JURY TRIAL IS REQUESTED AND DEMANDED

United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, N.Y. 10004-1408

Lead Case # 09-50026

In Re:	)	
	)	**Chapter 11**
GENERAL MOTORS CORP., et. al,,	)	**Case # 09-0950026**
Debtors	)	(Gerber)
	)	Jointly Administered

ADVERSARIAL COMPLAINT

Radha Ramana Murty Narumanchi (Murty) & **Plaintiffs**	)	**Adversarial Complaint**
Radha Bhavatarini Devi Narumanchi (Devi) ***Pro Se***	)	# _____
	)	
vs.	)	
	)	
(1) General Motors Corporation (GM)	)	
(2) Wilmington Trust Company (WTC)	)	
(3) Timothy F. Geithner (Geithner), Secretary of Treasury, U.S. Govt.	)	
(4) Steven Rattner (Rattner), U.S. President's nominee & Head Of Auto Task Force (ATF) in the Treasury Department	)	
(5) Ron Bloom (Bloom), Member, ATF	)	
(6) Mathew Feldman (Feldman), Member, ATF	)	**Dated: June 16, 2009**
(7) Harry J. Wilson (Wilson), Member, ATF	)	
(8) Kent Kresa (Kresa), Chairman of GM	)	
(9) Frederick "Fritz" Henderson (Henderson) , President & CEO of GM	)	
DEFENDANTS	)	

Part One (A) – Party Plaintiffs

1.0 Radha Ramana Murty Narumanchi (Murty) and Radha Bhavatarini Devi Narumanchi (Devi) are domiciles of Connecticut State, with a legal residential address at: 657 Middletown Avenue, New Haven, Connecticut 06513, since 1976. They are also citizens of the United States of America since 1971 .

JURY TRIAL IS REQUESTED AND DEMANDED

1.1 Both are pursuing this adversarial complaint as *Pro Se* plaintiffs.

1.2 Plaintiffs have legal standing to bring this action, since they own unsecured GM senior debentures (8.375% due in 2033) in the face value of $400,000 for which they had paid full par value in hard cash. They bought these bonds in different lots and have owned them since at least January 2005. They are, therefore, creditors in the current GM's Chapter 11 proceedings[1].

1.3 Plaintiffs are also "a party in interest" as that term and phrase are well understood in bankruptcy proceedings[2].

Part One (B) – Party Defendants

2.0 The bankrupt party, General Motors Corporation (GM), is said to be a corporate citizen of Delaware State, with an address at: 300 Renaissance Center, Detroit, Michigan 48265-3000, as well as a second address at: 767 Fifth Avenue, New York, N.Y. 10153. GM is our first defendant.

2.1 Wilmington Trust Company (ATF), the Second Defendant's state of corporate citizenship is of Delaware State, with an address at: Rodney Square North, 1100 North Market Street, Wilmington , Delaware 19890.

2.2 The third defendant is Timothy F. Geithner (Geithner), Treasury Secretary for the United States Government. His official address is: Department of Treasury, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220.

2.3 The fourth defendant is Steven Rattner (Rattner), President's nominee on Auto Task Force (ATF), working from the basement of the Department of Treasury, 1500 Pennsylvania Avenue, NW. Washington D.C. 20220.

---

[1]Plaintiffs intend to file their claim when they receive the notice of the "bar date" and a registry for such claims is opened.

[2]Separately, plaintiffs are filing their objections to the proposed Section 363 sale.

JURY TRIAL IS REQUESTED AND DEMANDED

2.4 The fifth defendant is Ron Bloom (Bloom), a member of ATF, working from the basement of the Department of Treasury, 1500 Pennsylvania Avenue, NW, Washington D.C. 20220.

2.5 The sixth defendant is Mathew Feldman (Feldman), a member of ATF, working from the basement of the Department of Treasury, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220.

2.6 The seventh defendant is Harry J. Wilson (Wilson), also a member of ATF, working from the basement of the Department of Treasury, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220.

2.7 The eighth defendant is Kent Kresa (Kresa), Chairman of the Board of Directors of the bankrupt GM with the address at: 300 Renaissance Center, Detroit, Michigan 48265-3000.

2.8 The nineth defendant is Frederick "Fritz" Henderson (Henderson), President and CEO of the bankrupt GM with the address at: 300 Renaissance Center, Detroit, Michigan 48265-3000.

Part Two – Different Counts of Adversary Complaint and Remedies Requested

(A) – Count # 1

3.1 Bankrupt defendant GM had starterd its automotive manufacturing operations in the USA about 100 years ago and reached the No. 1 position, globally, but then between the years 2005 and 2008, it had suffered massive losses, year after year, for a variety of reasons, chief among them being the extra-ordinarily runaway high labor costs. The massive losses during the years 2005 to 2008 in the amount of 84 billion dollars ($84,000,000,000) as follows:

(In Millions of Dollars)

	Amount of Net Income/ (Net Loss) for the	Net worth or Stockholders Equity/(Deficit) At the end of:
From Page 29 of 4-27-2009 GM's Exchange Offer:		
Year 2005	($10,417)	$14,442
Year 2006	($1,978)	($ 5,652)
Year 2007	($38,732)	($37,094)
Year 2008	($30,860)	($86,154)

JURY TRIAL IS REQUESTED AND DEMANDED

3.1.1 From these numbers admitted by the bankrupt defendant, in its published financial statements, it is obvious that some time during the year 2006, it had entered into the zone of "insolvency" [3], and the stockholders' equity was not only wiped out in full, but the company had also reached a point of no return as a "going concern".

3.1.2. Notwithstanding the insolvency, the bankrupt has failed, at least since some time in the year 2006, to protect the true and real best interests of the unsecured bondholders which stood at an aggregate amount of $27,378,898,712 [4]. The insolvent and now the bankrupt GM has failed in its fiduciary duty and

---

[3] We perfectly understand that the published financial statements by the insolvent, and now the bankrupt GM, applying "historical cost" bases, under the U.S.Generally Accepted Accounting Principles (GAAP), are not determinative of insolvency, but even if fair values and appreciation of assets are taken into account, and present values of liabilities are subtracted from such asset values, we are sure it will still show dozens of billions of dollars in accumulated deficit, i.e. a full blown state of insolvency, as a matter of reality. Moreover, if fair values are to be taken into account, then, where assets have declined in values, the concept of mark-to-market GAAP rule should also be implemented, which would obviously show a much deeper insolvency problem for the bankrupt GM.

[4] Of this amount, the bond debt in the USA consisted of $22,759,871,912 (with Wilmington Trust Company as the trustee); another bond debt of $175,976,800 with Bank of New York Mellon as the trustee; and European debt of $4,444,050,000. Assuming that the average investment per US family is about $50,000 in 46% of GM's unsecured bonds of $22,759,871,912 (it is assumed that about 54% is held by institutional and otherwise large scale investors), there may be **at least 210,000 US households** that are holding this unsecured debt of GM across this nation. Imagine how these **210,000 U.S. families** will be devastated when their life savings are brought to a zero value when the Obama administration is asking these low and middle income houses to make 100% sacrifices and become paupers, in the name of saving just high priced 60,000 jobs of GM workers (we assume these GM workers are the political allies of Obama administration). We submit that any loss of this proportion and magnitude should not be imposed on just the low and middle income families **(the voiceless and defense-less casualities and victims),** but if it is a matter of public policy to save the 60,000 (again the political allies of Obama administration and the democratic party) jobs of high-priced workers, then the loss should be spread across the nation by having the Federal Government (U.S. Treasury) absorb the entire loss under an appropriate congressional authorization and appropriation. Otherwise, it would become expropriation of private property, under the dictaates and duress of the executive branch, which is totally prohibited under the U.S. Constitution.

responsibilities to the unsecured bondholders. [5]

3.1.3 The following are the specific instances of gross negligence and total breach of fiduciary duty committed by the bankrupt GM, to the unsecured bondholders, during the period of its insolvency [6]:

(i) Pledging the "crown jewels" of the Corporation to the U.S. Treasury and thereby reducing the ability of the unsecured bondholders to achieve a maximum recovery of their investment;

(ii) Deepening the insolvency period of the bankrupt corporation and further wasting and dissipating the precious cash and assets of the corporation, and incurring additional liabilities, even after receiving about seventeen billion dollars ($17,000,000,000) from the U.S. Treasury; The inflow of funds from the U.S. Treasury to GM might have exceeded $20,000,000,000 by now.

(iii) Giving away the so-called severance payments to employees of insolvent GM, running into billions of dollars, during its period of actual insolvency, to the detriment of the unsecured bond-holders;.

(iv) Paying dividends to stockholders even after the company had entered into a state of insolvency, to the detriment of the unsecured bondholders; and

(v) Engaging and paying so-called consultants of all stripes and hues, in dozens of millions of dollars during the state of insolvency to the detriment of the unsecured bondholders.

---

[5] We are **not** stating here that we represent all the unsecured bondholders of GM. We are just interested in our own holding of $400,000 worth of 8.375% Senior Debentures due 7-15-2033, and the loss we would suffer if the bankrupt GM is allowed to sell all its crown jewels to a "good GM" headed by the U.S. Treasury, leaving all trashy, and worthless trinkets, to a "bad GM", to the detriment of the unsecured bondholders.

[6] We are sanguine and hopeful that the various creditor committees (yet to be formed in accordance with a request we are making hereunder) will investigate other illegal acts by the bankrupt GM through its directors, agents, officers, attorneys, et al. that could, would, and should be treated as illegal and criminal usurpation of the assets of the unsecured creditors, gross negligence and breach of fiduciary responsibilities to the unsecured bondholders.

JURY TRIAL IS REQUESTED AND DEMANDED

(A) - Count # 1 - Remedies Sought

3.1.4.1 A Declaratory judgment that defendant GM has been in a state of insolvency since at least the year 2006. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.1.4.2 A Declaratory judgment that the U.S. Department of Treasury, and any and all Auto Task Force (ATF) members thereof, including U.S. President's nominee, Steven Rattner, are "***insiders***" of the bankrupt GM, for the purpose of these bankruptcy proceedings; and also a Declaratory Judgment that all such personnel have/had the fiduciary duty, during GM's state of insolvency, to protect the interests of the unsecured bondholders and other creditors. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.1.4.3 A Declaratory judgment that the intervention of U.S. Treasury and any and all funds made available extended by the U.S. Treasury have, in fact, deepened and prolonged the insolvency of GM, to the detriment of the unsecured bondholders - in fact the asset values of GM have deteriorated to the detriment of the unsecured bondholders during this period of deepened and prolonged insolvency of GM. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.1.4.4 A Declaratory judgment that any document witnessing any and all pledging of assets to the U.S. Treasury, by GM, since the last quarter of 2008, is "null and void" *ab initio;* and also a Declaratory judgment that all funds given by the U.S. Treasury to GM since the last quarter of 2008 are/were in fact capital contributions to GM, and not loans (and especially not secured loans). Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.1.4.5 A Declaratory judgment that GM had utterly failed in its fiduciary duty and responsibilities to unsecured bondholders during its state of insolvency, and further continues with its behavior of not fulfilling its fiduciary duty and responsibilities towards unsecured creditors, and, therefore, all the

instant personnel of GM are removed from making any representation in this court on behalf of GM. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.1.4.6 Appoint a "Trustee" or a "Board of Trustees" or a "Receiver" to run the affairs of the bankrupt GM and make any submissions for reorganization of GM before this bankruptcy court.

3.1.4.7. Appoint an independent "Receiver" or "Examiner" or "Trustee" to examine the pay outs in dozens of millions of dollars to outside consultants, in terms of cost and benefit analysis, and to institute appropriate recovery or restitution proceedings against such culprits.

3.1.4.8 Also authorize the person(s) appointed under item (7) above, to examine the so-called severance amounts paid to employees of GM that run into billions of dollars, during the period of insolvency of GM and institute appropriate recovery or restitution proceedings against such recipient individuals.

3.1.4.9 Also authorize the person(s) appointed under item (7) above, to institute proceedings against all members of the Board of Directors of GM, individually and collectively, to recover or to have them restitute all the amounts paid as dividends to stockholders even after the company had entered into a state of insolvency, to the detriment of the unsecured bondholders.

3.1.4.10 Appoint a separate creditors (bondholders) committee to represent the unsecured bondholders, comprising of individuals and families, as follows:

Unsecured Creditors' Committee for Family Investors : To specifically represent all individuals and families that hold the unsecured bonds of GM in the aggregate amount of *lesser* than one million dollars ($1,000,000) *per individual* or *lesser* than $1,500,000 *per family*, but where the *cost basis* of the investment is *specifically greater than* 85% of the face value of such bond holdings.

(B) - Count # (2) Two

3.2 Defendant Wilmington Trust Company (WTC) is the current trustee for the unsecured debt securities issued by defendant GM, under an indenture issued in December 1995.

3.2.1 Article 4.06 of the said trust deed (or indenture) prohibits GM from issuing any debt on which

security interest would be granted on the assets of GM, to the detriment of unsecured debt security holders. Notwithstanding such a provision GM had entered into at least two security interests agreements with the U.S. Treasury Department. WTC did not take suitable action (legal or otherwise) against GM for violation of the covenants of the indenture. Nor did WTC notify all unsecured bondholders (debt securities), including the plaintiffs herein, of the violation of the indenture by GM.

3.2.2 As a result of gross incompetence, gross failure to take timely remedial action, on the part of defendant WTC, and also utter failure on the part of WTC to discharge its fiduciary duties, obligations, and responsibilities, now plaintiffs are on the verge of losing virtually their entire investment of $400,000 plus accrued interest in the amount of $16,375, in the unsecured debt of GM, due to voluntary filing of Chapter 11 bankruptcy on 6-1-2009 by GM.

(B) Count # (2) Two – Remedies Requested.

3.2.3.1 A Declaratory Judgment that defendant Wilmington Motors Corporation, as a Trustee, has failed in its fiduciary duties, obligations, and responsibilities towards unsecured bondholders (of debt securities).

3.2.3.2 A Money Damages Judgment in the full amount of loss sustained by all unsecured bondholders, including the plaintiffs, as well as for any future losses that may take place in the investment of the unsecured bondholders.

(C) – Count # (3) Three

3.3.1 It is said that the "field general" in the efforts of the U.S. Treasury Department to revamp GM is defendant Wilson. This is a self-styled expert in "restructuring distressed assets". He invited himself to join the U.S. President's Auto Task Force (ATF) by specifically writing to ATF's head honcho, defendant Rattner, who is the nominee of the U.S. President. A former hedge-fund star, in his past life, defendant Wilson appears to have become a "key voice" inside the ATF , leading a small clique known

as the "deals and diligence team". Obviously, defendant Wilson spent his time between GM's offices in Detroit, Michigan, and the Treasury Department in Washington, D.C.

The other defendant, Rattner, an investment banker[7], who, according to public records, owes federal taxes to the tune of $20,000,000 to $25,000,000 [8], is said to have played a "more central or contentious role" in the auto bailout. It is also said that defendant Rattner had campaigned openly for the job of being President's nominee to the ATF , and its head honcho [9], and credited with using "blunt force", "big dollars", "power of the Treasury"[10], "gambling with taxpayers' dollars", and mostly "President's bully pulpit", to cajole and bully the unsecured bondholders of GM, to agree to voluntarily put their heads under ATF's guillotine (and very unfortunately through this bankruptcy court)[11].

Bloom, yet another defendant, and a member of ATF, is said to have deep ties to organized labor (or is it an organized crime syndicate ?) and is a pivotal member of ATF. Defendant Feldman, is yet another member of ATF.

3.3.2 The Treasury Department, since at least the last quarter of the year 2008, and also ATF since its formation in the first quarter of the year 2009 had known or should have known that GM had been

---

[7] We should presume that he ceased from participating in his investment banking activities, and put all his assets in a blind trust (or liquidated them), once he accepted the head-honcho-ship of ATF.

[8] This should surprise no one in this country, nor this bankruptcy court, because, very very unfortunately, most of the candidates selected by President Obama, a man that wanted to bring "change", are found to be tax evaders, tax cheats or scofflaws, and the nominations had to be withdrawn the very moment such nominations were announced.

[9] It is said that this unsavory defendant has stirred controversy, in a pension-fund pay-to-play scandal in New York.

[10] We are sure that this defendant is going to have triple or quadruple fun (or even a higher multiplier) with about $40,000,000,000 of taxpayers' money to pay-and-play.

[11] It is needless to say that this bankruptcy court is the only competent judicial authority to prevent and stop the ATF (and the U.S. Treasury) and GM from **guillotining about 215,000 U.S. households, in this dastardly human sacrifice ritual.**

insolvent since at least some time in the year 2006.

3.3.3 The U.S. Treasury (and the ATF) who had extensively poured over the financial statements and other statistical data of GM, and did extensive analysis of the same, in consultation with outside and inside experts (where they spent millions of dollars, including some bankruptcy attorneys [12]) had known or should have known that any funds extended by it out of the taxpayers dollars, to insolvent GM, would never be recovered. Period.

3.3.4 Notwithstanding the clear undertaking by GM in its indenture of 1995 that it would not create any liens against its assets in order to safeguard the interests of the unsecured bondholders, the U.S. Treasury and ATF have bullied, instigated, and succeeded in creating **two** fictitious documents creating liens[13] in favor of U.S. Treasury, on the top of imposing onerous and impractical conditions and stipulations to have the unsecured bondholders debt reduced voluntarily to nothing but a zero value. Thus, these defendants have made GM cause a breach of contract with its unsecured bondholders.

3.3.5 U.S. Treasury (under the leadership of defendant Geithner) and ATF have committed an actionable tort in making aiding abetting GM to breach its indenture, to the detriment of unsecured bond-holders.

3.3.6 The actions of U.S. Treasury in providing funds to GM has deepened the insolvency of GM, i.e. fraudulently prolonging GM's corporate life beyond insolvency[14]. The Treasury and ATF providing any

---

[12] This is a clear indication that the U.S. Treasury and ATF were highly skeptical and deeply unsure about recovery of any funds.

[13] It is said, as per the exchange of debt offer document, that the First U.S. Treasury Loan Agreement was dated 12-31-2008; the Second U.S. Treasury Loan Agreement was dated 1-16-2009; and the modifications to these two agreements were on 3-31-2009.

[14] This harm had occurred when GM lacked the necessary cash or readily convertible- to- cash assets, and it also lacked the necessary income to pay either interest or pay off any borrowings, or both, assuming that U.S. treasury amounts were genuine loans, which they are, in fact, not.

any funds to GM has harmed the creditors, especially the unsecured bondholders, and it made it more difficult for GM to run a profitable business without recording to bankruptcy.

3.3.7 The U.S. Treasury and ATF maintained a strangle hold on GM, and when its past CEO, Rick Wagoner had proposed to convert the unsecured bondholders' debt into 90% of equity(Preferred and/or common stock to reduce the debt load) in any reorganized GM, ATF and the U.S. Treasury had prevailed upon the Board of Directors of GM to unceremoniously kick him out of his job and place a compliant CEO in his stead.

3.3.8 There are many instances of obnoxious control and behavior by the ATF personnel in interfering in the day-to-day operations of GM. More to be discovered after a discovery process. For all practical purposes and intents the U.S. Treasury and ATF could not be separated from the GM's own Board of Directors and Officers, i.e. to say that the U.S. Treasury and ATF were and continue to be *de facto* and *de jure* "insiders"[15], inasmuch as the funds provided by them to GM were nothing but infusion of capital i.e. equity investment[16].

(C) - Count # (3) Three – Remedies Sought

3.3.9.1 A Declaratory Judgment that GM has been in a state of insolvency since at least the year 2006. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.3.9.2 A Declaratory judgment that the U.S. Department of Treasury, and any and all Auto Task Force (ATF) members thereof, including U.S. President's nominee, Steven Rattner, are "***insiders***" of the bankrupt GM, for the purpose of these bankruptcy proceedings; and also a Declaratory Judgment that all

---

[15] We submit that as corporate "insiders", the U.S. Treasury and ATF have the fiduciary duty, obligation, and responsibility to protect the interests of the unsecured bondholders.

[16] Unfortunately, the $20,000,000,000 or so of cash funds injected into GM by the U.S. Treasury, since the last quarter of the year 2008, there is no corporate "trust fund" available, as of the date of Chapater 11 filing.

such personnel have/had the fiduciary duty, during GM's state of insolvency, to protect the interests of the unsecured bondholders and other creditors. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.3.9.3 A Declaratory judgment that the intervention of U.S. Treasury and any and all funds made available extended by the U.S. Treasury have, in fact, deepened and prolonged the insolvency of GM, to the detriment of the unsecured bondholders - in fact the asset values of GM have deteriorated to the detriment of the unsecured bondholders during this period of deepened and prolonged insolvency of GM. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.3.9.4 A Declaratory judgment that any document witnessing any and all pledging of assets to the U.S. Treasury, by GM, since the last quarter of 2008, is "null and void" *ab initio;* and also a Declaratory judgment that all funds given by the U.S. Treasury to GM since the last quarter of 2008 are/were in fact capital contributions to GM, and not loans (and especially not secured loans), and hence subordinate to to unsecured bondholders. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.3.9.5 A Declaratory judgment that the U.S. Treasury and ATF and all members and personnel thereof, had utterly failed in their fiduciary duty, obligations, and responsibilities to unsecured bondholders during its state of insolvency, and further continue with their behavior of not fulfilling its fiduciary duty and responsibilities towards unsecured creditors, and, therefore, all the instant personnel of U.S. Treasury and ATF, along with GM personnel are removed from making any representation in this court on behalf of U.S. Treasury and GM. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.3.9.6 Appoint a "Trustee" or a "Board of Trustees" or a "Receiver" to run the affairs of the bankrupt GM and make any submissions for reorganization of GM before this bankruptcy court.

JURY TRIAL IS REQUESTED AND DEMANDED

3.3.9.7 Appoint an independent "Receiver" or "Examiner" or "Trustee" to examine the pay outs in dozens of millions of dollars to outside consultants, in terms of cost and benefit analysis, and to institute appropriate recovery or restitution proceedings against such culprits.

3.3.9.8 Also authorize the person(s) appointed under item (7) above, to examine the so-called severance amounts paid to employees of GM that run into billions of dollars, during the period of insolvency of GM and institute appropriate recovery or restitution proceedings against such recipient individuals.

3.3.9.9 Also authorize the person(s) appointed under item (7) above, to institute proceedings against all members of the Board of Directors of GM, individually and collectively, to recover or to have them restitute all the amounts paid as dividends to stockholders even after the company had entered into a state of insolvency, to the detriment of the unsecured bondholders.

(D) – Count # (4) Four

3.4.1 Defendants Kresa and Henderson are members of the Board of Directors of GM, Kresa being its chairman and Henderson its President and CEO.

