mind. This required state of mind may be shown by any one or more of the following:

1. An intent to cause injury;
2. Wrongful conduct motivated by spite or ill will; or
3. The conscious pursuit of a course of conduct knowing that it created a substantial risk of significant harm to others.

If you decide that Mr. Ward is entitled to compensatory damages, you should decide whether he has proved by clear and convincing evidence that he is entitled to punitive damages as well. You do not need to determine the amount of any such award.

IV. CONCLUDING INSTRUCTIONS

Selection of Foreperson

In a few minutes, you are going to go into the jury room and begin your deliberations. Your first task will be to select a foreperson. The foreperson has no greater voice or authority than any other juror, but is the person who will communicate with me when questions arise or when you have reached a verdict.

Right To See Exhibits and Hear Testimony

Shortly after you retire to deliberate, all of the exhibits will be given to you in the jury

room. If you want any of the testimony read, including any of the testimony that you heard by videotaped deposition, you may also request that. Keep in mind that if you ask for testimony, however, the court reporters must search through their notes, the parties must agree on what portions of testimony may be called for, and if they disagree I must resolve those disagreements. That can be a time-consuming process. So please try to be as specific as you possibly can in requesting portions of the testimony, if you do.

Your request for testimony — in fact, any communication with the Court — should be made to me in writing, signed by your foreperson with the date and time, and given to one of the Marshals.

Juror Note-Taking

If any one of you took notes during the course of the trial, you should not show your notes to, or discuss your notes with, any other jurors during your deliberations. Any notes you have taken are to be used solely to assist you. The fact that a particular juror has taken notes entitles that juror's views to no greater weight than those of any other juror. Finally, your notes are not to substitute for your recollection of the evidence in the case. If, during your deliberations, you have any doubt as to any of the testimony, you may — as I just told you — request that the official trial transcript that has been made of these proceedings be read back to you.

Duty To Deliberate

The most important part of this case, members of the jury, is the part that you as jurors are now about to play as you deliberate on the issues of fact. I know you will try the issues that

have been presented to you according to the oath that you have taken as jurors. In that oath you promised that you would well and truly try the issues joined in this case and a true verdict render.

As you deliberate, please listen to the opinions of your fellow jurors, and ask for an opportunity to express your own views. Every juror should be heard. No one juror should hold the center stage in the jury room and no one juror should control or monopolize the deliberations. If, after listening to your fellow jurors and if, after stating your own view, you become convinced that your view is wrong, do not hesitate because of stubbornness or pride to change your view. On the other hand, do not surrender your honest convictions and beliefs solely because of the opinions of your fellow jurors or because you are outnumbered.

Your verdict must be unanimous. If at any time you are not in such agreement, you are instructed that you are not to reveal the standing of the jurors, that is, the split of the vote, to anyone, including me, at any time during your deliberations.

Return of the Verdict

We have prepared a Verdict Form for you to use in recording your decisions, a copy of which is attached to these instructions. Do not write on your individual copies of the Verdict Form. Ms. Smallman will give the official Verdict Form to Juror Number One, who should give it to the foreperson after the foreperson has been selected. You should draw no inference from the questions on the Verdict Form as to what your verdict should be. The questions are not to be taken as any indication that I have any opinion as to how they should be answered.

After you have reached a verdict, the foreperson should fill in the Verdict Form and note the date and time, and all jurors agreeing with the verdict should sign the Verdict Form. The foreperson should then give a note — that is, *not* the Verdict Form itself — to the Court Security

Officer outside your door stating that you have reached a verdict. Do not specify what the verdict is in your note. Instead, the foreperson should retain the Verdict Form and hand it to me in open court when I ask for it.

I will stress again that *all* of you must be in agreement with the verdict that is announced in court. Once your verdict is announced by your foreperson in open court and officially recorded, it cannot ordinarily be revoked.

Further Proceedings

Immediately following your verdict, there may be a need for brief additional proceedings and deliberation. You should not concern yourself with that at this point, but I did want to make you aware of the possibility.

Closing Comments

Finally, I say this, not because I think it is necessary, but because it is the custom in this courthouse to say it: You should treat each other with courtesy and respect during your deliberations.