3.4.2 As members of the Board of Directors, and as the top officers of the corporation, they had known or should have known that the General Motors Corporation, had entered the zone of "insolvency" some time during the year 2006.

3.4.3 Notwithstanding the state of insolvency of GM, as members of the Board of Directors, these two defendants (of course, along with numerous other members) had approved, authorized, and paid cash dividends to the common stockholders, to the detriment of the interests of unsecured bondholders. Such dividends were paid through the second quarter of the year 2008. These two defendants had known or should have known that payment of dividends to stockholders during the state of insolvency of the corporation is illegal, and hence the directors that authorized and paid any cash dividends to shareholders during the insolvency of the corporation, would be liable individually and jointly, to restitute such

payments.

3.4.4 The GM Corporation had entered into a solemn agreement, through its 1995 indenture, to protect the interests of unsecured bondholders. The GM corporation made a promise and undertaking in its indenture not to have any liens laid on any of its assets under any future borrowings. The two defendants Kresa and Henderson have, however, deliberately violated such solemn undertaking by allowing the U.S. Treasury hold secured liens on the assets of the GM Corporation, the first such act taking place on 12-31-2008, and yet another second act taking place on 1-16-2009. These two acts constitute a breach of fiduciary duty, obligations, and responsibilities by the two defendants towards the unsecured bondholders. These two defendants are responsible for any loss to the unsecured bondholders which may run into billions of dollars, and hence such losses must be properly restituted to all unsecured bondholders that had suffered losses.

3.4.5 These two defendants had also caused payments made to workers of GM, in billions of dollars, as severance pay, when the corporation was in a state of insolvency. Such payments were to the detriment of the unsecured bondholders. Such payments have caused incalculable harm and damage to the best interests of the unsecured bondholders. These two defendants had failed in their fiduciary duty, responsibility, and obligations to unsecured bondholders, during the period of insolvency of the corporation. Therefore, any and all payments made to GM workers under the rubric of severance pay require to be accounted for and properly restituted by these two defendants, individually and jointly.

3.4.6 These two defendants had also engaged and paid vast amounts of money to the so-called consultants and experts of all stripes, hues, and colors, which sums run into dozens of millions of dollars, to the detriment of unsecured bondholders, during the state of insolvency of the corporation. Such funds need to be restituted by these two defendants, since they dissipate the funds that should be available to unsecured bondholders.

JURY TRIAL IS REQUESTED AND DEMANDED

3.4.6 These two defendants should have been holding up to their fiduciary responsibilities, duties, and obligations, during insolvency of the corporation. Instead, they have been working against the best interests of the unsecured bondholders. As such, these two defendants deserve to be removed from their positions and replaced with some other individuals who will safeguard the best interests of the unsecured bondholders.

(D) - Count # (4) Four – Remedies Sought

3.4.7.1 A Declaratory Judgment that GM has been in a state of insolvency since at least the year 2006. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.4.7.2 A Declaratory judgment that the U.S. Department of Treasury, and any and all Auto Task Force (ATF) members thereof, including U.S. President's nominee, Steven Rattner, are "***insiders***" of the bankrupt GM, for the purpose of these bankruptcy proceedings; and also a Declaratory Judgment that all such personnel have/had the fiduciary duty, during GM's state of insolvency, to protect the interests of the unsecured bondholders and other creditors. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.4.7.3 A Declaratory judgment that the intervention of U.S. Treasury and any and all funds made available extended by the U.S. Treasury have, in fact, deepened and prolonged the insolvency of GM, to the detriment of the unsecured bondholders - in fact the asset values of GM have deteriorated to the detriment of the unsecured bondholders during this period of deepened and prolonged insolvency of GM. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.4.7..4 A Declaratory judgment that any document witnessing any and all pledging of assets to the U.S. Treasury, by GM, since the last quarter of 2008, is "null and void" *ab initio;* and also a Declaratory judgment that all funds given by the U.S. Treasury to GM since the last quarter of 2008 are/were in fact capital contributions to GM, and not loans (and especially not secured loans), and hence subordinate to

to unsecured bondholders. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.4.7.5 A Declaratory judgment that the U.S. Treasury and ATF and all members and personnel thereof, had utterly failed in their fiduciary duty, obligations, and responsibilities to unsecured bondholders during its state of insolvency, and further continue with their behavior of not fulfilling its fiduciary duty and responsibilities towards unsecured creditors, and, therefore, all the instant personnel of U.S. Treasury and ATF, along with GM personnel (including defendants Kresa and Henderson) are removed from making any representation in this court on behalf of U.S. Treasury and GM. Such a judgment shall issue either as a matter of law or by a jury trial with jury as the finder of facts.

3.4.7.6 Appoint a "Trustee" or a "Board of Trustees" or a "Receiver" to run the affairs of the bankrupt GM and make any submissions for reorganization of GM before this bankruptcy court.

3.4.7.7 Appoint an independent "Receiver" or "Examiner" or "Trustee" to examine the pay outs in dozens of millions of dollars to outside consultants, in terms of cost and benefit analysis, and to institute appropriate recovery or restitution proceedings against such culprits.

3.4.7.8 Also authorize the person(s) appointed under item (7) above, to examine the so-called severance amounts paid to employees of GM that run into billions of dollars, during the period of insolvency of GM and institute appropriate recovery or restitution proceedings against such recipient individuals.

3.4.7.9 Also authorize the person(s) appointed under item (7) above, to institute proceedings against all members of the Board of Directors of GM, individually and collectively, to recover or to have them restitute all the amounts paid as dividends to stockholders even after the company had entered into a state of insolvency, to the detriment of the unsecured bondholders

3.4.7.10 Issue a Declaratory Judgment that defendants Kresa and Henderson have failed in their fiduciary duties, responsibilities, and obligations towards unsecured creditors by committing unlawful and illegal

JURY TRIAL IS REQUESTED AND DEMANDED

acts, and also breaching solemnly affirmed contractual obligations enshrined in the 1995 indenture of GM.

3.4.7.11 Issue a Money Judgment for the losses deliberately caused to the unsecured bondholders, in an amount to be determined during the trial, with jury as finders of fact.

RESPECTFULLY SUBMITTED.

Dated at New Haven, this 16th day of June, 2009.

CREDITORS AND PLAINTIFFS IN THE
ADVERSARIAL COMPLAINT (*Pro Se*)

6/16/2009

(Radha R.M. Narumanchi) (Radha B.D. Narumanchi)
657 Middletown Avenue
New Haven, Ct. 06513
Phone: (203) 562-0536
Email: rrm_narumanchi@hotmail.com

FORM 104 (10/06)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS RADHA R.M. NARUMANCHI & RADHA B.D. NARUMANCHI	**DEFENDANTS** GENERAL MOTORS CORPORATION, ET AL.
ATTORNEYS (Firm Name, Address, and Telephone No.) PRO SE 65 M MIDDLETOWN AVENUE # 203 - NEW HAVEN, CT 06513 562-0536	**ATTORNEYS** (If Known) NOT KNOWN
PARTY (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☒ Creditor ☐ Other ☐ Trustee	**PARTY** (Check One Box Only) ☒ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☒ Other ☒ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

NATURE OF SUIT
(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☒ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☒ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☒ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☒ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – reinstatement of stay
- ☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- ☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☒ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☒ Check if a jury trial is demanded in complaint	Demand $ 400,000 + ACCRUED INTEREST OF $16,375
Other Relief Sought Declaratory judgment Money judgment	

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR General Motors Corporation		BANKRUPTCY CASE NO. 09-09500026
DISTRICT IN WHICH CASE IS PENDING SDNY	DIVISIONAL OFFICE	NAME OF JUDGE Honorable Judge Gerber
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE	PRINT NAME OF ATTORNEY (OR PLAINTIFF)	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

ERRATA ORDER RE: DECISION ON DEBTORS' MOTION FOR APPROVAL OF (1) SALE OF ASSETS TO VEHICLE ACQUISITION HOLDINGS LLC; (2) ASSUMPTION AND ASSIGNMENT OF RELATED EXECUTORY CONTRACTS; AND (3) ENTRY INTO UAW RETIREE SETTLEMENT AGREEMENT

This matter having come up on the Court's own motion, it is ORDERED:

1. The Court's Decision on Debtor's Motion for Approval of (1) Sale of Assets to Vehicle Acquisition Holdings LLC; (2) Assumption and Assignment of Related Executory Contracts; and (3) Entry into UAW Retiree Settlement Agreement, dated July 5, 2009, is corrected in the respects noted below:

Page 2, footnote 3: change "did not identify any" to "identified no".

Page 35, first full paragraph: delete "s" to change "$17 billion in sales" to "$17 billion in sale".

Page 40, first paragraph: delete "*Illinois*" and add "*s*" to change "*Betty Owens Illinois School*" to "*Betty Owens Schools"*.

Page 49, first full paragraph: delete "the" to change "the EDC" to "EDC".

Page 49, second full paragraph: delete "the" to change "the EDC" to "EDC".

Page 49, footnote 84: delete “the” to change “the EDC” to “EDC”.

Page 57, footnote 99: add “as” to change “for as much or as little it covers” to “for as much or as little as it covers”.

Page 61, first full paragraph: delete “,” to change “and, additionally advance” to “and additionally advance”.

Page 61, footnote 110: delete “to” to change “may have to resort to dealers” to “may have resort to dealers”.

Page 67, second paragraph: insert “as” to change “additional rights to retiree insurance benefits” to “additional rights as to retiree insurance benefits”.

Page 73, last line: delete “s” to change “States AGs” to “State AGs”.

Page 78, first full paragraph: change “State Attorneys General” to “AGs”.

Page 80, third paragraph, in second, third, and fourth sentences: change “Consent Decree” to “consent decree” in three places.

Page 81: move “For now it is sufficient to note that” from beginning of first paragraph to beginning of third paragraph. Change “the ECC Trust” to “The ECC Trust” at beginning of first paragraph, and “The ECC Trust’s” to “the ECC Trust’s” at beginning of third paragraph.

Page 82, third paragraph: insert “e” to change “therafter” to “thereafter”.

Page 84, first paragraph: delete “the” to change “the EDC” to “EDC”.

Page 86, second full paragraph: change “evidenced by” to “of”.

Page 87, footnote 143: insert “and 6006(d)” and “s” to change “shortens the Fed.R.Bankr.P. 6004(h) period” to “shortens the Fed.R.Bankr.P. 6004(h) and 6006(d) periods”.

2. Future references to this decision shall be to the decision as corrected, a copy of which is attached as exhibit A.

Dated: New York, New York
July 6, 2009

s/Robert E. Gerber
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DECISION ON DEBTORS' MOTION FOR APPROVAL OF (1) SALE OF ASSETS TO VEHICLE ACQUISITION HOLDINGS LLC; (2) ASSUMPTION AND ASSIGNMENT OF RELATED EXECUTORY CONTRACTS; AND (3) ENTRY INTO UAW RETIREE SETTLEMENT AGREEMENT

APPEARANCES:[1]
WEIL, GOTSHAL & MANGES LLP
Attorneys for Debtors and Debtors in Possession
767 Fifth Avenue
New York, New York 10153
By: Harvey R. Miller (argued)
Stephen Karotkin (argued)
Joseph H. Smolinsky (argued)

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Counsel for the Official Committee of Unsecured Creditors
1177 Avenue of the Americas
New York, New York 10036
By: Kenneth H. Eckstein (argued)
Thomas Moers Mayer (argued)
Robert Schmidt
Jeffrey S. Trachtman

[1] Principal participants are shown here. A full listing will be posted when practicable.

LEV L. DASSIN
Acting United States Attorney for the
Southern District of New York
Counsel to the United States of America
86 Chambers Street, Third Floor
New York, New York 10007
By: David S. Jones (argued)
Jeffrey S. Oestericher
Matthew L. Schwartz (argued)
Joseph N. Cordaro

-and-

CADWALADER, WICKERSHAM & TAFT LLP
Counsel to the United States of America
One World Financial Center
New York, New York 10281
By: John J. Rapisardi

CLEARY GOTTLIEB STEEN & HAMILTON
Counsel for The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO
One Liberty Plaza
New York, NY 10006
By: James L. Bromley (argued)
Avram E. Luft

COHEN, WEISS AND SIMON LLP
Counsel for The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO
330 West 42nd Street
New York, NY 10036
By: Babette A. Ceccotti (argued)

PATTON BOGGS LLP
Counsel For The Unofficial Committee Of Family & Dissident GM Bondholders
1185 Avenue of the Americas
New York, NY 10036
By: Michael P. Richman (argued)
Mark A. Salzberg (*pro hac vice*) (argued)
James C. Chadwick (*pro hac vice*)
Melissa Iachan

THE COLEMAN LAW FIRM
Attorneys for Individual Tort Litigants Callan Campbell, Kevin Junso, Edwin Agosto, Kevin Chadwick, and Joseph Berlingieri
77 West Wacker Dr., Suite 4800
Chicago, IL 60601
By: Steve Jakubowski (argued)
Elizabeth Richert

SCHNADER HARRISON SEGAL & LEWIS LLP
Attorneys for Ad Hoc Committee of Consumer Victims of General Motors
140 Broadway, Suite 3100
New York, NY 10005-1101
By: Barry E. Bressler (*pro hac vice*) (argued)
Richard A. Barkasy (*pro hac vice*)
Benjamin P. Deutsch

STUTZMAN, BROMBERG, ESSERMAN & PLIFKA P.C.
Counsel For Ad Hoc Committee of Asbestos Personal Injury Claimants
2323 Bryan Street, Suite 2200
Dallas, TX 75201
By: Sander L. Esserman (*pro hac vice*) (argued)
Robert T. Brousseau (*pro hac vice*)
Peter D'Apice
Jo E. Hartwick (*pro hac vice*)

ORRICK, HERRINGTON & SUTCLIFFE LLP
Counsel to the Unofficial GM Dealers Committee
Columbia Center
1152 15th Street, N.W.
Washington, D.C. 20005-1706
By: Roger Frankel (argued)
Richard H. Wyron

666 Fifth Avenue
New York, NY 10103
By: Lorraine S. McGowen
Alyssa D. Englund

KENNEDY, JENNIK & MURRAY, P.C.
Attorneys for IUE-CWA
113 University Place, 7th Floor
New York, New York 10003
By: Thomas M. Kennedy (argued)
Susan M. Jennik

NEBRASKA ATTORNEY GENERAL JON BRUNING
Attorney for the State of Nebraska and on behalf of the Ad Hoc Committee of State Attorneys General
The Nebraska Attorney General's Office
2115 State Capitol Building
Lincoln, NE 68509-8920
By: Leslie C. Levy
Karen Cordry (argued)

OLIVER ADDISON PARKER
Pro Se
283 Codrington Drive
Lauderdale By The Sea, FL 33308
Telephone: (954) 599-6468

N.W. BERNSTEIN & ASSOCIATES, LLC
Attorneys for the Trustees of Environmental Conservation and Chemical Corporation Site Trust Fund
800 Westchester Avenue, Suite 319 North
Rye Brook, NY 10573
By: Norman W. Bernstein (argued)

CAPLIN & DRYSDALE CHARTERED
Attorneys for Mark Buttita, personal representative of Salvatore Buttita
375 Park Avenue, 35th Floor
New York, NY 10152
Telephone: (212) 319-7125
By: Elihu Inselbuch, Esq.
Rita C. Tobin, Esq.

1 Thomas Circle
Washington, D.C. 20005
Telephone: (202) 862-5000
By: Peter Van N. Lockwood, Esq.
Ronald E. Reinsel, Esq. (*pro hac vice*) (argued)

VEDDER PRICE P.C.
Counsel for Export Development Canada
1633 Broadway, 47th Floor
New York, NY 10019
By: Michael J. Edelman
Michael L. Schein (argued)
Erin Zavalkoff-Babej

ROBINSON BROG LEINWAND GREENE, GENOVESE & CLUCK, P.C.
Attorneys for the Greater New York Automobile Dealers Association
1345 Avenue of the Americas
New York, NY 10105
By: Russell P. McRory (argued)
Fred B. Ringel
Mitchell Greene
Robert R. Leinwand

-and-

MYERS & FULLER P.A.
Attorneys for the Greater New York Automobile Dealers Association
2822 Remington Green Circle
Tallahassee, FL 32308
By: Richard Sox (*pro hac vice*)
Shawn Mercer (*pro hac vice*)
Robert Byerts (*pro hac vice*)

GIBSON, DUNN & CRUTCHER LLP
Attorneys for Wilmington Trust Company, Indenture Trustee
200 Park Avenue, 47th Floor
New York, NY 10166
Telephone: (212) 351-4000
By: David Feldman (argued)
Matthew J. Williams
Adam H. Offenhartz

KELLEY, DRYE & WARREN LLP
Counsel for Law Debenture Trust Company of New York,
as Proposed Successor Indenture Trustee
101 Park Avenue
New York, NY 10178
Telephone: (212) 808-7800
By: David E. Retter
Pamela Bruzzese-Szczygiel
Jennifer A. Christian (argued)

NEW YORK STATE DEPARTMENT OF LAW
Environmental Protection Bureau
The Capitol
Albany, New York
12224
Telephone: (518) 474-2432
By: Susan Taylor (argued)

LEVY RATNER, P.C.
Attorneys for United Steelworkers
80 Eighth Avenue, Eighth Floor
New York, New York 10011
By: Suzanne Hepner

GORLICK KRAVITZ & LISTHAUS P.C.
Attorneys for International Union of Operating Engineers Locals 18S, 101S, and 832S
17 State Street
New York, NY 10004
By: Barbara Mehlsack

FARELLA BRAUN & MARTEL LLP
Attorneys for General Motors Retirees Association
235 Montgomery Street, 17th Floor
San Francisco, CA 94104
By: Neil A. Goteiner (argued)
Dean M. Gloster (*pro hac vice*)
Nan E. Joesten (*pro hac vice*)

PUBLIC CITIZEN LITIGATION GROUP
Attorneys for Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety, National Association of Consumer Advocates, and Public Citizen
1600 20th Street NW
Washington, DC 20009
By: Adina H. Rosenbaum
Allison M. Zieve

OTTERBOURG, STEINDLER, HOUSTON & ROSEN, P.C.
Attorneys for GMAC LLC
230 Park Avenue
New York, NY 10169
By: Jonathan N. Helfat
Steven B. Soll

ATTORNEYS FOR THE STATE OF TEXAS
On behalf of the Texas Dep't of Transportation, Motor Vehicle Division
The Texas Attorney General's Office
P.O. Box 12548
Austin, TX 78711-2548
By: J. Casey Roy (argued)

DIANA G. ADAMS
United States Trustee
Office of the United States Trustee
33 Whitehall Street
21st Floor
New York, NY 10004
By: Diana G. Adams,
Linda A. Riffkin
Tracy Hope Davis
Andrew D. Velez-Rivera
Brian Shoichi Masumoto

TABLE OF CONTENTS

ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE

In this contested matter in the jointly administered chapter 11 cases of Debtors General Motors Corporation and certain of its subsidiaries (together, "**GM**"), the Debtors move for an order, pursuant to section 363 of the Bankruptcy Code, approving GM's sale of the bulk of its assets (the "**363 Transaction**"), pursuant to a "Master Sale and Purchase Agreement" and related documents (the "**MPA**"), to Vehicle Acquisitions Holdings LLC (the "**Purchaser**")[2]—a purchaser sponsored by the U.S. Department of the Treasury (the "**U.S. Treasury**")—free and clear of liens, claims, encumbrances, and other interests. The Debtors also seek approval of the assumption and assignment of the executory contracts that would be needed by the Purchaser, and of a settlement with the United Auto Workers ("**UAW"**) pursuant to an agreement (the "**UAW Settlement Agreement**") under which GM would satisfy obligations to an estimated 500,000 retirees.

GM's motion is supported by the Creditors' Committee; the U.S. Government (which has advanced approximately $50 billion to GM, and is GM's largest pre- and post-petition creditor); the Governments of Canada and Ontario (which ultimately will have advanced about $9.1 billion); the UAW (an affiliate of which is GM's single largest unsecured creditor); the indenture trustees for GM's approximately $27 billion in unsecured bonds; and an ad hoc committee representing holders of a majority of those bonds.

[2] When discussing the mechanics of the 363 Transaction, the existing GM will be referred to as "**Old GM,**" and the Purchaser will be referred to as "**New GM**."

But the motion has engendered many objections and limited objections, by a variety of others. The objectors include, among others, a minority of the holders of GM's unsecured bonds (most significantly, an ad hoc committee of three of them (the "**F&D Bondholders Committee**"), holding approximately .01% of GM's bonds),[3] who contend, among other things, that GM's assets can be sold only under a chapter 11 plan, and that the proposed section 363 sale amounts to an impermissible "*sub rosa*" plan.

Objectors and limited objectors also include tort litigants who object to provisions in the approval order limiting successor liability claims against the Purchaser; asbestos litigants with similar concerns, along with concerns as to asbestos ailments that have not yet been discovered; and non-UAW unions ("**Splinter Unions"**) speaking for their retirees, concerned that the Purchaser does not plan to treat their retirees as well as the UAW's retirees.

On the most basic issue, whether a 363 sale is proper, GM contends that this is exactly the kind of case where a section 363 sale is appropriate and indeed essential—and where under the several rulings of the Second Circuit and the Supreme Court in this area, GM's business can be sold, and its value preserved, before the company dies. The Court agrees. GM cannot survive with its continuing losses and associated loss of liquidity, and without the governmental funding that will expire in a matter of days. And there are no options to this sale—especially any premised on the notion that the company could

[3] When it filed its objection, the F&D Bondholders Committee, identifying itself as the "Family & Dissident" Bondholders Committee, said it was "representing the interests of" 1,500 bondholders, with bond holdings "believed to exceed $400 million." (F&D Bondholder Comm. Obj. at 1). But even after it filed the second of its Fed.R.Bankr.P. 2019 statements, it identified no other bondholders for whom it was speaking, or provide the holdings, purchases and sales information for any others that Rule 2019 requires. Under these circumstances, the Court must consider that the committee speaks for just those three bondholders.

survive the process of negotiations and litigation that characterizes the plan confirmation process.

As nobody can seriously dispute, the only alternative to an immediate sale is liquidation—a disastrous result for GM's creditors, its employees, the suppliers who depend on GM for their own existence, and the communities in which GM operates. In the event of a liquidation, creditors now trying to increase their incremental recoveries would get nothing.

Neither the Code, nor the caselaw—especially the caselaw in the Second Circuit—requires waiting for the plan confirmation process to take its course when the inevitable consequence would be liquidation. Bankruptcy courts have the power to authorize sales of assets at a time when there still is value to preserve—to prevent the death of the patient on the operating table.

Nor can the Court accept various objectors' contention that there here is a *sub rosa* plan. GM's assets simply are being sold, with the consideration to GM to be hereafter distributed to stakeholders, consistent with their statutory priorities, under a subsequent plan. Arrangements that will be made by the Purchaser do not affect the distribution of the *Debtor's* property, and will address wholly different needs and concerns—arrangements that the Purchaser needs to create a new GM that will be lean and healthy enough to survive.

Issues as to how any approval order should address *successor liability* are the only truly debatable issues in this case. And while textual analysis is ultimately inconclusive and caselaw on a nationwide basis is not uniform, the Court believes in *stare decisis*; it follows the caselaw in this Circuit and District in holding that to the extent the Purchaser

has not voluntarily agreed to accept successor liability, GM's property—like that of Chrysler, just a few weeks ago—may be sold free and clear of claims.

Those and other issues are addressed below. GM's motion is granted. The following are the Court's Findings of Fact, Conclusions of Law, and bases for the exercise of its discretion in connection with this determination.

Findings of Fact[4]

After an evidentiary hearing,[5] the Court makes the following Findings of Fact.

1. Background

GM is primarily engaged in the worldwide production of cars, trucks, and parts. It is the largest Original Equipment Manufacturer ("**OEM**") in the U.S., and the second largest in the world.

GM has marketed cars and trucks under many brands—most of them household names in the U.S.—including Buick, Cadillac, Chevrolet, Pontiac, GMC, Saab, Saturn, HUMMER, and Opel. It operates in virtually every country in the world.

GM maintains its executive offices in Detroit, Michigan, and its major financial and treasury operations in New York, New York. As of March 31, 2009, GM employed approximately 235,000 employees worldwide, of whom 163,000 were hourly employees and 72,000 were salaried. Of GM's 235,000 employees, approximately 91,000 are employed in the U.S. Approximately 62,000 (or 68%) of those U.S. employees were represented by unions as of March 31, 2009. The UAW represents by far the largest

---

[4] To avoid making this lengthy decision even longer, the Court has limited its citations in its Findings of Fact to those matters where they are most useful.

[5] In accordance with the Court's Case Management Order #1, direct testimony was presented by affidavit and cross-examination and subsequent questioning proceeded live. After cross-examination, the Court found all witnesses credible, and takes their testimony as true.

portion of GM's U.S. unionized employees, representing approximately 61,000 employees.

As of March 31, 2009, GM had consolidated reported global assets and liabilities of approximately $82 billion, and $172 billion, respectively. However, its assets appear on its balance sheet at book value, as contrasted to a value based on any kind of valuation or appraisal. And if GM had to be liquidated, its liquidation asset value, as discussed below, would be less than 10% of that $82 billion amount.

While GM has publicly traded common stock, no one in this chapter 11 case has seriously suggested that GM's stock is "in the money," or anywhere close to that. By any standard, there can be no doubt that GM is insolvent. In fact, as also discussed below, if GM were to liquidate, its unsecured creditors would receive nothing on their claims.

2. GM's Dealer Network

Substantially all of GM's worldwide car and truck deliveries (totaling 8.4 million vehicles in 2008) are marketed through independent retail dealers or distributors. GM relies heavily on its relationships with dealers, as substantially all of its retail sales are through its network of independent retail dealers and distributors.

The 363 Transaction contemplates the assumption by GM and the assignment to New GM of dealer franchise agreements relating to approximately 4,100 of its 6,000 dealerships, modified in ways to make GM more competitive (as modified, "**Participation Agreements**"). But GM cannot take all of the dealers on the same basis. At the remaining dealer's option, GM will either reject those agreements, or assume modified agreements, called "**Deferred Termination Agreements.**"

The Deferred Termination Agreements will provide dealers with whom GM cannot go forward a softer landing and orderly termination. GM is providing approximately 17 months' notice of termination.

As of the time of the hearing on this motion, approximately 99% of the continuing dealers had signed Participation Agreements and 99% of the dealers so affected had signed Deferred Termination Agreements.

The agreements of both types include waivers of rights that dealers would have in connection with their franchises. In accordance with a settlement with the Attorneys General of approximately 45 states (the "**AGs**"), the Debtors and the Purchaser agreed to modifications to the Purchase Agreement and the proposed approval order under which (subject to the more precise language in the proposed order) the Court makes no finding as to the extent any such modifications are enforceable, and any disputes as to that will be resolved locally.

3. GM's Suppliers

As the nation's largest automobile manufacturer, GM uses the services of thousands of suppliers—resulting in approximately $50 billion in annual supplier payments. In North America alone, GM uses a network of approximately 11,500 suppliers. In addition, there are over 600 suppliers whose sales to GM represent over 30% of their annual revenues. Thus hundreds, if not thousands, of automotive parts suppliers depend, either in whole or in part, on GM for survival.

4. GM's Financial Distress

Historically, GM was one of the best performing OEMs in the U.S. market. But with the growth of competitors with far lower cost structures and dramatically lower benefit obligations, GM's leadership position in the U.S. began to decline. At least as a

result of that lower cost competition and market forces in the U.S. and abroad (including jumps in the price of gasoline; a massive recession (with global dislocation not seen since the 1930s); a dramatic decline in U.S. domestic auto sales; and a freeze-up in consumer and commercial credit markets), GM suffered a major drop in new vehicle sales and in market share—from 45% in 1980 to a forecast 19.5% in 2009.

The Court does not need to make further factual findings as to the many causes for GM's difficulties, and does not do so. Observers might differ as to the causes or opine that there were others as well, and might differ especially with respect to which causes were most important. But what is clear is that, especially in 2008 and 2009, GM suffered a steep erosion in revenues, significant operating losses, and a dramatic loss of liquidity, putting its future in grave jeopardy.

5. U.S. Government Assistance

By the fall of 2008, GM was in the midst of a severe liquidity crisis, and its ability to continue operations grew more and more uncertain with each passing day. As a result, in November 2008, GM was compelled to seek financial assistance from the U.S. Government.

The U.S. Government understood the draconian consequences of the situation—one that affected not just GM, but also Chrysler, and to a lesser extent, Ford (the "**Big Three**"). And the failure of any of the Big Three (or worse, more than one of them) might well bring grievous ruin on the thousands of suppliers to the Big Three (many of whom have already filed their own bankruptcy cases, in this District, Delaware, Michigan and elsewhere); other businesses in the communities where the Big Three operate; dealers throughout the country; and the states and municipalities who looked to the Big Three, their suppliers and their employees for tax revenues.

The U.S. Government's fear—a fear this Court shares, if GM cannot be saved as a going concern—was of a systemic failure throughout the domestic automotive industry and the significant harm to the overall U.S. economy that would result from the loss of hundreds of thousands of jobs[6] and the sequential shutdown of hundreds of ancillary businesses if GM had to cease operations.

Thus in response to the troubles plaguing the American automotive industry, the U.S. Government, through the U.S. Treasury and its Presidential Task Force on the Auto Industry (the "**Auto Task Force**"), implemented various programs to support and stabilize the domestic automotive industry—including support for consumer warranties and direct loans. Thus at GM's request in late 2008, the U.S. Treasury determined to make available to GM billions of dollars in emergency secured financing in order to sustain GM's operations while GM developed a new business plan. At the time that the U.S. Treasury first extended credit to GM, there was absolutely no other source of financing available. No party other than Treasury conveyed its willingness to loan funds to GM and thereby enable it to continue operating.

The first loan came in December 2008, after GM submitted a proposed viability plan to Congress. That plan contemplated GM's shift to smaller, more fuel-efficient cars, a reduction in the number of GM brand names and dealerships, and a renegotiation of GM's agreement with its principal labor union. As part of its proposed plan, GM sought emergency funding in the form of an $18 billion federal loan.

But the U.S. Government was not of a mind to extend a loan that large, and after negotiations, the U.S. Treasury and GM entered into a term loan agreement on December

---

[6] More than 500,000 workers are employed by companies in the U.S. that manufacture parts and components used by automakers.

31, 2008 (the "**Treasury Prepetition Loan**"), that provided GM up to $13.4 billion in financing on a senior secured basis. Under that facility, GM immediately borrowed $4 billion, followed by $5.4 billion less than a month later, and the remaining $4 billion on February 17, 2009.

At the time this loan was made, GM was in very weak financial condition, and the loan was made under much better terms than could be obtained from any commercial lender—if any lender could have been found at all. But the Court has no doubt whatever, and finds, that the Treasury Prepetition Loan was intended to be, and was, a loan and not a contribution of equity. As contrasted with other TARP transactions that involved the U.S. Treasury making direct investments in troubled companies in return for common or preferred equity, the U.S. Treasury structured the Treasury Prepetition Loan as a loan with the only equity received by the U.S. Treasury being in the form of two warrants. The agreement had terms and covenants of a loan rather than an equity investment. The U.S. Treasury sought and received first liens on many assets, and second liens on other collateral. The transaction also had separate collateral documents. And the U.S. Treasury entered into intercreditor agreements with GM's other senior secured lenders in order to agree upon the secured lenders' respective prepetition priorities.

The Court further finds, as a fact or mixed question of fact and law, looking at the totality of the circumstances, that there was nothing inequitable about the way the U.S. Treasury behaved in advancing these funds. Nor did the U.S. Treasury act inequitably to GM's creditors, who were assisted, and not injured, by the U.S. Treasury's efforts to keep GM alive and to forestall a liquidation of the company.

GM had provided a business plan to Congress under which GM might restore itself to profitability, but it was widely perceived to be unsatisfactory. The U.S. Treasury required GM to submit a proposed business plan to demonstrate its future competitiveness that went significantly farther than the one GM had submitted to Congress. As conditions to the U.S. Treasury's willingness to provide financing, GM was to:

> (i) reduce its approximately $27 billion in unsecured public debt by no less than two-thirds;
>
> (ii) reduce its total compensation to U.S. employees so that by no later than December 31, 2009, such compensation would be competitive with Nissan, Toyota, or Honda in the U.S.;
>
> (iii) eliminate compensation or benefits to employees who had been discharged, furloughed, or idled, other than customary severance pay;
>
> (iv) apply, by December 31, 2009, work rules for U.S. employees in a manner that would be competitive with the work rules for employees of Nissan, Toyota, or Honda in the U.S.; and
>
> (v) make at least half of the $20 billion contribution that GM was obligated to make to a VEBA[7] Trust for UAW retirees ("**VEBA Trust**") in the form of common stock, rather than cash.

[7] GM has used trusts qualified as "voluntary employee beneficiary associations" under the Internal Revenue Code (each, a "**VEBA**"), to hold reserves to meet GM's future obligations to provide healthcare and life insurance benefits ("**OPEB**") to its salaried and hourly employees upon retirement. In substance, the employer makes contributions to the VEBA, and the VEBA funds the health benefits to the retirees.

Thereafter, in March 2009, Treasury indicated that if GM was unable to complete an effective out-of-court restructuring, it should consider a new, more aggressive, viability plan under an expedited Court-supervised process to avoid further erosion of value. In short, GM was to file a bankruptcy petition and take prompt measures to preserve its value while there was still value to save.

The Treasury Prepetition Loan agreement (whose formal name was "Loan and Security Agreement," or "**LSA**") provided that, if, by March 31, 2009, the President's designee hadn't issued a certification that GM had taken all steps necessary to achieve long-term viability, then the loans due to Treasury would become due and payable 30 days thereafter. And on March 30, the President announced that the viability plan proposed by GM was not satisfactory, and didn't justify a substantial new investment of taxpayer dollars.

But rather than leaving GM to simply go into liquidation, the President stated that the U.S. Government would provide assistance to avoid such a result, *if* GM took the necessary additional steps to justify that assistance—including reaching agreements with the UAW, GM's bondholders, and the VEBA Trust. The conditions to federal assistance required substantial debt reduction and the submission of a revised business plan that was more aggressive in both scope and timing.

As an alternative to liquidation, the President indicated that the U.S. Treasury would extend to GM adequate working capital for a period of another 60 days to enable it to continue operations. And as GM's largest secured creditor, the U.S. Treasury would negotiate with GM to develop and implement a more aggressive and comprehensive viability plan. The President also stated that GM needed a "fresh start to implement the

restructuring plan," which "may mean using our [B]ankruptcy [C]ode as a mechanism to help [it] restructure quickly and emerge stronger." The President explained:

> What I'm talking about is using our existing legal structure as a tool that, with the backing of the U.S. Government, can make it easier for General Motors . . . to *quickly* clear away old debts that are weighing [it] down so that [it] can get back on [its] feet and onto a path to success; a tool that we can use, even as workers stay on the job building cars that are being sold.
>
> What I'm not talking about is a process where a company is simply broken up, sold off, and no longer exists. We're not talking about that. And what I'm *not talking about is a company that's stuck in court for years, unable to get out*.[8]

The U.S. Treasury and GM subsequently entered into amended credit agreements for the Treasury Prepetition Loan to provide for an additional $2 billion in financing that GM borrowed on April 24, 2009, and another $4 billion that GM borrowed on May 20, 2009. The funds advanced to GM under the Treasury Prepetition Loan—ultimately $19.4 billion in total (all on a senior secured basis)—permitted GM to survive through the date of the filing of its bankruptcy case.

On June 1, 2009 (the "**Filing Date**"), GM filed its chapter 11 petition in this Court.

6. GM's First Quarter Results

On May 8, 2009, about three weeks before the Filing Date, GM announced its first quarter 2009 results. They presented a grim financial picture, and equally grim trends. Specifically:

[8] Emphasis added.

(a) GM's total net revenue decreased by $20 billion (or 47.1%) in the first three months of 2009, as compared to the corresponding period in 2008;

(b) Operating losses increased by $5.1 billion from the prior quarter;

(c) During this same period, GM had negative cash flow of $9.4 billion;

(d) Available liquidity deteriorated by $2.6 billion; and

(e) Sales by GM dealers in the U.S. fell to approximately 413,000 vehicles in that first quarter—a decline of approximately 49% as compared to the corresponding period in 2008.

7. The 363 Transaction

As noted above, in connection with providing financing, Treasury advised GM that, if an out-of-court restructuring was not possible,[9] GM should consider the bankruptcy process. That would enable GM to implement a transaction under which substantially all GM's assets would be purchased by a Treasury-sponsored purchaser (subject to any higher or better offer), in an expedited process under section 363 of the Code.

Under this game plan, the Purchaser would acquire the purchased assets; create a New GM; and operate New GM free of any entanglement with the bankruptcy cases. If the sale could be accomplished quickly enough, before GM's value dissipated as a result of continuing losses and consumer uncertainty, the 363 sale would thereby preserve the

[9] GM tried to accomplish an out-of-court restructuring, as suggested, but was unsuccessful.

going concern value; avoid systemic failure; provide continuing employment; protect the many communities dependent upon the continuation of GM's business, and restore consumer confidence.

To facilitate the process, the U.S. Treasury and the governments of Canada and Ontario (through their Export Development Canada ("**EDC**"))[10] agreed to provide DIP financing for GM through the chapter 11 process. But they would provide the DIP financing *only* if the sale of the purchased assets occurred on an *expedited* basis. That condition was imposed to:

> (i) preserve the value of the business;
>
> (ii) restore (or at least minimize further loss of) consumer confidence;
>
> (iii) mitigate the increasing damage that GM itself, and the industry, would suffer if GM's major business operations were to remain in bankruptcy; and
>
> (iv) avoid the enormous costs of financing a lengthy chapter 11 case.

Treasury also agreed to provide New GM with adequate post-acquisition financing.

Importantly, the DIP financing to be furnished by the U.S. Treasury and EDC is the only financing that is available to GM. The U.S. Treasury (with its Canadian EDC co-lender) is the only entity that is willing to extend DIP financing to GM. Other efforts to obtain such financing have been unsuccessful. Absent adequate DIP financing, GM will have no choice but to liquidate. But the U.S. Government has stated it will not

---

[10] The Canadian EDC participation was sizeable—approximately $3 billion with approximately an additional $6 billion to be provided later.

provide DIP financing without the 363 Transaction, and the DIP financing will come to an end if the 363 Transaction is not approved by July 10. Without such financing, these cases will plunge into a liquidation.

Alternatives to a sale have turned out to be unsuccessful, and offer no hope of success now. In accordance with standard section 363 practice, the 363 Transaction was subject to higher and better offers, but none were forthcoming. The Court finds this hardly surprising. Only the U.S. and Canadian Governmental authorities were prepared to invest in GM—and then not so much by reason of the economic merit of the purchase, but rather to address the underlying societal interests in preserving jobs and the North American auto industry, the thousands of suppliers to that industry, and the health of the communities, in the U.S. and Canada, in which GM operates.

In light of GM's substantial secured indebtedness, approximately $50 billion, the only entity that has the financial wherewithal and is qualified to purchase the assets—and the only entity that has stepped forward to make such a purchase—is the U.S. Treasury-sponsored Purchaser. But the Purchaser is willing to proceed only under an expedited sale process under the Bankruptcy Code.

8. The Liquidation Alternative

In connection with its consideration of alternatives, GM secured an analysis (the "**Liquidation Analysis**"), prepared by AlixPartners LLP, of what GM's assets would be worth in a liquidation. The Liquidation Analysis concluded that the realizable value of the assets of GM (net of the costs of liquidation) would range between approximately $6 billion and $10 billion. No evidence has been submitted to the contrary. This was in the context of an assumed $116.5 billion in general unsecured claims, though this could increase with lease and contract rejection claims and pension termination claims.

While the Liquidation Analysis projected some recoveries for secured debt and administrative and priority claims, it concluded that there would be *no recovery whatsoever* for unsecured creditors. The Court has no basis to doubt those conclusions. The Court finds that in the event of a liquidation, unsecured creditors would recover nothing.

9. Fairness of the Transaction

Before the 363 Transaction was presented for Court approval, GM's Board of Directors (the "**Board**") (all but one of whose members were independent, and advised by the law firm of Cravath, Swaine & Moore), received a fairness opinion, dated May 31, 2009 (the "**Fairness Opinion**"), from Evercore Group L.L.C. ("**Evercore**").

The Fairness Opinion's conclusion was that the purchase price was fair to GM, from a financial point of view. No contrary evidence has been submitted to the Court.

10. Specifics of the Transaction

The sale transaction, as embodied in the MPA and related documents, is complex. Its "deal points" can be summarized as follows:

(a) Acquired and Excluded Assets

Under the Sale, New GM will acquire all of Old GM's assets, with the exception of certain assets expressly excluded under the MPA (respectively, the "**Purchased Assets**" and the "**Excluded Assets**"). The Excluded Assets chiefly consist of:

(i) $1.175 billion in cash or cash equivalents;

(ii) equity interests in certain Saturn and other entities;

(iii) certain real and personal property;

(iv) bankruptcy avoidance actions;

(v) certain employee benefit plans; and

(vi) certain restricted cash and receivables.

(b) Assumed and Excluded Liabilities

Old GM will retain all liabilities except those defined in the MPA as "**Assumed Liabilities**." The Assumed Liabilities include:

(i) product liability claims arising out of products delivered at or after the Sale transaction closes (the "**Closing**");

(ii) the warranty and recall obligations of both Old GM and New GM;

(iii) all employment-related obligations and liabilities under any assumed employee benefit plan relating to employees that are or were covered by the UAW collective bargaining agreement;

and—by reason of an important change that was made in the MPA after the filing of the motion—

(iv) broadening the first category substantially, *all* product liability claims arising from accidents or other discrete incidents arising from operation of GM vehicles occurring subsequent to the closing of the 363 Transaction, *regardless of when the product was purchased.*

The liabilities being retained by Old GM include:

(i) product liability claims arising out of products delivered prior to the Closing (to the extent they weren't assumed by reason of the change in the MPA after the filing of objections);

(ii) liabilities for claims arising out of exposure to asbestos;

(iii) liabilities to third parties for claims based upon "[c]ontract, tort or any other basis";

(iv) liabilities related to any implied warranty or other implied obligation arising under statutory or common law; and

(v) employment-related obligations not otherwise assumed, including, among other obligations, those arising out of the employment, potential employment, or termination of any individual (other than an employee covered by the UAW collective bargaining agreement) prior to or at the Closing.

(c) Consideration

Old GM is to receive consideration estimated to be worth approximately $45 billion, plus the value of equity interests that it will receive in New GM. It will come in the following forms:

(i) a credit bid by the U.S. Treasury and EDC, who will credit bid the majority of the indebtedness outstanding under their DIP facility and the Treasury Prepetition Loan;

(ii) the assumption by New GM of approximately $6.7 billion of indebtedness under the DIP facilities, plus an additional $1.175 billion to be advanced by the U.S. Treasury under a new DIP facility (the "**Wind Down Facility**") whose proceeds will be used by Old GM to wind down its affairs;

(iii) the surrender of the warrant that had been issued by Old GM to Treasury in connection with the Treasury Prepetition Loan;

(iv) 10% of the post-closing outstanding shares of New GM, plus an additional 2% if the estimated amount of allowed prepetition general unsecured claims against Old GM exceeds $35 billion;

(v) two warrants, each to purchase 7.5% of the post-closing outstanding shares of New GM, with an exercise price based on a $15 billion equity valuation and a $30 billion equity valuation, respectively; and

(vi) the assumption of liabilities, including those noted above.

(d) Ownership of New GM

Under the terms of the Sale, New GM will be owned by four entities.

(i) Treasury will own 60.8% of New GM's common stock on an undiluted basis. It also will own $2.1 billion of New GM Series A Preferred Stock;

(ii) EDC will own 11.7% of New GM's common stock on an undiluted basis. It also will own $400 million of New GM Series A Preferred Stock;

(iii) A New Employees' Beneficiary Association Trust ("**New VEBA**") will own 17.5% of New GM's common stock on an undiluted basis. It also will own $6.5 billion of New GM's Series A Preferred Stock, and a 6-year warrant to acquire 2.5% of New GM's common stock, with an exercise price based on $75 billion total equity value; and

(iv) Finally, if a chapter 11 plan is implemented as contemplated under the structure of the Sale transaction, Old GM will own 10% of New GM's common stock on an undiluted basis. In addition, if the allowed prepetition general unsecured claims against Old GM exceed $35 billion, Old GM will be issued an additional 10 million shares, amounting to

approximately 2% of New GM's common stock. Old GM will also own the two warrants mentioned above.

(e) Other Aspects of Transaction

New GM will make an offer of employment to all of the Sellers' non-unionized employees and unionized employees represented by the UAW. Substantially all of old GM's executory contracts with direct suppliers are likely to be assumed and assigned to New GM.

After the Closing, New GM will assume all liabilities arising under express written emission and limited warranties delivered in connection with the sale of new vehicles or parts manufactured or sold by Old GM.