All litigants stand equal in this room. All litigants stand equal before the bar of justice. All litigants stand equal before you. Your duty is to decide between these parties fairly and impartially, and to see that justice is done.

Under your oath as jurors, you are not to be swayed by sympathy. You should be guided solely by the evidence presented during the trial and the law as I gave it to you, without regard to the consequences of your decision. You have been chosen to try the issues of fact and reach a verdict on the basis of the evidence or lack of evidence. If you let sympathy interfere with your

clear thinking, there is a risk that you will not arrive at a just verdict. All parties to a civil lawsuit are entitled to a fair trial. You must make a fair and impartial decision so that you will arrive at the just verdict.

Members of the jury, I ask your patience for a few moments longer, as I need to spend a few moments with the lawyers and the court reporter at the side bar. I will ask you to remain patiently in the jury box, without speaking to each other, and we will return in just a moment to submit the case to you. Thank you.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		:	
DENNIS WARD,		:	
	Plaintiff,	:	14-CV-8317 (JMF)
-v-		:	<u>VERDICT FORM</u>
GENERAL MOTORS LLC,		:	
	Defendant.	:	
-----X		:	

PLEASE CIRCLE YOUR ANSWERS

All Answers Must Be Unanimous

1. Did Plaintiff Dennis Ward prove by a preponderance of the evidence that Old GM failed to exercise reasonable care in the manufacture and/or design of Plaintiff's 2009 Chevrolet HHR?

YES NO

Regardless of your answer to Question 1, proceed to Question 2.

2. Did Plaintiff prove by a preponderance of the evidence that Old GM and/or GM LLC (that is, New GM) negligently failed to warn Plaintiff about a defect in his 2009 Chevrolet HHR that made the vehicle unreasonably dangerous for its reasonably foreseeable use?

YES NO

Regardless of your answer to Question 2, proceed to Question 3.

3. Did Plaintiff prove by a preponderance of the evidence that GM LLC (that is, New GM) failed to comply with applicable federal laws and regulations requiring notification and reporting, as included in the jury instructions?

YES NO

If you answered "Yes" to ANY of the preceding three Questions, then proceed to Question 4. If you answered "No" to ALL three of the preceding Questions, then proceed directly to the signature page.

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14-CV-8317
Verdict Form

- 4. Did Plaintiff prove by a preponderance of the evidence that the negligence you have found on the part of Old GM and/or GM LLC (New GM) was a proximate cause of Plaintiff's injuries?

YES NO

If you answered "Yes," then proceed to Question 5. If you answered "No," then proceed directly to the signature page.

- 5. Did Plaintiff prove by a preponderance of the evidence that he sustained damages as a result of the negligence you have found on the part of Old GM and/or GM LLC (New GM)?

YES NO

If you answered "Yes," then proceed to Question 6. If you answered "No," then proceed directly to the signature page.

- 6. If, but ONLY if, you answered "Yes" to Questions 4 and 5, then you should decide on a dollar amount that will compensate Plaintiff for the damages caused to him. Plaintiff Dennis Ward proved by a preponderance of the evidence that his damages totaled:

\$ _____.

Regardless of your answer to Question 6, proceed to Question 7.

Contributory Fault:

- 7. Did Defendant GM LLC prove by a preponderance of the evidence that on March 27, 2014, Plaintiff was negligent in failing to perform his duty to operate his 2009 Chevrolet HHR as a reasonably prudent driver would do under the same or similar circumstances?

YES NO

If you answered "Yes," then proceed to Question 8. If you answered "No," then proceed to Question 11.

- 8. Did Defendant GM LLC prove by a preponderance of the evidence that Plaintiff's negligence was a proximate cause of his injuries?

YES NO

If you answered "Yes," then proceed to Question 9. If you answered "No," then proceed directly to Question 11.

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Verdict Form

9. Do you wish to reduce Plaintiff's full damages because he was partially at fault?

YES NO

If you answered "Yes," then proceed to Question 10. If you answered "No," then proceed directly to Question 11.

10. What percentage of fault for Plaintiff Dennis Ward's injuries do you assign to Old GM and GM LLC (New GM), on the one hand, and to Plaintiff, on the other? The percentages must total 100%.