One of the requirements of the U.S. Treasury, imposed when the Treasury Prepetition Loan was put in place, was the need to negotiate a new collective bargaining agreement which would allow GM to be fully competitive, and "equitize"—*i.e.*, convert to equity—at least one half of the obligation GM had to the UAW VEBA. Ultimately GM did so. New GM will make future contributions to the New VEBA that will provide retiree health and welfare benefits to former UAW employees and their spouses. Also, as part of the 363 Transaction, New GM will be the assignee of revised collective bargaining agreements with the UAW, the terms of which were recently ratified—though contingent upon the approval of the entirety of these motions.

(f) The Proposed Sale Order

Though GM's request has been narrowed, as noted above, to provide that New GM will assume liability for product liability claims arising from operation of GM vehicles occurring after the closing of the 363 Transaction (regardless of when the product was purchased), GM asks this Court, as in the *Chrysler* case, to authorize the

Sale free and clear of all other "liens, claims, encumbrances and other interests," including, specifically, "all successor liability claims."

To effectuate this result, GM has submitted a proposed order to the Court (the "**Proposed Sale Order**") that contains provisions directed at cutting off successor liability except in the respects where successor liability was contractually assumed.

First, the Proposed Sale Order contains a finding—and a decretal provision to similar effect—that the Debtors may sell the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability.

Second, the Proposed Sale Order would enjoin all persons (including "litigation claimants") holding liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, from asserting them against New GM or the Purchased Assets.[11]

11. Contingent Liabilities

Certain types of GM liabilities are contingent and difficult to quantify. GM's most recent quarterly report noted present valued contingent liabilities of $934 million for product liability, $627 million for asbestos liability, $307 million for other litigation liability, and $294 million for environmental liability.

12. Agreement with UAW

Workers in the U.S. do not have government provided healthcare benefits of the type that the employees of many of GM's foreign competitors do. Over the years, GM and the other members of the Big Three committed themselves to offer many of those

[11] Proposed Sale Order ¶ 8.

healthcare benefits, resulting in decreased competitiveness and enormous liabilities. GM tried to reduce the costs of healthcare benefits for its employees, but these costs continued to substantially escalate. Many of these costs were in the form of obligations to pay healthcare costs of union employees on retirement.

In 2007 and 2008, GM settled various controversies with respect to its healthcare obligations by entering into an agreement (the "**2008 UAW Settlement Agreement**"), generally providing that responsibility for providing retiree healthcare would permanently shift from GM to a new plan that was independent of GM. GM would no longer have to pay for the benefits themselves, but instead would have to make specified contributions aggregating approximately $20.56 billion to be made by GM into the VEBA Trust. The 2008 UAW Settlement Agreement, therefore, fixed and capped GM's obligations—but in a very large amount.

As part of the 363 Transaction, the Purchaser and the UAW have reached a resolution addressing the ongoing provision of those benefits. New GM will make contributions to the New VEBA, which will have the obligation to fund the UAW retiree health and welfare benefits. And under the "**UAW Retiree Settlement Agreement**," New GM will put value into the New VEBA, which will then have the obligation to fund retiree medical benefits for the Debtors' retirees and surviving spouses represented by the UAW (the "**UAW-Represented Retirees**").

New GM will also assume modified and duly ratified collective bargaining agreements entered into by and between the Debtors and the UAW.

13. Need for Speed

GM and the U.S. Treasury say that the 363 Transaction must be approved and completed quickly. The Court finds that they are right.

Absent prompt confirmation that the sale has been approved and that the transfer of the assets will be implemented, GM will have to liquidate. There are no realistic alternatives available.

There are no merger partners, acquirers, or investors willing and able to acquire GM's business. Other than the U.S. Treasury and EDC, there are no lenders willing and able to finance GM's continued operations. Similarly, there are no lenders willing and able to finance GM in a prolonged chapter 11 case.

The continued availability of the financing provided by Treasury is expressly conditioned upon approval of this motion by July 10, and prompt closing of the 363 Transaction by August 15. Without such financing, GM faces immediate liquidation.

The Court accepts as accurate and truthful the testimony by GM CEO Fritz Henderson at the hearing:

> Q. Now, if the U.S. Treasury does not fund on July 10th and the sale order is not entered by that date, what options are there for GM at that point?
>
> A. Well, if they don't continue, we would liquidate.[12]

The July 10 deadline is important because the U.S. Treasury, like GM itself, has been very concerned about the business status of the company in a bankruptcy process.[13] GM did worse than expected in fleet sales in June, as fleet sales customers pulled back their orders because they didn't know their status in the bankruptcy. Although the company did *better* on retail sales than expected in June, it did so for a number of reasons, one of

---

12 Audio Recording of Testimony of June 30, 2009.

13 *Id.* at 85.

which was the expectation that the chapter 11 case would move quickly, and that the company, in the 363 process, would be successful.[14] And results were "still terrible."[15]

Even if funding were available for an extended bankruptcy case, many consumers would not consider purchasing a vehicle from a manufacturer whose future was uncertain and that was entangled in the bankruptcy process.

Thus the Court agrees that a lengthy chapter 11 case for the Debtors is not an option. It also agrees with the Debtors and the U.S. Government that it is not reasonable to expect that a reorganization plan could be confirmed in the next 60 days (*i.e.*, 90 days from the Filing Date).

The Auto Task Force talked to dozens of experts, industry consultants, people who had observed General Motors for decades, management, and people who were well versed in the bankruptcy process as part of its planning and work on this matter. None of them felt that GM could survive a traditional chapter 11 process. The Auto Task Force learned of views by one of the leading commentators on GM that GM would be making a tragic mistake by pursuing a bankruptcy filing. It became clear to the Auto Task Force that a bankruptcy with a traditional plan confirmation process would be so injurious to GM as to not allow for GM's viability going forward.[16]

The Court accepts this testimony, and so finds. A 90 day plan confirmation process would be wholly unrealistic. In fact, the notion that a reorganization with a plan confirmation could be completed in 90 days in a case of this size and complexity is ludicrous, especially when one is already on notice of areas of likely controversy.

---

14 *Id.* at 85-86.

15 *Id.* at 103.

16 Audio Recording of Testimony of July 1, 2009.

14. Ultimate Facts

The Court thus makes the following findings of ultimate facts:

1. There is a good business reason for proceeding with the 363 Transaction now, as contrasted to awaiting the formulation and confirmation of a chapter 11 plan.
2. There is an articulated business justification for proceeding with the 363 Transaction now.
3. The 363 Transaction is an appropriate exercise of business judgment.
4. The 363 Transaction is the only available means to preserve the continuation of GM's business.
5. The 363 Transaction is the only available means to maximize the value of GM's business.
6. There is no viable alternative to the 363 Transaction.
7. The only alternative to the 363 Transaction is liquidation.
8. No unsecured creditor will here get less than it would receive in a liquidation.
9. The UAW Settlement is fair and equitable, and is in the best interests of both the estate and UAW members.
10. The secured debt owing to the U.S. Government and EDC (both postpetition and, to the extent applicable, prepetition) is not subject to recharacterization as equity or equitable subordination, and could be used for a credit bid.
11. The Purchaser is a purchaser in good faith.

Discussion

The substantive objections break down into a number of categories by concept, and the Court thus considers them in that fashion.

1. Sale Under Section 363

Determining the propriety of the 363 Transaction requires confirming that section 363 can be utilized for the sale of this much of GM's assets before confirmation of a reorganization plan; that the necessary showings for approval of any section 363 sale have been made; that the 363 Transaction is not a "*sub rosa*" plan; and that various related issues have been satisfactorily resolved. The Court considers these in turn.

(a) Utilization of Section 363

The F&D Bondholders, bondholder Oliver Addison Parker ("**Parker**") and several other objectors contend that by disposing of so much of its assets in a single section 363 sale, GM improperly utilizes section 363. Implicit in that argument is the contention that even under the facts here, section 363 cannot be used to dispose of all or the bulk of a debtor's assets, and that such can be achieved only by means of a reorganization plan. The Court disagrees.

As usual, the Court starts with textual analysis. With exceptions not relevant here, section 363 of the Bankruptcy Code provides, in relevant part:

> (b)(1) The trustee,[17] after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate….

[17] In all respects relevant here, where (as here, and as is the norm) the debtor remains in possession and the court has not ordered otherwise, the debtor has the rights of the trustee. *See* Bankruptcy Code section 1107(a) ("Subject to . . . such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation . . . of a trustee serving in a case under this chapter.").

Notably, section 363 has no carveouts from its grant of authority when applied in cases under chapter 11. Section 363 does not provide, in words or substance, that it may not be used in chapter 11 cases for dispositions of property exceeding any particular size, or where the property is of such importance that it should alternatively be disposed of under a plan. Nor does any other provision of the Code so provide.

Then, section 1123 of the Code—captioned "Contents of plan," a provision in chapter 11 which sets forth provisions that a chapter 11 reorganization plan *must* do or contain, and *may* do or contain—provides, as one of the things that a plan *may* do:

> provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests….[18]

But neither section 363 nor section 1123(b)(4) provides that resort to 1123(b)(4) is the *only* way by which all or substantially all of the assets can be sold in a chapter 11 case. Most significantly, neither section 1123(b)(4) nor any other section of the Code trumps or limits section 363, which by its plain meaning permits what GM here proposes to do.

However, the issue cannot be addressed by resort to "plain meaning" or textual analysis alone. GM's ability to sell the assets in question under section 363 is governed by an extensive body of caselaw. Bankruptcy courts in this Circuit decide issues of the type now before the Court under binding decisions of the U.S. Supreme Court and the Second Circuit Court of Appeals, each of which (particularly the latter) has spoken to the issues here. And bankruptcy courts also look to other bankruptcy court decisions, which, in this District and elsewhere, have dealt with very similar facts. While an opinion of one

[18] Section 1123(b)(4).

bankruptcy judge in this District is not, strictly speaking, binding on another, it is the practice of this Court to grant great respect to the earlier bankruptcy court precedents in this District,[19] particularly since they frequently address issues that have not been addressed at the Circuit level.

Here this Court has the benefit of the decisions of Bankruptcy Judge Gonzalez in the *Chrysler* chapter 11 cases[20]—affirmed by the Second Circuit, for substantially the reasons Judge Gonzalez set forth in his opinion—on facts extraordinarily similar to those here.[21] Even more importantly, this Court also has the benefit of the Second Circuit's decisions in *Lionel*,[22] *LTV*,[23] *Financial News Network*,[24] *Gucci*,[25] and *Iridium*,[26] which

---

19 *See, e.g., In re Adelphia Communications Corp.*, 359 B.R. 65, 72 n.13 (Bankr. S.D.N.Y. 2007) ("This Court has been on record for many years as having held that the interests of predictability in this District are of great importance, and that where there is no controlling Second Circuit authority, it follows the decisions of other bankruptcy judges in this district in the absence of clear error.").

20 *See In re Chrysler LLC*, 405 B.R. 84 (Bankr. S.D.N.Y. 2009) ("***Chrysler***"), and 405 B.R. 79 (Bankr. S.D.N.Y. 2009) ("***Chrysler-Standing***") (Gonzalez, J.), *aff'd for substantially the reasons stated in the opinions below*, No. 09-2311-bk (2d Cir. Jun. 5, 2009) ("***Chrysler-Circuit***"), *temporary stay vacated and further stay denied*, 129 S.Ct. 2275 (Jun. 9, 2009).

21 Though the similarities between this case and *Chrysler* are many, there is a noteworthy difference, as that case had one issue not before the Court here. In *Chrysler*, Judge Gonzalez had to analyze rights of participants in a secured lending facility who quarreled with their administrative agent's decision to consent to a sale free and clear of secured creditor claims and interests. *See Chrysler*, 405 B.R. at 100-104. Here there was no objection by secured creditors, other than a single limited objection by a secured creditor with a lien on property to be transferred, looking for adequate protection as part of the sale. Here the objecting bondholders are holders of *unsecured* debt, and thus lack the greater rights that secured creditors have in bankruptcy cases. Of course, the *Chrysler* case never really concerned, as some asserted, an assault on secured creditors' rights; it merely involved dissident minority participants in a secured lending facility being bound by the actions of their agent, pursuant to contractual agreements with the agent that they or their predecessors had agreed to.

22 *Comm. of Equity Sec. Holders v. Lionel Corp.(In re Lionel Corp.)*, 722 F.2d 1063, (2d Cir. 1983) ("***Lionel***").

23 *Official Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp.* (*In re Chateaugay Corp.*), 973 F.2d 141 (2d Cir. 1992) ("***LTV***").

24 *Consumer News & Bus. Channel P'ship v. Fin. News Network Inc. (In re Fin. News Network Inc.)*, 980 F.2d 165 (2d Cir. 1992) ("***FNN***").

25 *Licensing By Paolo, Inc. v. Sinatra* (*In re Gucci*), 126 F.3d 380 (2d Cir. 1997) ("***Gucci***").

confirm that section 363 sales of major assets may be effected before confirmation, and lay out the circumstances under which that is appropriate. And this Court also can draw upon the Supreme Court's decision in *Piccadilly Cafeterias*,[27] which, while principally addressing other issues, recognized the common practice in chapter 11 cases of selling the bulk of a debtor's assets in a section 363 sale, to be followed by confirmation of a liquidating plan.

In *Chrysler*, Judge Gonzalez discussed at great length the evolution of the law in this area and its present requirements,[28] and this Court need not do so in comparable length. Judge Gonzalez, and the Second Circuit affirming him, dealt with the exact issue presented here: whether under Bankruptcy Code section 363, the bulk of the assets of an estate can be sold before confirmation. As Judge Gonzalez noted, *Lionel*—upon whose standards all of the cases considering pre-confirmation section 363 sales have been based—speaks directly to whether assets of a bankruptcy estate can be sold "out of the ordinary course of business and prior to acceptance and outside of any plan of reorganization."[29]

The *Lionel* court expressly recognized that section 363(b) "seems on its face to confer upon the bankruptcy judge virtually unfettered discretion" to authorize sales out of the ordinary course.[30] And the *Lionel* court further declared that "a bankruptcy judge

---

26 *Motorola v. Comm. of Unsecured Creditors (In re Iridium Operating LLC),* 478 F.3d 452 (2d Cir. 2007) ("***Iridium***").

27 *Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc.*, --- U.S. ----, ---- n.2, 128 S.Ct. 2326, 2331 n.2, 171 L.Ed.2d 203 (2008) ("***Piccadilly Cafeterias***").

28 *See Chrysler*, 405 B.R. at 94-96.

29 *Id.* at 94.

30 722 F.2d at 1069.

must not be shackled with unnecessarily rigid rules when exercising the undoubtedly broad administrative power granted him under the Code,"[31] and that:

> To further the purposes of Chapter 11 reorganization, a bankruptcy judge must have substantial freedom to tailor his orders to meet differing circumstances. This is exactly the result a liberal reading of § 363(b) will achieve.[32]

Nevertheless, the Circuit considered it inappropriate to authorize use of section 363(b) to the full extent that section 363(b)'s plain language—with its absence of any express limitations—would suggest. Instead, the Circuit established a standard that was in substance one of common law, but grounded in the overall structure of the Bankruptcy Code. The Second Circuit "reject[ed] the requirement that only an emergency permits the use of § 363(b)."[33] But it also "reject[ed] the view that § 363 grants the bankruptcy judge carte blanche."[34] Concerned that such a construction would "swallow[] up Chapter 11's safeguards,"[35] the *Lionel* court established the more nuanced balancing test that the lower courts in this Circuit have applied for more than 25 years. The Circuit declared:

> The history surrounding the enactment in 1978 of current Chapter 11 and the logic underlying it buttress our conclusion that *there must be some articulated business justification,* other than appeasement of major creditors, for using, selling or leasing property out of the ordinary course of business before the bankruptcy judge may order such disposition under section 363(b).[36]

It went on to say that:

---

31 *Id.*

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.*

36 *Id.* at 1070 (emphasis added).

> Resolving the apparent conflict between Chapter 11 and § 363(b) does not require an all or nothing approach. Every sale under § 363(b) does not automatically short-circuit or side-step Chapter 11; nor are these two statutory provisions to be read as mutually exclusive. Instead, if a bankruptcy judge is to administer a business reorganization successfully under the Code, then … some play for the operation of both § 363(b) and Chapter 11 must be allowed for.[37]

And it went on to set forth the rule for which *Lionel* is remembered:

> The rule we adopt requires that a judge determining a § 363(b) application expressly find from the evidence presented before him at the hearing *a good business reason* to grant such an application.[38]

With no less than five decisions from the Circuit holding similarly[39]—not counting the Circuit's recent affirmance of *Chrysler*—it is plain that in the Second Circuit, as elsewhere,[40] even the entirety of a debtor's business may be sold without

---

37 *Id.* at 1071.

38 *Id.* (emphasis added).

39 *See Lionel*; *LTV*, 973 F.2d at 143-44 ("In *Lionel*, we adopted a rule that 'requires that a judge determining a § 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application,'" and, quoting *Lionel*, reiterating that "First and foremost is the notion that a bankruptcy judge must not be shackled with unnecessarily rigid rules when exercising the undoubtedly broad administrative power granted him under the Code," and that "a bankruptcy judge must have substantial freedom to tailor his orders to meet differing circumstances."); *FNN*, 980 F.2d at 169 (in considering sale outside of a plan of reorganization, "a bankruptcy judge must not be shackled with unnecessarily rigid rules when exercising the undoubtedly broad administrative power granted him under the [Bankruptcy] Code"); *Gucci*, 126 F.3d at 387 ("A sale of a substantial part of a Chapter 11 estate . . . may be conducted if a good business reason exists to support it."); *Iridium*, 478 F.3d at 466 ("In this Circuit, the sale of an asset of the estate under § 363(b) is permissible if the judge determining [the] § 363(b) application expressly find[s] from the evidence presented before [him or her] at the hearing [that there is] a good business reason to grant such an application.").

40 *See, e.g., In re Decora Indus.*, No. 00-4459, 2002 WL 32332749, at *3 (D.Del. May 20, 2002) (Farnan, J.) (approving a 363 sale, finding a "sound business purpose" where "the Court understands the precarious financial and business position of Debtors"; their only source of outside financing was a DIP facility that would soon expire, with no source of alternative financing, and where the alternatives were either the proposed sale transaction or termination of business operations and liquidation).

See also 3 COLLIER ON BANKRUPTCY ¶ 363.02[3] (15th ed. rev. 2009) ("***Collier***") (While sales of

waiting for confirmation when there is a good business reason for doing so. Likewise, in *Piccadilly Cafeterias*, the Supreme Court, while principally addressing a different issue,[41] recognized the use of section 363 sales under which all or substantially all of a debtor's assets are sold. The Supreme Court stated:

> Chapter 11 bankruptcy proceedings ordinarily culminate in the confirmation of a reorganization plan. *But in some cases, as here, a debtor sells all or substantially all its assets under § 363(b)(1) before seeking or receiving plan confirmation.* In this scenario, the debtor typically submits for confirmation a plan of liquidation (rather than a traditional plan of reorganization) providing for the distribution of the proceeds resulting from the sale.[42]

In making the determination as to whether there is a good business reason to effect a 363 sale before confirmation, the *Lionel* court directed that a court should consider all of the "salient factors pertaining to the proceeding" and "act to further the diverse interests of the debtor, creditors and equity holders."[43] It then set forth a nonexclusive list to guide a court in its consideration of the issue:

> (a) the proportionate value of the asset to the estate as a whole;
>
> (b) the amount of elapsed time since the filing;

---

substantial portions of a debtor's assets under section 363 must be scrutinized closely by the court, "[i]t is now generally accepted that section 363 allows such sales in chapter 11, as long as the sale proponent demonstrates a good, sound business justification for conducting the sale before confirmation (other than appeasement of the loudest creditor), that there has been adequate and reasonable notice of the sale, that the sale has been proposed in good faith, and that the purchase price is fair and reasonable.").

41 There the issue involved the debtor's entitlement to the "stamp-tax" exemption of Bankruptcy Code section 1146, after a 363 sale of the entirety of the debtor's assets and confirmation of a plan distributing the proceeds of the earlier 363 sale.

42 128 S.Ct. at 2331 n.2 (emphasis added).

43 722 F.2d at 1071.

(c) the likelihood that a plan of reorganization will be proposed and confirmed in the near future;

(d) the effect of the proposed disposition on future plans of reorganization;

(e) the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property;

(f) which of the alternatives of use, sale or lease the proposal envisions; and "most importantly perhaps,"[44]

(g) whether the asset is increasing or decreasing in value.[45]

Importantly, the *Lionel* court also declared that a bankruptcy court must consider if those opposing the sale produced some evidence that the sale was not justified.[46]

As the *Lionel* court expressly stated that the list of salient factors was not exclusive,[47] this Court might suggest a few more factors that might be considered, along with the preceding factors, in appropriate cases:

(h) Does the estate have the liquidity to survive until confirmation of a plan?

(i) Will the sale opportunity still exist as of the time of plan confirmation?

---

44 *Id.*

45 *Id.* at 1071.

46 *Id*.

47 *Id.* ("This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge."); *accord Iridium*, 478 F.3d at 466 n.21.

(j) If not, how likely is it that there will be a satisfactory alternative sale opportunity, or a stand-alone plan alternative that is equally desirable (or better) for creditors? And

(k) Is there a material risk that by deferring the sale, the patient will die on the operating table?

Each of the factors that the *Lionel* court listed, and the additional ones that this Court suggests, go to the ultimate questions that the *Lionel* court identified: Is there an "articulated business justification" and a "good business reason" for proceeding with the sale without awaiting the final confirmation of a plan.

As discussed in Section 1(c) below, a debtor cannot enter into a transaction that "would amount to a *sub rosa* plan of reorganization" or an attempt to circumvent the chapter 11 requirements for confirmation of a plan of reorganization.[48] If, however, the transaction has "a proper business justification" which has the potential to lead toward confirmation of a plan and is not to evade the plan confirmation process, the transaction may be authorized.[49] Thus as observed in *Chrysler*:

> A debtor may sell substantially all of its assets as a going concern and later submit a plan of liquidation providing for the distribution of the proceeds of the sale. This strategy is employed, for example, when there is a need to preserve the going concern value because revenues are not sufficient to support the continued operation of the business and there are no viable sources for financing.[50]

As further observed in *Chrysler*, several sales seeking to preserve going concern value have recently been approved in this district, and going back further, many more

---

[48] *See Chrysler*, 405 B.R. at 95-96.

[49] *Id.* at 96.

[50] *Id.* (citations omitted).

have been, as debtors not infrequently could not survive until a plan could be confirmed. In addition to *BearingPoint*, which Judge Gonzalez expressly noted, many other 363 sales have been approved in chapter 11 cases on this Court's watch, after appropriate consideration of *Lionel* and its progeny. In *Our Lady of Mercy Hospital*,[51] for example, the hospital was sold as a going concern before it ran out of money, saving about 2,300 jobs and a critical supplier of medical services in the Bronx.

In *Adelphia*,[52] a sale under a *plan* was originally proposed by the debtors, but a section 363 sale had to be effected instead, when intercreditor disputes made it impossible to confirm a plan in time to save the sale opportunity, and more than $17 billion in sale proceeds nearly was lost.[53] Anyone with a knowledge of chapter 11 cases in this District can well understand why none of Harry Wilson's advisors thought that GM could survive a normal plan confirmation process.

After *Lionel*, *LTV*, *FNN*, *Gucci*, *Iridium* and, of course, *Chrysler*, it is now well established that a chapter 11 debtor may sell all or substantially all its assets pursuant to section 363(b) prior to confirmation of a chapter 11 plan, when the court finds a good business reason for doing so. And here the Court has made exactly such a finding. In fact, it is hard to imagine circumstances that could more strongly justify an immediate 363 sale. As the Court's Findings of Fact set forth at length, GM, with no liquidity of its own and the need to quickly address consumer and fleet owner doubt, does not have the luxury of selling its business under a plan.

---

51 No. 07-10609 (REG), ECF #284.

52 No. 02-41729 (REG).

53 *See In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 169 (Bankr. S.D.N.Y. 2007) ("**Adelphia-Confirmation**") (describing the history).

And if that is not by itself enough, the U.S. Treasury's willingness to fund GM is contingent upon the approval of the 363 Transaction by July 10. The Court fully understands the unwillingness of the Government to keep funding GM indefinitely—especially to await the resolution of disputes amongst creditors trying to maximize their recoveries. If the 363 Transaction is disapproved, GM will lose its funding and its liquidity on July 10, and its only alternative will be liquidation.[54]

In its summation, the F&D Bondholders Committee stated that it was not inclined to second guess *GM's* view that it had to proceed with a 363 sale, given GM's lack of alternatives, but that the *Court* should step in to tell everyone that a 363 sale was unacceptable. The premise underlying this contention was that the U.S. Government's July 10 deadline was just posturing, and that the Court should assume that the U.S. Government cares so much about GM's survival that the U.S. Government would never let GM die.

---

[54] Thus the Court needn't spend extensive time in individualized discussion of each of the more specific factors articulated in *Lionel*, and by this Court, as aids in determining "good business reason." Where the proportionate value of the assets being sold is high, as they are here, Factor (a) (proportionate value of the assets to the estate as a whole) suggests that the situation be given close factual scrutiny—which the Court has attempted to do, in its rather lengthy Findings of Fact above—but at most Factor (a) tips only mildly against approval here. The same is true with respect to Factor (b) (elapsed time since the filing)—since where the need is most pressing, it would be foolhardy to wait. Factors (d) (effect on reorganization), (e) (proceeds to be realized), and (f) (which alternative is proposed) are inapplicable or favor immediate sale, as the Court finds that a standalone plan of reorganization is not possible, that the sale would not change distribution priorities in any ultimate plan, and there are no opportunities to realize greater value. And all of the other factors weigh *heavily* in favor of approval. Factor (g) (whether the asset is increasing or decreasing in value), expressly stated by the Circuit to be most important, *compels* and not just favors immediate sale. So do Factors (h) (lack of liquidity); (i) (no alternative sale opportunity later); (j) (same, along with no stand-alone plan alternative); and (k) the certainty or near certainty that in the absence of this sale, the patient will indeed die on the operating table. (If it matters, the same conclusion follows even if one does not consider the additional factors this Court suggested.)

The Court also notes the critically important absence of proof tending to support a contrary finding, as also required by *Lionel*. *See Lionel*, 722 F.2d at 1071. Opponents of the sale have produced no evidence that the sale is *not* justified.

The Court declines to accept that premise and take that gamble. The problem is not that the U.S. Treasury would walk away from GM if this Court took an extra day or so to reach its decision. The problem is that if the 363 Transaction got off track, especially by the disapproval the F&D Bondholders Committee seeks, the U.S. Government would see that there was no means of early exit for GM; that customer confidence would plummet; and that the U.S. Treasury would have to keep funding GM while bondholders (and, then, perhaps others) jousted to maximize their individual incremental recoveries. The Court fully takes Harry Wilson at his word.

In another matter in the *Adelphia* cases, this Court was faced with quite similar circumstances. The Government had the ability to effect a forfeiture of Adelphia assets, and even to indict Adelphia (as a corporation, in addition to the Rigases), which would destroy most, if not all, of Adelphia's value. The Government had indicted Arthur Andersen, with those exact consequences, but many Adelphia creditors argued that the Government would never do it again. And they objected to an Adelphia settlement that paid $715 million to the Government, to forestall all of those potential consequences, among others. This Court approved the settlement, and its determination was affirmed on appeal. This Court stated:

> Would the DoJ have indicted Adelphia, with the threat to the recoveries for innocent stakeholders that such an indictment would have entailed? One would think not, but the DoJ had done exactly that to Arthur Andersen, with those exact consequences. It was at least prudent for Adelphia's Board to protect the entity under its stewardship from its destruction, and to avoid taking such a gamble.[55]

---

[55] *In re Adelphia Commc'ns Corp.*, 327 B.R. 143, 166 (Bankr. S.D.N.Y. 2005) ("***Adelphia Settlement-Bankruptcy***"), *aff'd* 337 B.R. 475 (S.D.N.Y. 2006) (Kaplan, J.) ("***Adelphia***

This Court further stated that "[o]nce more, the Adelphia Board cannot be faulted for declining to bet the company on what would be little more than a guess as to the decision the DoJ would make."[56]

GM's counsel noted in summation that the F&D Bondholders Committee was expecting this Court to play Russian Roulette, and the comparison was apt. So that the F&D Bondholders Committee could throw GM into a plan negotiation process, the Court would have to gamble on the notion that the U.S. Government didn't mean it when it said that it would not keep funding GM. There is no reason why any fiduciary, or any court, would take that gamble. This is hardly the first time that this Court has seen creditors risk doomsday consequences to increase their incremental recoveries, and this Court—which is focused on preserving and maximizing value, allowing suppliers to survive, and helping employees keep their jobs—is not of a mind to jeopardize all of those goals.

Thus there is more than "good business reason" for the 363 Transaction here. The Creditors' Committee in this case put it better than this Court could:

> The simple fact is that there are no other viable bids—indeed no serious expressions of interest—to purchase GM's assets and no other feasible way for GM to restructure its business to remain viable. The current transaction is the only option on the table. The Court is thus faced with a clear choice: to approve the proposed sale transaction, preserve the going-concern value of the Debtors' businesses, and maximize substantial value for stakeholders (despite the pain that this course will inflict on numerous innocent parties), or reject the transaction and precipitate the dismantling and liquidation of GM to the detriment of all involved. *Preventing this harm serves the core purposes of the*

***Settlement-District**"), appeal dismissed*, 222 Fed. App. 7, 2006 WL 3826700 (2d Cir. 2006), *cert. denied*, 128 S.Ct. 114 (2007).

[56] *Adelphia Settlement-Bankruptcy*, 327 B.R. at 167.

> *Bankruptcy Code and constitutes a strong business justification under Section 363 of the Code to sell the debtors' assets outside of a plan process.*[57]

While because of the size of this case and the interests at stake, GM's chapter 11 case can hardly be regarded as routine, GM's proposed section 363 sale breaks no new ground. This is exactly the type of situation where under the Second Circuit's many holdings, there is good business reason for an immediate sale. GM does not have the luxury to wait for the ultimate confirmation of a plan, and the only alternative to an immediate sale is liquidation.

(b) Compliance with Standards for Approval of Section 363 Sales

With the Court having concluded that the requisite sound business justification exists for a proposed sale of the type proposed here, the inquiry turns to whether the routine requirements for any section 363 sale, and appropriate exercise of the business judgment rule, have been satisfied. The court must be satisfied that (i) notice has been given to all creditors and interested parties; (ii) the sale contemplates a fair and reasonable price; and (iii) the purchaser is proceeding in good faith.[58]

These factors are all satisfied here. Notice was extensively given, and it complied with all applicable rules. As to the sufficiency of the purchase price, the Court is equally satisfied. No other, much less better, offer was received, and the GM Board even secured a fairness opinion from reputable advisors, expressing the opinion that the consideration was, indeed, fair.

---

[57] Creditors' Comm. Ltd. Obj. ¶ 3 (emphasis added).

[58] *See, e.g., In re Betty Owens Sch., Inc.*, 1997 WL 188127, at *4 (S.D.N.Y. Apr. 17, 1997) (Leisure, J.), citing *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (Longobardi, J.). *See also* Judge Farnan's more recent decision in *Decora Industries*, 2002 WL 32332749, at *2.

Finally, the Court has found that the Purchaser has acted in good faith, and as mixed questions of fact and law, the Court now determines (i) that this legal requirement for a sale has been satisfied, and (ii) that the Purchaser is entitled to a good faith purchaser finding—matters that are relevant to the determination under *Betty Owens Schools* and the other cases articulating like requirements, and also to the section 363(m) finding that the U.S. Government understandably desires. In ruling that the U.S. Government has indeed acted in good faith, for both of the purposes for which that ruling is relevant, the Court sees no basis for finding material differences in the standard.

While the Bankruptcy Code does not define the "good faith" that protects transactions pursuant to section 363(m) (or, for that matter, the "good faith" that courts require in approving section 363 sales in the first place), the Second Circuit has explained that:

> Good faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings; where there is a lack of such integrity, a good faith finding may not be made. A purchaser's good faith is lost by 'fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.'[59]

Here there is no proof that the Purchaser (or its U.S. and Canadian governmental assignors) showed a lack of integrity in any way. To the contrary, the evidence establishes that the 363 Transaction was the product of intense arms'-length negotiations. And there is no evidence of any efforts to take advantage of other bidders, or get a leg up over them. In fact, the sad fact is that there *were no* other bidders.

---

[59] *Gucci*, 126 F.3d at 390 (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)); *accord id.* (noting also that the relevant fraudulent, collusive actions are those "specifically intended to affect the sale price or control the outcome of the sale."); *Chrysler*, 405 B.R. at 106 (same).

Thus, the Court finds that the Purchaser is a good faith purchaser, for sale approval purposes, and also for the purpose of the protections section 363(m) provides.

The Court additionally determines that it finds GM to be in compliance with the requirements of the business judgment rule, commonly used in consideration of 363 sales in this District and elsewhere.[60] As noted in this Court's decision in *Global Crossing,* and Judge Mukasey's decision in *Integrated Resources*, that rule entails "(1) a business decision, (2) disinterestedness, (3) due care, (4) good faith, and (5) according to some courts and commentators, no abuse of discretion or waste of corporate assets."[61]

Here the Court finds it unnecessary to state, one more time, all of the facts that support a finding that such requirements have been satisfied. The GM Board's decision would withstand *ab initio* review, far more than the business judgment test requires.[62]

(c) "Sub Rosa" Plan

The F&D Bondholders, Parker and other objectors also contend that by proposing the 363 Transaction, GM has proposed the implementation of a forbidden "*sub rosa*" plan. The Court disagrees.

---

60 *See In re Global Crossing Ltd*., 295 B.R. 726, 742-44 (Bankr. S.D.N.Y. 2003), relying heavily on *Official Comm. of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.),* 147 B.R. 650 (S.D.N.Y. 1992) (Mukasey, C.J.).

61 *Global Crossing*, 295 B.R. at 743.

62 When the Court considers "disinterestedness," it looks to the disinterestedness of GM's Board and management, and particularly its Board, which is the ultimate decision maker for any corporation. The Court heard no evidence that either the Board or management chose the sale opportunity over any other alternative either because of a conflict of interest, or because the Government told them to. The Court finds instead that GM's Board and management took the pending opportunity to save the company because it was the only responsible alternative available.

Finally, the U.S. and Canadian governments did not become "insiders" skewing any disinterestedness analysis by reason of their assistance to GM. *See Chrysler*, 405 B.R. at 107 ("Nor did the Governmental Entities control the Debtors in that regard [with respect to the *Chrysler* sale transaction] or become 'insiders' of the Debtors.").

While neither section 363 nor any other provision of the Code defines or otherwise mentions "*sub rosa*" plans, or provides that they are impermissible, caselaw (including caselaw in this Circuit and District) recognizes the impropriety of *sub rosa* plans in instances in which they genuinely exist.[63] The idea underlying the prohibition against *sub rosa* plans appears in *Braniff*, the case from which the prohibition emerged. It is that "the debtor and the Bankruptcy Court should not be able to short circuit the requirements of Chapter 11 for confirmation of a reorganization plan by establishing the terms of the plan *sub rosa* in connection with a sale of assets."[64] A proposed 363 sale may be objectionable, for example, when aspects of the transaction dictate the terms of the ensuing plan or constrain parties in exercising their confirmation rights,[65] such as by placing restrictions on creditors' rights to vote on a plan.[66] A 363 sale may also may be objectionable as a *sub rosa* plan if the sale itself seeks to allocate or dictate the distribution of sale proceeds among different classes of creditors.[67]

But none of those factors is present here. The MPA does not dictate the terms of a plan of reorganization, as it does not attempt to dictate or restructure the rights of the creditors of this estate. It merely brings in value. Creditors will thereafter share in that

---

63 *See Iridium*, 478 F.3d at 466 (citing *Pension Benefit Guar. Corp. v. Braniff Airways, Inc. (In re Braniff Airways, Inc),* 700 F.2d 935, 940 (5th Cir. 1983); *Chrysler*, 405 B.R. at 95-96.

64 700 F.2d at 940.

65 *See Abel v. Shugrue (In re Ionosphere Clubs, Inc.),* 184 B.R. 648, 654 & n.6 (S.D.N.Y. 1995).

66 *See Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop., Inc. (In re Cajun Elec. Power Coop, Inc.),* 119 F.3d 349, 354 (5th Cir. 1997).

67 *See Contrarian Funds, LLC v. Westpoint Stevens Inc. (In re Westpoint Stevens Inc.),* 333 B.R. 30, 51 (S.D.N.Y. 2005) (Swain, J.).

value pursuant to a chapter 11 plan subject to confirmation by the Court. A transaction contemplating that does not amount to a *sub rosa* plan.[68]

In the *TWA* chapter 11 case,[69] substantially all of the airline's assets were sold to American Airlines, in a 363 sale. There too the contention was made that the 363 sale was a *sub rosa* plan. Judge Walsh rejected the contention. He explained:

> It is true, of course, that TWA is converting a group of volatile assets into cash. It may also be true that the value generated is not enough for a dividend to certain groups of unsecured creditors. *It does not follow, however, that the sale itself dictates the terms of TWA's future chapter 11 plan.* The value generated through the Court approved auction process reflects the market value of TWA's assets and the conversion of the assets into cash is the contemplated result under § 363(b).[70]

Here the objectors principally base their arguments on things the *Purchaser* intends to do. They complain of the Purchaser's intention, in connection with the 363 Transaction, to

> (i) be assigned substantially all executory contracts with direct suppliers,
>
> (ii) make offers of employment to all of the Debtors' nonunionized employees and employees represented by the UAW, and

---

68 *See In re Naron & Wagner, Chartered*, 88 B.R. 85, 88 (Bankr. D. Md. 1988) (the "sale proposed here is not a *sub rosa* plan because it seeks only to liquidate assets, and the sale will not restructure [the] rights of creditors.").

69 *See In re Trans World Airlines, Inc.*, 2001 WL 1820326, at *11 (Bankr. D. Del. Apr. 2, 2001) (Walsh, J.).

70 2001 WL 1820326, at *12 (emphasis added).

(iii) be assigned a modified collective bargaining agreement with the UAW, including an agreement to contribute to the New VEBA to fund retiree medical benefits for UAW members and their surviving spouses.

But these do not give rise to a *sub rosa* plan when the first is merely an example of an element of almost *every* 363 sale (where purchasers designate the contracts to be assumed and assigned), and the second and third are actions by the *Purchaser*.

The Court senses a disappointment on the part of dissenting bondholders that the Purchaser did not choose to deliver consideration to them in any manner other than by the Purchaser's delivery of consideration to GM as a whole, pursuant to which bondholders would share like other unsecured creditors—while many supplier creditors would have their agreements assumed and assigned, and new GM would enter into new agreements with the UAW and the majority of the dealers. But that does not rise to the level of establishing a *sub rosa* plan. The objectors' real problem is with the decisions of the Purchaser, not with the Debtor, nor with any violation of the Code or caselaw.

Caselaw also makes clear that a section 363(b) sale transaction is not objectionable as a *sub rosa* plan based on the fact that the purchaser is to assume *some*, but not all, of the debtor's liabilities, or because some contract counterparties' contracts would not be assumed. As Judge Walsh observed in *TWA*:

> [N]othing in § 363 suggests that disparate treatment of creditors, such as is likely to occur here, disqualifies a transaction from court approval. The purpose of a § 363(b) sale is to transform assets . . . into cash in an effort to maximize value. *Distribution of the value generated in accordance with § 1129 and other priority provisions occurs and is intended to occur subsequent to the sale*.

He further stated:

> The treatment of creditors in a § 363(b) context is dictated by the fair market value of those assets of the debtor that the purchaser in its business judgment elects to purchase. A purchaser cannot be told to assume liabilities that do not benefit its purchase objective. *Thus, the disparate treatment of creditors occurs as a consequence of the sale transaction itself and is not an attempt by the debtor to circumvent the distribution scheme of the Code*.[71]

Last, but hardly least, the *sub rosa* plan contention was squarely raised, and rejected, in *Chrysler*,[72] which is directly on point and conclusive here.

The *Chrysler* transaction was structured in a fashion very similar to that here, with a combination of sale proceeds to be provided to the seller, assignments of contracts with suppliers, taking on seller employees, and contribution to a VEBA. Judge Gonzalez rejected the contention that the transaction amounted to a *sub rosa* plan. He noted that:

> (i) there was no attempt to allocate sale proceeds away from the objectors (there, first lien lenders);[73]
>
> (ii) the fact that counterparties whose executory contracts were being assumed and assigned under section 365, at the election of the purchaser, gave counterparties a *Code-authorized* "more favorable treatment," which neither violated the priority rules nor transformed the sale into a *sub rosa* plan;[74]
>
> (iii) the purchaser's ability to choose which contracts it considered valuable did not change that result;[75]

---

71 2001 WL 1820326, at *11 (emphasis added).

72 *See* 405 B.R. at 97-100.

73 *Id.* at 98.

74 *Id.* at 99.

75 *Id.*

(iv) in negotiating with groups essential to its viability (such as its workforce) the purchaser was free to provide ownership interests in the new entity as it saw fit;[76] and that

(v) the purchaser's allocation of value in its own enterprise did not elevate its measures into a *sub rosa* plan.[77]

In connection with the last two points, Judge Gonzalez made a critically important point—that the allocation of value by the purchaser did not affect the *debtor's* interest. In that connection, Judge Gonzalez observed:

> In negotiating with those groups essential to its viability, New Chrysler made certain agreements and provided ownership interests in the new entity, which was neither a diversion of value from the Debtors' assets nor an allocation of the proceeds from the sale of the Debtors' assets. *The allocation of ownership interests in the new enterprise is irrelevant to the estates' economic interests.*[78]

Similarly, Judge Gonzalez noted that what the UAW, the VEBA and the U.S. Treasury would be getting in New Chrysler was not on account of any entitlements any of them might have in the case before him. He observed:

> In addition, the UAW, VEBA, and the Treasury are not receiving distributions on account of their prepetition claims. Rather, consideration to these entities is being provided under separately-negotiated agreements with New Chrysler.[79]

---

76 *Id.*

77 *Id.* at 99-100.

78 *Id.* at 99 (emphasis added).

79 *Id.* As he further observed, the UAW in *Chrysler* was providing substantial consideration to New Chrysler in the form of "unprecedented modifications" to the UAW's collective bargaining agreement. *Id.* at 100. The record supports a similar finding here.

As in *Chrysler* and *TWA*, the Court rules that the 363 Transaction does not constitute an impermissible *sub rosa* plan.

(d) Recharacterization or Subordination of U.S. Treasury Debt

The F&D Bondholders and Bondholder Parker contend that some or all of the U.S. Government's secured debt should be recharacterized as equity—or, alternatively, equitably subordinated to unsecured debt—as a predicate for their next contention that it cannot be used as the basis for a credit bid. The Court disagrees with each contention.

In another of its decisions in the *Adelphia* chapter 11 cases,[80] this Court likewise considered allegations that a secured lender's debt should be recharacterized as equity. In doing so, the Court applied standards articulated by the Fourth Circuit and Sixth Circuit in the *Dornier Aviation*[81] and *AutoStyle Plastics*[82] cases, which in turn had been based on tax law precedent.

Factors listed in those cases are:

> (1) the names given to the instruments, if any, evidencing the indebtedness;
>
> (2) the presence or absence of a fixed maturity date and schedule of payments;
>
> (3) the presence or absence of a fixed rate of interest and interest payments;
>
> (4) the source of repayments;

---

80 *See Adelphia Commc'ns Corp. v. Bank of America (In re Adelphia Commc'ns Corp.)*, 365 B.R. 24, 73-75 (Bankr. S.D.N.Y. 2007) ("***Adelphia-Bank of America***"), *aff'd as to all but an unrelated issue*, 390 B.R. 80 (S.D.N.Y. 2008) (McKenna, J.).

81 *In re Official Comm. of Unsecured Creditors for Dornier Aviation (North America), Inc.*, 453 F.3d 225, 233-34 (4th Cir. 2006).

82 *In re AutoStyle Plastics, Inc.*, 269 F.3d 726, 749-50 (6th Cir. 2001).