Old GM/GM LLC: _____%

Plaintiff Dennis Ward: _____%

(Total Must Equal 100%)

Regardless of your answer to Question 10, proceed to Question 11.

Punitive Damages:

11. Did Plaintiff Dennis Ward prove by clear and convincing evidence that he is entitled to punitive damages based on GM LLC's conduct on or after July 10, 2009?

YES NO

If you answered "Yes," then proceed to Question 12. If you answered "No," then proceed to the signature page.

12. Do you wish to assess punitive damages against GM LLC?

YES NO

Regardless of your response to Question 12, proceed to the signature page.

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Verdict Form

SIGNATURES

Sign your names in the space provided below, fill in the date and time, and inform the Court Security Officer — with a note, not the Verdict Form itself — that you have reached a verdict.

After completing the form, each juror who agrees with this verdict must sign below:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date and Time: _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DENNIS WARD, :
 :
 :
 Plaintiff, : 14-CV-8317 (JMF)
 :
 -v- :
 :
 GENERAL MOTORS LLC, :
 :
 Defendant. :
 :
-----X

JURY CHARGE
(PHASE TWO)

July 18, 2017

PHASE TWO: THE AMOUNT OF PUNITIVE DAMAGES

Members of the jury, you must now decide how much to assess in punitive damages. In doing so, you should follow the instructions I gave you earlier. But let me add a few brief comments on how you should decide on the amount of punitive damages.

The Amount of Punitive Damages

The law provides no fixed standard for the amount of punitive damages you may assess, but leaves the amount to your discretion. Nevertheless, the amount of punitive damages that you award must be both reasonable and proportionate to the actual and potential harm suffered by Mr. Ward, and to the measure of compensatory damages that you awarded him.

In deciding the amount of punitive damages to award, you may consider the character of GM LLC's conduct or motive; the nature and extent of the harm that GM LLC caused to Mr. Ward; and the nature and extent of GM LLC's financial condition and the impact your punitive damages award will have on GM LLC. You may consider evidence of actual harm to others in determining the seriousness of the hazard to the public and thus whether the conduct that harmed Mr. Ward was particularly reprehensible or bad. Conduct that risks harm to many may be more reprehensible than conduct that risk harm to only a few. You are not, however, to impose punishment on GM LLC for harms suffered by anyone other than Mr. Ward.

I remind you that punitive damages are recoverable based only on GM LLC's conduct and state of mind — *not* based on Old GM's conduct. Therefore, you may not consider the conduct of Old GM in determining the amount of punitive damages that are warranted in this case.

Return of the Verdict

We have prepared another Verdict Form for you to use in recording your decision, which Ms. Smallman will provide to the foreperson. As you will see, the Punitive Damages Verdict Form asks you to enter the amount in dollars of punitive damages that should be awarded to Mr. Ward. After deciding on an amount, the foreperson should fill in the Punitive Damages Verdict Form and note the date and time, and all jurors agreeing with the award should sign the Punitive Damages Verdict Form. The foreperson should then give a note — that is, *not* the Punitive Damages Verdict Form itself — to the Court Security Officer outside your door stating that you have reached a decision. Do not specify what the decision is in your note. Instead, the foreperson should retain the Punitive Damages Verdict Form and hand it to me in open court when I ask for it.

Once again, I stress that *all* of you must be in agreement with the decision that is announced in court. Once your decision is announced in open court and officially recorded, it too cannot ordinarily be revoked.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		:	
DENNIS WARD,		:	
	Plaintiff,	:	14-CV-8317 (JMF)
-v-		:	
		:	<u>PUNITIVE DAMAGES</u>
GENERAL MOTORS LLC,		:	<u>VERDICT FORM</u>
	Defendant.	:	
-----X		:	

Your Answer Must Be Unanimous

What is the total amount of punitive damages that you award Mr. Ward?

\$ _____.

SIGNATURES

Sign your names in the space provided below, fill in the date and time, and inform the Court Security Officer — with a note, not the Verdict Form itself — that you have reached a verdict.

After completing the form, each juror who agrees with this verdict must sign below:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date and Time: _____