(5) the adequacy or inadequacy of capitalization;

(6) the identity of interest between the creditor and the stockholder;

(7) the security, if any, for the advances;

(8) the corporation's ability to obtain financing from outside lending institutions;

(9) the extent to which the advances were subordinated to the claims of outside creditors;

(10) the extent to which the advances were used to acquire capital assets; and

(11) the presence or absence of a sinking fund to provide repayments.[83]

Here the Court finds that GM was inadequately capitalized at the time the loans were made; that GM could not obtain financing from outside lending institutions, and that the record does not show the presence of a sinking fund to provide repayments—three of the eleven factors that would suggest recharacterization. But of the remainder, every single factor supports finding that this was genuine debt. Among other factors, as noted in the Court's Findings of Fact above, this transaction was fully documented as a loan; was secured debt, complete with intercreditor agreements to address priority issues with other secured lenders; had interest terms (albeit at better than market rate) and maturity terms, and, significantly, had *separate* equity features—providing for warrants to accompany the debt instruments. The Court has previously found, as a fact and mixed

[83] *See Adelphia-Bank of America*, 365 B.R. at 74 (*citing, inter alia, Dornier Aviation* and *AutoStyle*).

question of fact and law, that the Prepetition Secured Debt was, in fact, debt, and the Court now determines that as a conclusion of law.[84]

Likewise, the Court disagrees with contentions (principally by bondholder Parker) that the secured debt held by the U.S. Treasury (and, presumably, EDC) should be equitably subordinated. The Court addressed the development of the law of equitable subordination (and its first cousin, equitable disallowance) in its decision in *Adelphia-Bank of America*, and need not discuss it in comparable length here. It is sufficient for the purposes of this decision to say that as originally stated in the famous case of *Mobile Steel*,[85] a party seeking to establish equitable subordination must prove that (i) the holder of the claim being subordinated engaged in inequitable conduct; (ii) the inequitable conduct resulted in injury to creditors or conferred an unfair advantage on the claimant; and (iii) equitable subordination is not inconsistent with the provisions of the Bankruptcy Code.[86] None of those factors has been established here.

First the Court finds that none of the U.S. Treasury, the Government of Canada, the Government of Ontario, or EDC acted inequitably in any way. They advanced funds to help thousands of creditors, citizens, employees of GM, and employees of suppliers and others. Their efforts to ensure that they were not throwing their money away in a useless exercise, and were expecting GM to slim down so it could survive without governmental assistance, are hardly inequitable; they were common sense.

---

84 There is no basis for recharacterizing the $33 billion that was the subject of the DIP loans provided by the U.S. Treasury and EDC. These were presented to the Court as loans, seeking approval for post-petition financing under section 364 of the Code.

85 *Benjamin v. Diamond* (*In re Mobile Steel Co.*), 563 F.2d 692 (5th Cir. 1977).

86 *Id.* at 700.

Similarly, the Court finds no harm to creditors; without the challenged efforts, GM would have had to liquidate. Nor was there any special benefit to any of the Government entities.

Finally, treating the governmental lenders as lenders is hardly inconsistent with the provisions of the Bankruptcy Code. There is, in short, no basis for equitable subordination here.

(e) Asserted Inability to Credit Bid

In light of the conclusions reached in the preceding section, the U.S. Treasury and EDC may, if they choose, assign their secured debt to the Purchaser, and there is then no reason why the Purchaser may not credit bid.

2. Successor Liability Issues

Many objectors—including the Ad Hoc Committee of Consumer Victims (the "**Consumer Victims Committee**"), individual accident litigants ("the **Individual Accident Litigants**"), and attorneys for asbestos victim litigants (collectively, "the **Asbestos Litigants**") object to provisions in the proposed sale order that would limit any "successor liability" that New GM might have. Successor liability claims normally are for money damages—as, for example, the claims by the Individual Accident Litigants are. If permitted, such claims would be asserted against the successor in ownership of property that was transferred from the entity whose alleged wrongful acts gave rise to the claim.

"As a general rule, a purchaser of assets does not assume the liabilities of the seller unless the purchaser expressly agrees to do so or an exception to the rule exists."[87]

[87] 3 *Collier* at ¶ 363.06[7].

Successor liability is an equitable exception to that general rule.[88] Successor liability depends on state law, and the doctrines vary from state to state,[89] but generally successor liability will not attach unless particular requirements imposed by that state have been satisfied.[90]

If a buyer cannot obtain protection against successor liability, "it may pay less for the assets because of the risk."[91] When the transfer of property takes place in a 363 sale, and the buyer has sought and obtained agreement from the debtor that the sale will be free and clear, the bankruptcy court is invariably asked to provide, in its approval order, that the transferee does not assume liability for the debtor's pre-sale conduct.

Such a request was likewise made here. Under the proposed order, in its latest form, New GM would voluntarily assume liability for warranty claims, and for product liability claims asserted by those injured after the 363 Transaction—even if the vehicle was manufactured before the 363 Transaction. But New GM would not assume any Old GM liabilities for injuries or illnesses that arose before the 363 Transaction. And the proposed order has a number of provisions making explicit findings that New GM is not subject to successor liability for such matters, and that claims against New GM of that character are enjoined.[92]

---

88 *Id.*

89 *Id.*

90 *See id.*

91 *Id.* Whether the U.S. and Canadian Governments would have lent and ultimately bid a lesser amount here is doubtful, but this consideration provides the context for deciding legal issues that presumably will extend beyond this case.

92 The principal provisions in the proposed order provide, in relevant part:

> Except for the Assumed Liabilities, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Purchaser in accordance with the MPA, and, upon the Closing, shall be free and clear of all

The issues as to the successor liability provisions in the approval order are the most debatable of the issues now before the Court. Textual analysis is ultimately inconclusive as to the extent to which a 363 order can bar successor liability claims premised upon the transfer of property, and cases on a nationwide basis are split. But principles of *stare decisis* dictate that under the caselaw in this Circuit and District, the Court should, and indeed must, rule that property can be sold free and clear of successor liability claims.

(a) Textual Analysis

As before, the Court starts with textual analysis. Section 363(f) provides, in relevant part:

> The trustee may sell property under subsection (b) … of this section free and clear of any interest in such property of an entity other than the estate, only if—

> liens, claims, encumbrances, and other interests of any kind or nature whatsoever … including rights or claims based on any successor or transferee liability….

Proposed Order ¶ 7.

> …[A]ll persons and entities… holding liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, against or in a Seller or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Sellers, the Purchased Assets, the operation of the Purchased Assets prior to the Closing, or the 363 Transaction, are forever barred, estopped, and permanently enjoined from asserting against the Purchaser, its successors or assigns, its property, or the Purchased Assets, such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability.

Proposed Order ¶ 8. Similar provisions are in the MPA.

> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

Application of section 363(f)'s authority to issue a "free and clear" order with respect to a successor liability claim turns, at least in the first instance, on whether such a claim is an "interest in property." But while "claim" is defined in the Code,[93] neither "interest" nor "interest in property" is likewise defined.

So in the absence of statutory definitions of either "interest" or "interest in property," what can we discern from the text of the Code as to what those words mean?

First, we know that "interest" includes more than just a lien. Subsection (f)(3) makes clear that "interest" is broader, as there otherwise would be no reason for (f)(3) to deal with the subset of interests where "such interest is a lien." *Collier* observes that:

> Section 363(f) permits the bankruptcy court to authorize a sale free of "any interest" that an entity has in property of the estate. Yet the Code does not define the concept of "interest," of which the property may be sold free. Certainly a lien is a type of "interest" of which the property may be sold free and clear. This becomes apparent in reviewing section 363(f)(3), which provides for particular treatment when "such interest is a lien." *Obviously there must be situations in which the interest is*

[93] *See* Section 101(5) of the Code.

> *something other than a lien*; otherwise, section 363(f)(3) would not need to deal explicitly with the case in which the interest is a lien.[94]

Second, we know that an "interest" is something that may accompany the transfer of the underlying property, and where bankruptcy policy, as implemented by the drafters of the Code, requires specific provisions to ensure that it *will not* follow the transfer.

The Individual Accident Litigants contend that here the Court should presume that "equivalent words have equivalent meaning when repeated in the same statute."[95] But while that is often a useful aid to construction, we cannot do so here. That is because "interest" has wholly different meanings as used in various places in the Code,[96] and assumptions that they mean the same thing here are unfounded.

Thus, those in the bankruptcy community know, upon considering the usage of "interest" in any particular place in the Code, that "interest" means wholly different things in different contexts:

> (i) a nondebtor's *collateral*—as used, for example, in consideration of adequate protection of an interest under sections 361 and 362(d)(1), use of cash collateral under section 363(c)(2), or in many 363(f) situations, such as where a creditor has a lien;

---

94 3 *Collier* at ¶ 363.06[1] (emphasis added).

95 Indiv. Accident Litigants Br. 4, *quoting Cohen v. de la Cruz*, 523 U.S. 213, 220 (1998).

96 *See* Postings of Stephen Lubben, Professor at Seton Hall Law School, to Credit Slips, http://www.creditslips.org/creditslips/2009/06/claim-or-interest.html (June 13, 2009, 8:25 PM EST); and http://www.creditslips.org/creditslips/2009/06/claim-or-interest-part-2.html (June 14, 2009, 6:42 PM EST). Blogs are a fairly recent phenomenon in the law, providing a useful forum for interchanges of ideas. While comments in blogs lack the editing and peer review characteristics of law journals, and probably should be considered judiciously, they may nevertheless be quite useful, especially as food for thought, and may be regarded as simply another kind of secondary authority, whose value simply turns on the rigor of the analysis in the underlying ideas they express.

(ii) *a legal or equitable ownership of property*—as used, for example, in section 541 of the Code, or in other section 363(f) situations, where a nondebtor asserts competing ownership, a right to specific performance, or the like— or, quite differently,

(iii) *stock* or other equity in the debtor, *as contrasted to debt*—as used, for example, in section 1111 ("[a] proof of claim or interest is deemed filed under section 501"), or where a reorganization plan is to establish classes of claims and interests, under sections 1122 and 1123.

The Individual Accident Litigants place particular emphasis on section 1141(c) of the Code, asking this Court to compare and contrast it. They argue that

> In contrast, § 1141(c) of the Bankruptcy Code provides that "property dealt with by the plan is free and clear of all *claims and interests … in* the debtor." (Emphasis added). Section 363 and 1141(c) are two mechanisms for transfer of estate property (one through a sale, the other through a plan). The difference between the words chosen by Congress in these two closely related sections shows that Congress did not intend a sale under § 363(f) to be free and clear of "*claims*," but only of "*interests in* such property" because "'it is generally presumed that Congress actions intentionally and purposely' when it 'includes particular language in one section of a statute but omits it in another.'"[97]

But this is not an apt comparison, since when "interests" is used in section 1141(c), it is used with the wholly different definition of (iii) above—*i.e.*, as stock or another type of equity—in contrast to the very different definitions in (i) and (ii) above, which are ways by which "interests in property" may be used in section 363(f).

[97] Indiv. Accident Litigants Br. 4.

Thus, as Lubben suggests, and the Court agrees, in section 1141 "interest" matches up with "equity," and "claim" matches up with debt.[98] Section 1141 is of no assistance in determining whether litigation rights transmitted through transfers of property fall within the meaning of "interests in property." Section 1141 does not provide a yardstick by which section 363(f)'s meaning can be judged.

So where does textual analysis leave us? It tells us that "interest" means more than a lien, but it does not tell us how much more. Textual analysis does not support or foreclose the possibility that an "interest in property" covers a right that exists against a new party solely by reason of a transfer of property to that party. Nor does textual analysis support or foreclose the idea that an "interest" is a right that travels with the property—or that it would do so unless the Code cut it off. Ultimately textual analysis is inconclusive. Neither the Code nor interpretive aids tells us how broadly or narrowly—in the particular context of section 363(f)—"interest in property" should be deemed to be defined.[99]

---

98 *See* Posting of Stephen Lubben, Professor at Seton Hall Law School, to Credit Slips, http://www.creditslips.org/creditslips/2009/06/claim-or-interest.html (June 13, 2009, 8:25 PM EST).

99 The Individual Accident Litigants also place heavy reliance on *Butner v. United States*, 440 U.S. 48 (1970), *see* Indiv. Accident Litigants Br. 8, suggesting that *Butner* requires deference to state law that might impose successor liability and that this would require excluding successor liability damages claims from any definition of "interest." But the Court cannot agree. First, when quoted in full, *Butner* (whose bottom line was that the issue of whether a security interest extended to rents derived from the property was governed by state law) stated:

> The Bankruptcy Act does include provisions invalidating certain security interests as fraudulent, or as improper preferences over general creditors. Apart from these provisions, however, Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law.

440 U.S. at 54. *Butner* further stated (in language the Individual Accident Litigants did not quote):

> Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently

(b) Caselaw

Therefore, once again—as in the Court's earlier consideration of *Lionel* and its progeny and the cases establishing the judge-made law of *sub rosa* plans—the Court must go beyond the words of the Code to the applicable caselaw.

Viewed nationally, the caselaw is split in this area, both at the Circuit Court level and in the bankruptcy Courts. Some courts have held that section 363(f) provides a basis for selling free and clear of successor liability claims,[100] and others have held that it does not.[101]

But the caselaw is *not* split in this Circuit and District. In *Chrysler*, Judge Gonzalez expressly considered and rejected the efforts to impose successor liability. And more importantly, the Second Circuit, after hearing extensive argument on this issue along with others, affirmed Judge Gonzalez's *Chrysler* order for substantially the reasons Judge Gonzalez set forth in his *Chrysler* decision.

> simply because an interested party is involved in a bankruptcy proceeding.
>
> *Id.* at 55. But the *Butner* court laid out principles by which we determine what is property of the estate; it did not address the different issue of whether a state may impose liability on a transferee of estate property by reason of something the debtor did before the transfer. Moreover, *Butner* noted that provisions of the Code can and do sometimes trump state law. And section 363(f), for as much or as little as it covers, is exactly such a provision. In fact, 363(f) is a classic example of an instance where a "federal interest requires a different result." *Butner* neither supports nor defeats either party's position here.

[100] *See, e.g., Chrysler*, 405 B.R. at 111; *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-90 (3d Cir. 2003) ("***TWA***"); *United Mine Workers of Am. 1992 Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573, 581-82 (4th Cir. 1996).

[101] *See, e.g., Michigan Empl. Sec. Comm. v. Wolverine Radio Co., Inc. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147-48 (6th Cir. 1991); *Precision Indus., Inc. v. Qualitech Steel SBQ, LLC (In re Qualitech Steel Corp.)*, 327 F.3d 537, 545-46 (7th Cir. 2003); *Fairchild Aircraft Corp. v. Campbell (In re Fairchild Aircraft Corp.)*, 184 B.R. 910, 918 (Bankr. W.D. Tex. 1995), *vacated as moot on equitable grounds*, 220 B.R. 909 (W.D. Tex. 1998).

See also Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.), 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (concluding that 363(f) could not be utilized, but that section 105(a) could be used to effect 363 sale free and clear of claims).

This Court has previously noted how *Chrysler* is so closely on point, and this issue is no exception. Judge Gonzalez expressly considered it. In material reliance on the Third Circuit's decision in *TWA*, "the leading case on this issue," Judge Gonzalez held that *TWA*:

> makes clear that such tort claims are interests in property such that they are extinguished by a free and clear sale under section 363(f)(5) and are therefore extinguished by the Sale Transaction. The Court follows *TWA* and overrules the objections premised on this argument. … [I]n personam claims, including any potential state successor or transferee liability claims against New Chrysler, as well as in rem interests, are encompassed by section 363(f) and are therefore extinguished by the Sale Transaction.[102]

This Court has already noted its view of the importance of *stare decisis* in this district,[103] and feels no differently with respect to this issue. This Court follows the decisions of its fellow bankruptcy judges in this district, in the absence of plain error, because the interests of predictability in commercial bankruptcy cases are of such great importance. Apart from the underlying reasons that have caused *stare decisis* to be embedded in American decisional law, *stare decisis* is particularly important in commercial bankruptcy cases because of the expense and trauma of any commercial bankruptcy, and the need to deal with foreseeable events, by pre-bankruptcy planning, to the extent they can be addressed. Likewise, litigation, while a fact of life in commercial bankruptcy cases, takes money directly out of the pockets of creditors, and predictability fosters settlements, since with predictability, parties will have an informed sense as to how any disputed legal issues will be decided.

---

[102] 405 B.R. at 111.

[103] *See* 27-28, n.19 above.

Though for all of these reasons, this Court would have followed *Chrysler* even if that case had no subsequent history, we here have a hugely important additional fact. The Circuit affirmed *Chrysler, and* for "substantially for the reasons stated in the opinion below."

Those two matters are somewhat different, and each merits attention. Appellate courts review judgments (or orders), not statements in opinions.[104] With the Circuit having affirmed, application of that principle would not, in the absence of more, necessarily suggest agreement with any reasoning Judge Gonzalez utilized in reaching his conclusion. But it would necessarily support agreement with his bottom line—at least on matters that were argued to the Circuit on appeal. Otherwise, the Circuit would not have affirmed.

Here, of course, there is more—because the Circuit did not simply affirm without opinion, but it stated, as part of its order, that Judge Gonzalez's decision was affirmed "for substantially the reasons stated in the opinions below." While that might hint that the Circuit generally agreed with Judge Gonzalez's reasoning as well, it does not compel that conclusion. At this point, the Court concludes merely that the Circuit agreed with Judge Gonzalez's successor liability issues bottom line.

But that alone is very important. One of the matters argued at length before the Circuit on the appeal was successor liability, both with respect to present claims[105] and

---

104 *See*, *e.g.*, *O'Brien v. State of Vermont (In re O'Brien)*, 184 F.3d 140, 142 (2d Cir. 1999); *Mangosoft, Inc. v. Oracle Corp.*, 525 F.3d 1327, 1330 (Fed. Cir. 2008).

105 *See* Tr. of Arg. before Second Circuit, No. 09-2311 (2d Cir. June 5, 2009) ("**2d Cir. Arg. Tr**.") at 17-22 (current tort claims); 47-49 (current tort claims); 60-62 (current tort claims).

unknown future claims.[106] They were hardly trivial elements of the appeal, and were a subject of questioning by members of the panel.[107] If the Circuit did not agree with Judge Gonzalez's conclusions on successor liability, after so much argument on that exact issue, it would not have affirmed.

Thus the Court has, at the least, a judgment by the Second Circuit that 363(f) may appropriately be invoked to sell free and clear of successor liability claims. The claims sought to be preserved here are identical to those in *Chrysler*. And *Chrysler* is not distinguishable in any legally cognizable respect.[108] On this issue, it is not just that the Court feels that it *should* follow *Chrysler*. It *must* follow *Chrysler*. The Second Circuit's *Chrysler* affirmance, even if reduced solely to affirmance of the judgment, is controlling authority.[109]

This Court fully understands the circumstances of tort victims, and the fact that if they prevail in litigation and cannot look to New GM as an additional source of recovery, they may recover only modest amounts on any allowed claims—if, as is possible, they do

---

106 2d Cir. Arg. Tr. at 22-26 (future and, to a limited extent, current, product liability claims); 26-29 (current and future asbestos claims); 45-46 (future asbestos and tort claims); 62-64 (future asbestos claims).

107 This Court has previously noted that it is hesitant to draw too much from the questions judges ask in argument. *See In re Adelphia Commc'ns Corp*., 336 B.R. 610, 636 n.44 ("Thoughts voiced by judges in oral argument do not always find their way into final decisions, often intentionally and for good reason.") Thus the Court does not rely on anything that was said in the way of questions in the *Chrysler* appeal for the purpose of trying to predict the Circuit's thinking or leanings. This Court looks to the *Chrysler* argument questioning solely for the purpose of noting the issues that were before the Circuit, and that got its substantive attention.

108 The Court cannot agree with the suggestion that *Chrysler* is distinguishable because the purchaser there, Fiat, was a commercial entity, and that the purchaser here is an entity formed by the U.S. and Canadian Governments. We are talking about an issue of statutory interpretation here, and the Code makes no distinction in that regard.

109 *Collier* states that "[a]lthough some courts have limited the term ["interest in property," as used in section 363(f)] to *in rem* interests in the property, the trend seems to be in favor of a broader definition that encompasses other obligations that may flow from ownership of the property." 3 *Collier* at ¶ 363.06[1]. Though *Collier* is of course consistent with this Court's conclusion, the Court regards the caselaw holdings in this Circuit and District as more important.

not have other defendants who can also pay.[110] But the law in this Circuit and District is clear; the Court will permit GM's assets to pass to the purchaser free and clear of successor liability claims, and in that connection, will issue the requested findings and associated injunction.[111]

3. Asbestos Issues

The Asbestos Litigants raise the same successor liability issues just addressed, and additionally advance the interests of future victims of asbestos ailments (though their counsel do not represent any); *future* victims would not yet know that they have any asbestos ailments, or to whom they might look to bring litigation, if necessary. The Asbestos Litigants' concerns as to a sale free and clear of asbestos liability claims, like those of tort litigants, have already been discussed, and the Court, while also sympathetic to asbestos victims, must rule similarly.

But the Court must separately address the separate issues concerning asbestos ailments, in light of the reality that those ailments may take many years to be discovered, during which asbestos victims would not know that they should be filing claims.

The Asbestos Litigants object to GM's effort to "channel all present and future asbestos personal injury claims to Old GM and to shield New GM from 'successor liability' claims . . . without the appointment of a future claims representative and the other express requirements mandated by Congress in 11 U.S.C. § 524(g)."[112] But that

---

[110] They may have resort to dealers, and the proposed sale motion also contemplates that New GM will indemnify dealers for losses of this type, whenever the claims arose. While this would seemingly greatly reduce the number of instances where a plaintiff cannot recover meaningful amounts if liability is established, the Court does not suggest that it will cover all of them.

[111] Findings and an injunction of the character requested were issued in each of *Chrysler* and *TWA*. *See Chrysler*, No. 09-50002 (Bankr. S.D.N.Y. June 1, 2009) (Order Granting 363 Sale ¶¶ W-BB, 9-23); *TWA*, 322 F.3d at 286-87.

[112] Asbestos Br. at 2.

overstates, in material part, what GM is trying to do. It is unnecessary to "channel" present asbestos injury claims to GM, as that is where they already are, and belong. And New GM has not yet done anything wrong, if it ever will. So the bulk of the Asbestos Litigants' contention is simply a variant of the successor liability issues that the Court just addressed, and must be decided the same way.

Where there *is* a separate issue is claims for *future* injuries that people exposed to asbestos might suffer when they don't yet know of their ailments or the need to sue or assert a claim. The Court refers to those as "**Future Claims**," while noting that they are not yet "claims" as defined in the Bankruptcy Code. Efforts to deal with such circumstances led to the enactment of section 524(g) of the Code, which *inter alia* authorizes injunctions, under a reorganization plan, to enjoin actions against nondebtors by those who have a right of recovery from a trust created to address their claims, in accordance with more detailed provisions set out in section 524(g). (Those provisions also include the appointment of a future claims representative.)

The Debtors ask for findings that New GM will not be deemed to be a successor of Old GM, and ask for an injunction barring those holding Future Claims, like others, from pursuing New GM. The Asbestos Litigants contend that such an injunction would walk, talk and quack like a section 524(g) injunction, and that it thus is impermissible. The Debtors respond that we do not yet have a request to approve a plan, and that these issues are now premature—better to be considered if and when they ever ask for a 524(g) injunction.

The Court does not have to decide these issues now, except in a modest way. The Asbestos Litigants' counsel represent only individuals with *present* asbestos ailments,

and do not represent future claimants. Thus the Court has material difficulty in seeing how they have standing to assert *other's* needs and concerns, or how they would be persons aggrieved, on any appeal, if the Court ruled adversely to them on future claims issues.

By the same token, the Court fully recognizes that the notice given on this motion was not fully effective, since without knowledge of an ailment that had not yet manifested itself, any recipient would be in no position to file a present claim.[113]

This objection raises classic standing *and* ripeness issues. And, in addition, the Court does not know if anyone in the future would have a legally valid objection as to the requested injunction—especially if Old GM were still in existence, and a claim could be filed with Old GM. The Court is doubtful that it should be erecting barriers to GM's ability to reorganize by creating hurdles at the behest of people who lack standing, but at the same time, is not of a mind to do anything that might be constitutionally suspect. The Future Claims issues, in the Court's view, are best addressed here by adding language to the injunction paragraph to which objection has been made, applicable (only) to asbestos claims and demands, making the injunction enforceable "to the fullest extent constitutionally permissible." That limitation should address both sides' legitimate future claims concerns. The Court's order will read accordingly.

4. Environmental Issues

Certain objectors—most notably, New York's Attorney General (the "**New York AG**"), who enforces New York's environmental laws, and the St. Regis Mohawk Tribe

---

[113] *See Chrysler* Arg. Tr. at 46, 47, 72-73 (colloquy, principally with Judge Sack, with respect to this issue). Once more, the Court does not read those questions as telegraphing any views or decision of the Circuit as to these issues, but rather as helping this Court focus on matters worthy of consideration.

(the "**Tribe**"), in upstate New York (together, the "**Environmental Matters Objectors**")—have voiced concerns as to whether any approval order would too broadly release either Old GM or New GM from their respective duties to comply with environmental laws and cleanup obligations. Objections of this character were a matter of concern to this Court as well, but they were addressed—very well, in this Court's view—by amendments to the proposed order that were made after objections were due. The additional language provides that:

> Nothing in this Order or the MPA releases, nullifies, or enjoins the enforcement of any Liability to a governmental unit under Environmental Laws or regulations (or any associated Liabilities for penalties, damages, cost recovery, or injunctive relief) that any entity would be subject to as the owner, lessor, or operator of property after the date of entry of this Order. Notwithstanding the foregoing sentence, nothing in this Order shall be interpreted to deem the Purchaser as the successor to the Debtors under any state law successor liability doctrine with respect to any Liabilities under Environmental Laws or regulations for penalties for days of violation prior to entry of this Order. Nothing in this paragraph should be construed to create for any governmental unit any substantive right that does not already exist under law.[114]

Another paragraph goes on to say:

> Nothing contained in this Order or in the MPA shall in any way (i) diminish the obligation of the Purchaser to comply with Environmental Laws, or (ii) diminish the obligations of the Debtors to comply with Environmental Laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. The definition of Environmental Laws in the MPA shall be amended to delete the words "in existence on the date of the

[114] Proposed Order ¶ 61

> Original Agreement." For purposes of clarity, the exclusion of asbestos liabilities in section 2.3(b)(x) of the MPA shall not be deemed to affect coverage of asbestos as a Hazardous Material with respect to the Purchaser's remedial obligations under Environmental Laws.[115]

Especially collectively, they make it quite clear that neither Old GM nor New GM will be relieved of its duty to comply with environmental laws.

Those changes deal with much, but not all, of the Environmental Matters Objectors' concerns. The remaining objections, however, must be overruled.

The Environmental Matters Objectors understandably would like New GM to satisfy cleanup obligations that were the responsibility of Old GM, on theories of successor liability. For reasons articulated in the Court's "Successor Liability Issues" discussion in Section 2 above, however, the property may be sold free and clear of such claims.

Indeed, further reinforcing that view (as well as the Court's decision to follow *Chrysler*) is this Court's decision, seven years ago, in *MagCorp.*[116] There, upon the sale of property with substantial environmental issues, this Court was faced with the exact same issue—to what extent could that property be sold free and clear of environmental claims under 363(f). This Court ruled that one had to make a distinction. Under section 363(f), there could be no successor liability imposed on the purchaser for the seller MagCorp's monetary obligations related to cleanup costs, or any other obligations that were obligations of the seller. But the purchaser would have to comply with its environmental responsibilities starting with the day it got the property, and if the property

---

115 *Id.* ¶ 62.

116 Tr. of Hr'g, *In re Magnesium Corporation of America*, No. 01-14312 (Bankr. S.D.N.Y. June 4, 2002) (ECF #290).

required remediation as of that time, any such remediation would be the buyer's responsibility:

> When you are talking about free and clear of liens, it means you don't take it subject to claims which, in essence, carry with the property. It doesn't absolve you from compliance with the law going forward.[117]

Those same principles will be applied here. Any Old GM properties to be transferred will be transferred free and clear of successor liability,[118] but New GM will be liable from the day it gets any such properties for its environmental responsibilities going forward. And if the State of New York (or, to the extent it has jurisdiction, the Tribe) feels a need to cause any acquiror of Old GM property to engage in remedial action because of environmental issues existing even at the outset of the acquiror's ownership, nothing in this Court's order will stand in its way.

5. Splinter Union Retiree Issues

Three unions—the IUE, the Steelworkers, and the Operating Engineers (referred to by all parties as the "**Splinter Unions**") also have filed an objection. The Splinter Unions submit affidavits from many of their retirees, describing, in moving detail, their difficulties in getting by, and how decreased medical benefits would directly impact them. The hardship would be particularly great on those not yet eligible for Medicare, as the U.S. does not yet have comparable medical insurance for those below the qualifying age, if it ever will.

---

117 *Id.* at 129.

118 The Court understands that the Purchaser does not want the Massena site and that it will not be transferred to New GM, but it is unclear to the Court whether Old GM will want to sell the Massena site to someone else or abandon it. Certainly, if the Purchaser does not wish to take the Massena site, it does not have to. If Old GM wishes to abandon the Massena site, the Environmental Matters Objectors, or some of them, will have rights to be heard, and may have substantive future rights. The Court does not decide any of those additional issues at this time.

But fully acknowledging, as one must, the hardship that the Splinter Union Retirees would suffer, the legal issue before this Court is whether section 1114 of the Code applies to a transaction of the type we have here, and whether a purchaser of assets must assume liabilities that it does not want to voluntarily assume. The answer to each of those questions must be "no."

The Splinter Unions understandably rely on section 1114 of the Code, a provision that was added to the Code to provide additional rights as to retiree insurance benefits, most significantly, medical and life insurance (for the purposes of this discussion, "**Retiree Benefits**"). Generally speaking, section 1114 attempts to balance the needs and concerns of retirees with the reality that large legacy Retiree Benefits obligations not infrequently can impair debtors' ability to reorganize, and that chapter 11 debtors often cannot afford to pay Retiree Benefits as they were previously offered.

While section 1114 is too long to quote here in full, it provides, in substance, for a procedure that must be complied with before a chapter 11 debtor can modify or not pay Retiree Benefits. Modifying or ending benefits requires a motion to be approved by the bankruptcy court. Prior to filing such a motion, the debtor or trustee must first make a proposal to the retirees' representative—usually their union, if there is one, or alternatively a committee to act on their behalf.

The proposal is supposed to provide "for those necessary modifications in the retiree benefits that are necessary to permit the reorganization of the debtor and assure[] that all creditors, the debtor and all of the affected parties are treated fairly and equitably…." The parties are then "to confer in good faith in attempting to reach mutually satisfactory modifications of such retiree benefits."

If agreement is not forthcoming, the motion may proceed further. Under section 1114(g) (with exceptions and provisos not relevant here):

> The court shall enter an order providing for modification in the payment of retiree benefits if the court finds that—
>
> > (1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (f);
> >
> > (2) the authorized representative of the retirees has refused to accept such proposal without good cause; and
> >
> > (3) such modification is necessary to permit the reorganization of the debtor and assures that all creditors, the debtor, and all of the affected parties are treated fairly and equitably, and is clearly favored by the balance of the equities….

Here GM has stated that before Old GM stops paying or modifies Retiree Benefits, it will comply with section 1114. But as a practical matter, Old GM will be liquidating, and it will not be able to keep making these payments very much longer. After that, even if Old GM makes a proposal in good faith (as the Court assumes it will), the Splinter Union retirees may well be left with unsecured claims, with the relatively low recoveries on their unsecured claims that all other unsecured creditors will receive, and with the delays in getting distributions on allowed claims that are an unfortunate reality of the bankruptcy process.

And New GM has not agreed to assume liability for the Splinter Union Retiree Benefits.[119] It declined to do so, while going further for other unions, especially the

[119] New GM has offered to assume the liability to provide Retiree Benefits to a certain extent, but in a dramatically reduced amount. Its proposal in that regard was unacceptable to the Splinter Unions, and a counterproposal by the Splinter Unions has not been accepted. On July 2, the Court

UAW, because with very limited exceptions, the Splinter Unions no longer have active employees working for GM, and the U.S. Treasury—triaging its ability to undertake obligations, and trying to make New GM as lean and as viable as possible—allocated its available money to spend it only where necessary to build a new and stronger GM.[120]

With that by way of backdrop, the Court considers the legal issues. The Splinter Unions argue in substance, that the 363 Transaction constitutes a forbidden *sub rosa* plan. But this contention has previously been addressed. The remaining issue is the extent, if any, to which special 1114 rights for retirees make an otherwise permissible transaction impermissible.

Once more the Court starts with textual analysis, and looks to the words of the statute. The most relevant portions of section 1114 are the portions that impose the continuing duties to pay retiree benefits; not to end or modify them; and to negotiate with unions or other retiree representatives before changing them. Apropos the first (the continuing duty to pay), section 1114(e) is relevant. It provides, in relevant part:

> (e)(1) Notwithstanding any other provision of this title, *the debtor in possession, or the trustee if one has been appointed under the provisions of this chapter (hereinafter in this section "trustee" shall include a debtor in possession),* shall timely pay and shall not modify any retiree benefits, except that—
>
> > (A) the court, on motion of the trustee or authorized representative, and after notice and a hearing, may order modification of

---

approved settlements between GM and other non-UAW unions under which New GM would assume Retiree Benefits for them, but again in dramatically reduced amounts.

120 The obligations in question are very sizeable—more than $3 billion in retiree health care and hundreds of millions more for retirement life insurance. Splinter Union Obj. ¶ 4. Those large figures show why the Splinter Unions care about the issue, and why New GM feels that it cannot assume those obligations when such a small number of Splinter Union members will be working for New GM.

> such payments, pursuant to the provisions of subsections (g) and (h) of this section, or
>
> (B) the trustee and the authorized representative of the recipients of those benefits may agree to modification of such payments,
>
> after which such benefits as modified shall continue to be paid by the *trustee*.[121]

Thus, under the words of the statute, these are duties imposed upon the trustee (which includes, by express reference, the debtor in possession)—not anyone else.

With respect to the second (the duty not to end or modify), the relevant portion is that same section 1114(e) ("the debtor in possession, or the trustee if one has been appointed … shall not modify any retiree benefits"). Once more, the duty not to end or modify is not statutorily imposed on anyone else.

With respect to the third (the duty to negotiate before filing a motion to modify benefits) the relevant portion is 1114(f):

> (f)(1) Subsequent to filing a petition and prior to filing an application seeking modification of the retiree benefits, the *trustee* shall—
>
> (A) make a proposal to the authorized representative of the retirees ….

Here too, by the words of the Code, the duty is imposed upon the trustee.

Finally, the Court notes that section 363 is silent with respect to any need to first comply with section 1114 before effecting a section 363 sale.

Turning beyond textual analysis to the caselaw, the Court has seen nothing to establish a violation of law. The Splinter Unions cite no authority holding or suggesting that a purchaser of assets from an entity with section 1114 obligations must assume the

[121] Section 1114(e) (emphasis added).

debtor seller's duty to comply with section 1114's provisions. Nor do they cite such law considering section 1113 of the Code, which, while dealing with collective bargaining agreements, imposes similar duties.

On the other hand, *Chrysler* is helpful, though it did not expressly address this issue. In considering a closely similar transaction, Judge Gonzalez did not find there to be section 1114 impediments, even for non-UAW retirees.[122]

The Splinter Unions argue that "section 1114 cannot be ignored in the § 363 process,"[123] but that is not what GM is asking the Court to do. GM acknowledges its duties to comply with section 1114, and so far as the record reflects, has not failed in any of its duties in that respect so far. If, in the future, GM does not comply with its section 1114 duties (or is perceived to be failing to comply in that regard), the Splinter Unions, or anyone else with standing, could of course bring that to the Court's attention. But the Splinter Union's real objection is that the Purchaser is not volunteering to comply with section 1114, and under the words of the statute, the Purchaser is not within the zone of persons upon whom section 1114 places duties.

---

[122] With respect to section 1114 matters and related issues, he stated:

> The objecting retirees represented by the UAW objected to the modification of retiree benefits under the settlement agreement between New Chrysler and the UAW, but those objections are overruled because the UAW was the objectors' authorized representative under section 1114, and the modifications were negotiated in good faith pursuant to that section. The objecting retirees not represented by the UAW whose benefits are adversely impacted may have unsecured claims against the Debtors' estates, but the purchased assets are sold free and clear of those potential unsecured claims. For those reasons, their objections to the Sale Motion are overruled. Further, the Court finds that if the Sale Motion were not approved, which would likely result in the Debtors' liquidation, there would likely be no value to distribute any retirees, all of whom would be unsecured creditors.

405 B.R. at 110.

[123] Splinter Union Obj. ¶ 79.

The Splinter Unions note that there is another arguably relevant provision of the Code that must be considered, section 1129(a)(13). Section 1129 sets forth the requirements for confirmation of a chapter 11 plan, and the provisions in its subsection (a) include a list of requirements for confirmation of any chapter 11 plan. Section 1129(a) provides, in relevant part:

> (a) The court shall confirm a plan only if all of the following requirements are met:
>
> …
>
> (13) The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

There can be no doubt that compliance with section 1129(a)(13), along with the other 15 subsections of section 1129(a), is a requirement for confirmation of a plan. But the Court has already addressed arguments of this character, as raised by bondholders in different contexts. The Court is not here considering confirmation of a plan; it is considering a section 363 transaction, and because there is a good business reason for selling the assets now, and there is not here a *sub rosa* plan, requirements of section 1129, including section 1129(a)(13), do not apply.

The Court fully realizes that UAW retirees will get a better result, after all is said and done, than Splinter Union Retirees will, but that is not by reason of any violation of the Code or applicable caselaw. It is because as a matter of reality, the Purchaser needs a properly motivated workforce to enable New GM to succeed, requiring it to enter into

satisfactory agreements with the UAW—which includes arrangements satisfactory to the UAW for UAW retirees. And the Purchaser is not similarly motivated, in triaging its expenditures, to assume obligations for retirees of unions whose members, with little in the way of exception, no longer work for GM.

The Court has also considered the Splinter Unions' point that in pre-bankruptcy planning, GM and the U.S. Treasury focused on the duties to Splinter Union Retirees, and made a conscious decision that Splinter Union retirees would not be offered as good a deal as others. But the Court cannot find that there was any "conspiracy" in that regard, nor that there was any intention to disregard applicable law. The U.S. Treasury, in making hard decisions about where to spend its money and make New GM as viable as possible, made business decisions that it was entitled to make, and the fact that there were so few Splinter Union employees still working for GM was an understandable factor in that decision. The Court's responsibility is not to make fairness judgments as to those decisions, but merely to gauge those decisions under applicable law.

The Splinter Unions' objection must be overruled.

6. Dealer Issues

As noted, the 363 Transaction contemplates that GM's present dealer network of about 6,000 dealers will be made more efficient, continuing approximately 4,100 of its dealers, and ending its relationship, though not instantly, with approximately 1,900 others.[124] In cooperation with State AGs, and the Unofficial Dealers Committee[125] (the

---

[124] Henderson Decl. ¶¶ 92-93.

[125] The Unofficial GM Dealers Committee was formed prior to the filing of GM's chapter 11 case by the GM National Dealer Council in coordination with the National Automobile Dealers Association. It was formed to act as a voice for the dealer body's collective interests in connection GM's restructuring efforts. Its members sell and service vehicles under GM brands in locations all over the country.

"**Dealer Committee**"), GM and the Purchaser agreed on additional language in the sale order for the protection of dealers, and the AGs and the Dealer Committee withdrew their objections to the sale. However, a local dealers association, the Greater New York Automobile Dealers Association (the "**New York Dealers Association**"), seeking to be heard as an *amicus*, filed a brief contending that the Participation Agreements and Deferred Termination Agreements that more than 99% of GM dealers entered into were coerced and unlawful.

Initially, the Court deals with a matter of standing, to which it became more sensitive, after oral argument, upon rereading the New York Dealers Association's *amicus* brief. The New York Dealers Association does not purport to speak for a single identified GM dealer. It does not seek standing under section 1109. It speaks only as an *amicus*. And in addition, the main thrust of the New York Dealers Association *amicus* brief is not the protection of *GM* dealers. It is the protection of their *competitors*. The interests of *GM* dealers were the subject of the negotiations with the Dealer Committee and the AGs, and resolved to their satisfaction. While the New York Dealers Association objection professes to be speaking for the interests of GM dealers, its principal thrust is very different; it is to protect the interests of others who are competing with GM and (especially since it is a dealers' organization), competing with GM dealers.[126]

Under these circumstances, the Court must note the lack of standing and that the New York Dealers Association may be heard as nothing more than as an *amicus*; note that the New York Dealers Association does not have section 1109 rights; and note that at

---

[126] *See, e.g.*, N.Y. Auto Dealers Obj. at ¶¶ 19, 20 ("GM seeks, through this proceeding, to gain advantage over other manufacturers."); *id.* ("Permitting GM in bankruptcy, to ignore state dealer laws upsets the competitive balance among GM and every other automotive manufacturer.").

least seemingly, if not plainly, the New York Dealers Association has interests largely adverse to those whom it is professing to help.[127]

Then, turning to the merits of the New York Dealers Association arguments (assuming that, as *amicus*, it has any standing to make them), any objection that the New York Dealers Association might make—though it never says that it is making an "objection"—would have to be overruled, and to the extent it is making an objection, it *is* overruled. While the Court understands the unattractive choices that many dealers had to face, the Court cannot go so far as to hold that these agreements were "coerced" or are unlawful—even if (as the Court assumes, without deciding) those dealer rights could not be so modified outside of bankruptcy.

Implementation of federal bankruptcy policy permits debtors, for the benefit of the creditor body as a whole, to alter creditors' and contract counterparties' contractual rights. Corporate reorganization, by its nature, requires parties in interest to consider unattractive choices. One of the relevant rights in bankruptcy is the right of a debtor to reject an executory contract with its contract counterparty, for the benefit of the debtor's other creditors. All concerned with GM's future knew that GM had to slim down and improve its dealer network, and that this required modifying dealer agreements before they were assumed and assigned—a process that led to the Participation Agreements. Similarly, as an alternative to simply leaving dealers who would otherwise be terminated in the lurch, GM proposed giving them a soft landing, in exchange for waivers of other rights – a process that led to the Deferred Termination Agreements. Those offers secured

[127] It also at least seemingly would not be a person aggrieved with standing to appeal, but that is an issue for the appellate courts.

widespread acceptance; 99% of the continuing dealers accepted, and 99% of the dealers who eventually would be terminated took the offer.

The alternative, in each case was rejection. Contract counterparties do not have to accept what they are offered, and they may elect to stand on their rights. But here GM was not obligated, as a matter of law, to choose between leaving its dealer contracts unmodified or rejecting them. It could, if it wished, offer its contract counterparties deals that would more appropriately meet each side's needs and concerns, without fear that such deals would be subject to collateral attack by reason of assertions of coercion.

Directly on point are comments this Court made at the bankruptcy court level, and Judge Kaplan made at the district court level, in the *Adelphia* chapter 11 cases. There, in connection with the DoJ Settlement discussed above,[128] Adelphia agreed to provide $715 million to the United States Government (on behalf of both the DoJ and the SEC) in exchange for dropping threats of indictment and forfeiture, and settling claims that might otherwise have been pursued by the SEC. The settlement was attacked by Adelphia creditors, who charged that it was the result of unlawful coercion. In the same decision to which this Court previously referred, this Court disagreed, and on appeal, so did Judge Kaplan.

This Court stated:

> [W]here the "coercion" results from differences in bargaining power, as a consequence of law or fact, or governmentally granted authority and discretion (such as the authority and discretion we grant to prosecutors, to achieve a common good), that is a wholly different kind of "coercion." As one of the

[128] *See* discussion at 37, above.

> banks' counsel aptly noted in argument on this motion, it is what we call "leverage."[129]

Judge Kaplan, affirming, agreed—even going so far as to quote the language this Court just used—and continued:

> What the appellants characterize as coercion was no different in principle than the pressure that leads the overwhelming majority of defendants in criminal cases to plead guilty—the risk that a conviction after trial will result in a harsher sentence than is likely to be imposed following a guilty plea. Yet guilty pleas in such circumstances rightly are considered voluntary and uncoerced in any relevant sense.[130]

For decades, counterparties to executory contracts with bankruptcy debtors have known that their agreements could be rejected, and debtors and contract counterparties have negotiated deals as alternatives to that scenario. When they have been so negotiated (with all knowing that the debtor has the option to reject if the existing deal is not modified to its satisfaction), that has never been regarded as unlawful coercion. Rather, it has been recognized as an appropriate use of the leverage that Congress has given to debtors for the benefit of all of the other creditors who are not contract counterparties, and for whom the restructuring of contractual arrangements is important to any corporate restructuring.

The Court's observation in questioning at oral argument, with respect to dealer contract modifications, that "no good deed goes unpunished" (perhaps naively thinking at the time that the New York Dealers Association was advocating the interests of *GM* dealers) was, as it probably sounded, an indication of frustration with the New York

---

129 *Adelphia Settlement-Bankruptcy*, 327 B.R. at 166.

130 *Adelphia Settlement-District*, 337 B.R. at 477.

Dealers Association's argument. And what the Court could have said then, and what it is saying now, is that the *last* thing bankruptcy courts should be doing is to be forcing debtors and their contract counterparties into situations where rejection is the only lawful alternative, subjecting other creditors to dilution on their recoveries by running up rejection damages, and subjecting contract counterparties to the full hardships of an executory contract rejection. There is no basis in law or fact for holding that these contractual modifications were unlawfully "coerced." Disapproving contractual modifications of the type here would be squarely inconsistent with the goals of corporate reorganization.

As a practical matter, modifications negotiated by the Dealers Committee and the AGs mooted out many, if not all, of the New York Auto Dealers' complaints about the loss of dealer protection laws. To the extent they did not, however, the Court notes that Judge Gonzalez dealt with these same contentions in another decision in *Chrysler*. After concluding that Chrysler's rejection of dealership agreements constituted a valid exercise of business judgment, Judge Gonzalez found that the state franchise laws at issue, like those at issue here, frustrated the purposes of (and, thus, were preempted by) section 365.[131] To the extent that laws of the type relied upon by the New York Dealers Association—either state or federal—impair the ability to reject, or to assume and assign, they must be trumped by federal bankruptcy law. And to the extent that nonbankruptcy law prohibits debtors and their contract counterparties from finding mutually satisfactory less draconian alternatives to rejection, it likewise must be trumped.

---

[131] *See In re Old Carco LLC*, 2009 WL 1708813, *11-*17 (Bankr. S.D.N.Y. Jun. 19, 2009); *see also id.* at *16 ("'Where a state law 'unduly impede[s] the operation of federal bankruptcy policy, the state law [will] have to yield'") (quoting *In re City of Vallejo*, 403 B.R. 72, 77 (Bankr. E.D. Cal. 2009)).

As Judge Gonzalez explained:

> Specifically and by no means exclusively, statutory notice periods of, *e.g.*, 60 or 90 days before termination clearly frustrate § 365's purpose to allow a debtor to reject a contract as soon as the debtor has the court's permission (and there is no waiting period under the Bankruptcy Rules). Buy-back requirements also frustrate § 365's purpose to free a debtor of obligations once the debtor has rejected the contract. Good cause hearings frustrate § 365's purpose of giving a bankruptcy court the authority to determine whether a contract may be assumed or rejected. Strict limitations on grounds for nonperformance frustrate § 365's purpose of allowing a debtor to exercise its business judgment and reject contracts when the debtor determines rejection benefits the estate. So-called "blocking rights," which impose limitations on the power of automobile manufacturers to relocate dealers or establish new dealerships or modify existing dealerships over a dealer's objection, frustrate § 365's purpose of giving a debtor the power to decide which contracts it will assume and assign or reject by allowing other dealers to restrict that power.[132]

Judge Gonzalez also made clear that 28 U.S.C. § 959(b), on which the New York Dealers Association's *amicus* brief heavily relies, did not alter the Court's "preemption analysis," because that provision "does not de-limit the precise conditions on contract rejection"—particularly where, as in *Chrysler* and here, the pertinent state laws concern "consumer convenience and costs and the protection of local businesses, rather than a concern over public safety."[133]

---

[132] 2009 WL 1708813 at *16; *see also Vallejo*, 403 B.R. at 77 (holding that "Congress enacted section 365 to provide debtors the authority to reject executory contracts. This authority preempts state law by virtue of the Supremacy Clause [and] the Bankruptcy Clause.") (internal citation omitted).

[133] 2009 WL 1708813, at *14-15. *See also* 2009 WL 1708813, at *15 ("In sum, the Dealer Statutes . . . are concerned with protecting economic or commercial interests and are thus preempted by the Bankruptcy Code notwithstanding 28 U.S.C. § 959(b)") (citing *In re Baker & Drake, Inc.*, 35 F.3d

To the extent that the New York Auto Dealers Association complains that GM gets a "competitive advantage over others not in bankruptcy,"[134] that likewise is a complaint with respect to federal bankruptcy policy, which gives companies a chance to reorganize and shed burdensome obligations to achieve a greater good. That GM's reorganization will make New GM and GM dealers more competitive is not a bad thing; it is exactly the point.

The New York Auto Dealers' Association lacks standing to have its comments deemed to be an objection. To the extent that its *amicus* comments can be deemed to constitute an objection, any such objection is overruled.

7. ECC Trust

The Environmental Conservation and Chemical Corporation Site Trust Fund (the "**ECC Trust**") has also filed a limited objection. The ECC Trust was created as a means to implement a consent decree that GM and other parties entered into with the United States and the State of Indiana to clean up hazardous materials at the EnviroChem Superfund Site in Zionsville, Indiana (the "**Zionsville Site**"). The consent decree was approved in 1991 by the United States District Court for the Southern District of Indiana. Under the authority of the consent decree, the Trustee for the ECC Trust issued an assessment on April 20, 2009, requiring GM to pay approximately $63,000 into the ECC Trust. Shortly before the due date, GM notified the ECC Trust that it would not be paying its share, and filed its chapter 11 petition shortly thereafter.

1348, 1353 (9th Cir. 1994)); *id.* at *16 n.32 (stating that "state law protections cannot be used to negate the Debtors' rejection powers under § 365 . . . . 'The requirement that the debtor in possession continue to operate *according to* state law requirements imposed on the debtor in possession (i.e., § 959(b)) does not imply that its powers under the Code are *subject to* the state law protections.'") (quoting *In re PSA, Inc.*, 335 B.R. 580, 587 (Bankr. D. Del. 2005) (emphasis in original)).

134 N.Y. Auto Dealers Obj. ¶ 20.

The ECC Trust requests that this Court, using its "equitable powers," require that the Purchase Agreement be modified such that the ECC Trust's claim be designated an "Assumed Liability." Unfortunately, the Court cannot do that.

This Court need not, at this juncture, decide the vast majority of the issues presented by the parties at oral argument—including, especially, whether a consent decree is considered a contract or a judicial decree for enforcement purposes, and whether this particular consent decree created a monetary obligation, which would be regarded like any other unsecured claim, or was in fact a mandatory injunction to clean up the Site.

For now it is sufficient to note that the ECC Trust's present rights are against *Old GM*. Under the ECC Trust's best case scenario, as argued, the ECC Trust may be able to secure equitable relief against Old GM. But whether the ECC Trust can enforce an injunction against Old GM, or must instead live with an unsecured claim, is an issue for another day.

Whatever the ECC Trust's rights are against Old GM, there is no basis for this Court to use its "equitable powers" to force the Purchaser to assume this liability. This Court has found that the Purchaser is entitled to a free and clear order. The Court cannot create exceptions to that by reason of this Court's notions of equity. As this Court noted in another of its *Adelphia* decisions, it is not free to use its equitable powers to circumvent the Code.[135] Decisions of the Second Circuit make it clear that, even with the presence of section 105(a), bankruptcy judges are not free to do whatever feels right.[136]

---

135 *See In re Adelphia Commc'ns Corp.*, 336 B.R. 610, 664 (Bankr. S.D.N.Y. 2006).

136 *See, e.g., In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 & n. 4 (2d Cir. 1994) ("It is well settled that bankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.... We have repeatedly emphasized the

Insufficient justification has been provided for this Court to force the Purchaser to assume this liability, in the face of section 363(f)'s explicit language allowing the sale of property "free and clear" of such liabilities. The Court is aware that the requested relief would have a very modest impact on the Purchaser, but is nevertheless required to issue a principled decision.

8. "Equally and Ratably" Issues

Pro se unsecured bondholders Parker and Radha R. M. Narumanchi raise objections that they should be treated as secured creditors, and have not been. They contend that the indenture for their bonds (the 1995 issue, whose indenture trustee, represented by skilled counsel, did not raise a similar objection) had an "equal and ratable clause," boosting their bonds to secured debt status if liens were thereafter put on certain manufacturing facilities. They then contend that when the 2008 Prepetition Financing was put in place, it triggered their equal and ratable clauses, making them secured.

The Court agrees that the bonds have an equal and ratable clause. But it cannot agree that it was triggered. The 2008 Prepetition Financing Documents expressly carved out from the grant of the security interest under those documents any instance where it would trigger, *inter alia*, the equal and ratable clause.

---

importance of the bankruptcy court's equitable power." But "[t]his power is not unlimited. Thus, a bankruptcy court may not exercise this power in contravention of provisions of the Code."); *In re Joint Eastern & Southern District Asbestos Litig.*, 982 F.2d 721, 751 (2d Cir. 1992) ("*Asbestos Litigation*") ("[A] reorganization is assuredly governed by equitable considerations, but that guiding principle is not a license to courts to invent remedies that overstep statutory limitations."); *see also In re Aquatic Dev. Group, Inc.*, 352 F.3d 671, 680 (2d Cir. 2003) (Straub, J., concurring) ("*Aquatic Development*") ("[T]his Court has repeatedly cautioned that 105(a) 'does not "authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity."'"), quoting *In re Dairy Mart Convenience Stores, Inc.*, 351 F.3d 86, 92 (2d Cir. 2003) ("*Dairy Mart*"), in turn quoting *U.S. v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986).

The 2008 Prepetition Financing granted the U.S. Treasury a lien, subject to exceptions not applicable here, on a wide array of property. But it expressly did not put a lien on what it called "**Excluded Collateral**."[137] Excluded Collateral included, among other things:

> (v) any Property, including any debt or Equity Interest and any manufacturing plan or facility which is located within the continental United States, to the extent that the grant of a security interest therein to secure the Obligations *will result in a lien, or an obligation to grant a lien, in such Property to secure any other obligation.*[138]

Thus when liens were granted in favor of the U.S. Treasury in December 2008, the U.S. Treasury was not granted a lien on any of the Excluded Collateral—including, as relevant here, anything that would trigger the equal and ratable clause.[139]

9. Unauthorized Use of TARP Funds Issues

Bondholder Parker (so far as the Court can tell, the only one of the 850 objectors) objects to the 363 Transaction on the additional ground that the U.S. Government was not authorized to use TARP funds to assist the auto industry, and hence that the 363 Transaction is unlawful. The Court agrees with the United States Attorney that the issue of the U.S. Treasury's lending authority now is moot, and that Mr. Parker lacks standing to raise the issue. Thus the Court does not need to reach the third issue.

---

137 *See* 2008 Prepetition Agreement Section 4.01 (proviso generally providing that collateral would not include "Excluded Collateral," a term defined elsewhere in that agreement).

138 *Id.* Section 1.01 – "Excluded Collateral"(v) ("Definitions") (emphasis added).

139 It does not matter if, as Parker suggested but did not prove, the U.S. Treasury unintentionally or even intentionally recorded a mortgage or UCC-1 covering the property mentioned in the equal and ratable clause. Doing so would only have *perfected* a lien, assuming that one was granted in the first place. Here there was no grant of any lien, and perfecting such a nonexistent lien would be meaningless.

First, the Court agrees that the objection is moot. The 363 Transaction does not involve any expenditure of TARP funds. It simply involves a credit bid by the Purchaser—as an assignee of secured debt held by EDC (as to whom no objection is made) and the U.S. Treasury—of amounts due on previous loans under the U.S. Treasury Prepetition Loan and the DIP Financing Facility.

No party objected to the use of TARP funds in connection with the DIP Financing Facility, or when GM got the assistance it did before the filing of GM's chapter 11 case. And the Court approved the DIP Financing Facility after full hearing and notice. It was *then* that the U.S. Treasury became a lender, not now. Complaints that the U.S. Treasury should not have lent the money to GM are now moot.

Second, the Court once more agrees with the United States Attorney that Mr. Parker lacks standing to challenge the U.S. Government's lending authority here. Judge Gonzalez addressed this exact issue in *Chrysler-Standing*,[140] the second of the two decisions that were affirmed by the Circuit.

The Court does not need to repeat all of the elements of Judge Gonzalez's analysis in *Chrysler-Standing*, nor what this Court has stated previously with respect to the importance of *stare decisis*, or its compliance with decisions of the Second Circuit. Here, as in *Chrysler-Standing*, an unsecured creditor like Mr. Parker does not establish the injury-in-fact necessary to establish constitutional standing under Article III because "all holders of unsecured claims are receiving no less than what they would receive in a liquidation."[141] And even assuming that the 363 Transaction itself injured bondholders like Mr. Parker (though it is difficult to see how, since without the 363 Transaction, GM

---

[140] *See* 405 B.R. at 83.

[141] *Chrysler-Standing*, 405 B.R. at 83.

would have to liquidate), Mr. Parker cannot demonstrate standing because he cannot show that any such injury is "fairly traceable" to the Government's use of TARP funds, as opposed to the 363 Transaction itself.

As Judge Gonzalez explained in *Chrysler-Standing*, "[i]f a non-governmental entity were providing the funding in this case, the [objectors] would be alleging the same injury. . . . In this light, it is not the actions of the lender that the [objectors] are challenging but rather the transaction itself. Specifically, the [objectors'] alleged injury is not fairly traceable to the U.S. Treasury's actions because the [objectors] would suffer the same injury regardless of the identity of the lender."[142]

Under these circumstances, the Court need not address Mr. Parker's third point. This objection is overruled.

10. Cure Objections

Many contract counterparties—more than 500—voiced objections to GM's estimated cure amounts, generally expressing different perceptions as to the exact amounts GM owes them. These differences would eventually have to be resolved, since to assume an executory contract (and GM is assuming thousands of them), most prepetition defaults would have to be cured.

GM proposed a mechanism for fixing the cure amount entitlements—an amalgam of exchanges of information, negotiation, ADR, and court determination, if needed. Significantly, while many parties had differing views as to the amounts to which they were entitled, none voiced objections to the method GM proposed. As those counterparties will remain eligible for their full legal entitlements, the Court finds the

142 *Id*.

proposed mechanism fully satisfactory, and it is unnecessary and inappropriate to rule on all of the cure amount issues here.

11. UAW Settlement Objections

Approximately 56 UAW retirees—somewhat numerous in number, but a miniscule portion of the estimated 500,000 covered under the UAW Settlement Agreement—object to the UAW Settlement Agreement. In general, they express (understandable) disappointment with a settlement that results in a reduction of their health benefits. But they do not articulate objections legally cognizable under the law.

The Curson testimony, in particular, evidences the sensitivity to member and retiree needs and concerns of the UAW leadership. As discussed at considerable length above, the UAW had to make very hard decisions as to concessions it would make on behalf of its members and retirees to preserve GM's viability—and to avoid a liquidation that would be disastrous for the people the UAW was trying to help. The UAW was successful in preserving an acceptable level of core medical benefits. And as the UAW properly observes in its brief, if the UAW had not done as well as it did, its agreement would not have been ratified.

Given the alternatives, it is easy to find that the UAW settlement is fair and equitable, from the perspective of both the GM estate and UAW members. It falls well within the range of reasonableness from GM's perspective, and is fair, reasonable and in the best interest of the UAW retirees.

12. Stockholder Objections

Many GM stockholders, understandably disappointed that the 363 Transaction will leave them with no recovery, have voiced objections. Once again, the Court is sensitive to their concerns, but cannot help them. GM is hopelessly insolvent, and there

is nothing for stockholders now. And if GM liquidates, there will not only be nothing for stockholders; there will be nothing for unsecured creditors.

Under those circumstances, GM stockholders cannot claim to be aggrieved by the transactions before the Court here.

13. Miscellaneous Objections

The Court cannot lengthen this decision further by specifically addressing any more of the approximately 850 objections that were raised on this motion. The Court has canvassed them and satisfied itself that no material objections other than those it has specifically addressed were raised and have merit. To the extent those objections were not expressly addressed in this decision, they are overruled.

Conclusion

The 363 Transaction is approved. The Court is entering an order in accordance with this Decision.[143]

Dated: New York, New York
July ***5***, 2009

s/Robert E. Gerber
United States Bankruptcy Judge

[143] The order entered by the Court differs from the revised proposed order submitted by the Debtors in a few respects: The order entered by the Court adds this Decision to the places where Findings of Fact are set forth and where Conclusions of Law may be found. It adds "to the fullest extent constitutionally permissible" in connection with the injunction as to successor liability claims, to address notice or other due process issues that might otherwise exist with respect to future asbestos claims or "demands" as discussed above. And like the order entered by Judge Gonzalez in *Chrysler*, the order shortens the Fed.R.Bankr.P. 6004(h) and 6006(d) periods, but still provides 4 days, so as to avoid effectively precluding any appellate review.

Exhibit 10.1

EXECUTION VERSION

LOAN AND SECURITY AGREEMENT

By and Between

The Borrower Listed on Appendix A

as Borrower

and

THE UNITED STATES DEPARTMENT OF THE TREASURY

as Lender

Dated as of December 31, 2008

*** Portions of this exhibit have been omitted under a request for confidential treatment pursuant to Rule 24b-2 of the Securities and Exchange Act of 1934 and filed separately with the United States Securities and Exchange Commission.

TABLE OF CONTENTS

SCHEDULES

EXHIBITS

APPENDICES

LOAN AND SECURITY AGREEMENT

LOAN AND SECURITY AGREEMENT, dated as of December 31, 2008, between the Borrower set forth on Appendix A (the " Borrower ") and THE UNITED STATES DEPARTMENT OF THE TREASURY (the " Lender ").

RECITALS

The Borrower wishes to obtain financing from time to time to restore liquidity to its business, and to restore stability to the domestic automobile industry in the United States, and the Lender has agreed, subject to the terms and conditions of this Loan Agreement, to provide such financing to the Borrower.

The financing provided hereunder will be used in a manner that (A) enables the Borrower and its Subsidiaries to develop a viable and competitive business that minimizes adverse effects on the environment; (B) enhances the ability and the capacity of the Borrower and its Subsidiaries to pursue the timely and aggressive production of energy-efficient advanced technology vehicles; (C) preserves and promotes the jobs of American workers employed directly by the Borrower and its Subsidiaries and in related industries; (D) safeguards the ability of the Borrower and its Subsidiaries to provide retirement and health care benefits for their retirees and their dependents; and (E) stimulates manufacturing and sales of automobiles produced by the Borrower and its Subsidiaries.

Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. DEFINITIONS AND ACCOUNTING MATTERS .

1.01 Certain Defined Terms . Subject to the amendments, restatements, supplements or other modifications in Section 1.01 of Appendix A, as used herein, the following terms shall have the following meanings (all terms defined in this Section 1.01 or in other provisions of this Loan Agreement in the singular to have the same meanings when used in the plural and vice versa):

" Account Control Agreement " shall mean one or more account control agreements among the Lender, the applicable Loan Parties and each bank party thereto, in form and substance acceptable to the Lender, to be entered into with respect to each Facility Account, as amended, restated, supplemented or otherwise modified from time to time.

" Acknowledgement and Consent " shall have the meaning specified in Section 5.01(r) hereof.

" Advance " shall have the meaning specified in Section 2.01(a).

" Affiliate " shall mean, with respect to any Person, any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such Person. For purposes of this Loan Agreement, "control" (together with the correlative meanings of "controlled by" and "under common control with") means possession, directly or indirectly, to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract, or otherwise.

" After Acquired Real Property " shall have the meaning set forth in Section 7.16(b) hereof.

" Applicable Law " shall mean, with reference to any Person, all laws (including common law), statutes, regulations, ordinances, treaties, judgments, decrees, injunctions, writs and orders of any court, governmental agency or authority and rules, regulations, orders, directives, licenses and permits of any Governmental Authority applicable to such Person or its property or in respect of its operations.

" Bankruptcy Code " shall mean Title 11 of the United States Code, as amended from time to time.

" Bankruptcy Exceptions " shall mean limitations on, or exceptions to, the enforceability of an agreement against a Person due to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or the application of general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity.

" Benefit Plan " shall mean any employee benefit plan within the meaning of section 3(3) of ERISA and any other plan, arrangement or agreement which provides for compensation, benefits, fringe benefits or other remuneration to any employee, former employee, individual independent contractor or director, including without limitation, any bonus, incentive, supplemental retirement plan, golden parachute, employment, individual consulting, change of control, bonus or retention agreement, whether provided directly or indirectly by any Loan Party or otherwise.

" Board " shall mean the Board of Governors of the Federal Reserve System of the United States.

" Bond Exchange " shall mean the conversion of existing public debt into equity, debt and/or cash as contemplated in Section 7.20(c).

" Business Day " shall mean any day other than (i) a Saturday or Sunday, (ii) a Federal holiday or other day on which banks in New York, New York or the District of Columbia are permitted to close, or (iii) a day on which trading in securities on the New York Stock Exchange or any other major securities exchange in the United States is not conducted.

" Capital Lease Obligations " shall mean, for any Person, all obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) Property to the extent such obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP, and, for purposes of this Loan Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

" Cash Equivalents " shall mean (a) U.S. dollars, or money in other currencies received in the ordinary course of business, (b) securities with maturities of one (1) year or less from the date of acquisition issued or fully guaranteed or insured by the U.S. Government or any agency thereof, (c) securities with maturities of one (1) year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody's, (d) demand deposit, certificates of deposit and time deposits with maturities of one (1) year or less from the date of acquisition and overnight bank deposits of any commercial bank, supranational bank or trust company having capital and surplus in excess of $500,000,000, (e) repurchase obligations with respect to securities of the types (but not necessarily maturity) described in clauses (b) and (c) above, having a term of not more than ninety (90) days, of banks (or bank holding companies) or subsidiaries of such banks (or bank holding companies) and non-bank broker-dealers listed on the Federal Reserve Bank of New York's list of primary and other reporting

dealers (" Repo Counterparties "), which Repo Counterparties have capital, surplus and undivided profits aggregating in excess of $500,000,000 (or the foreign equivalent thereof) and which Repo Counterparties or their parents (if the Repo Counterparties are not rated) will at the time of the transaction be rated "A-1" by S&P (or such similar equivalent rating) or higher by at least one nationally recognized statistical rating organization, (f) commercial paper rated at least A-1 or the equivalent thereof by S&P or P-1 or the equivalent thereof by Moody's and in either case maturing within one (1) year after the day of acquisition, (g) short-term marketable securities of comparable credit quality, (h) shares of money market mutual or similar funds which invest at least 95% in assets satisfying the requirements of clauses (a) through (g) of this definition, and (i) in the case of a Foreign Subsidiary, substantially similar investments, of comparable credit quality, denominated in the currency of any jurisdiction in which such Person conducts business.

" Certification Deadline " shall mean March 31, 2009 or such later date (not to exceed thirty (30) days after March 31, 2009) as determined by the President's Designee in his or her sole discretion.

" Change of Control " shall mean with respect to the Borrower, the acquisition, after the Effective Date, by any other Person, or two or more other Persons acting in concert other than the Permitted Investors, the Lender or any Affiliate of the Lender, of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended) of outstanding shares of voting stock of the Borrower at any time if after giving effect to such acquisition such Person or Persons owns twenty percent (20%) or more of such outstanding voting stock.

" Code " shall mean the Internal Revenue Code of 1986, as amended from time to time.

" Collateral " shall have the meaning assigned to such term in Section 4.01(a) hereof.

" Collateral Substitution " shall have the meaning assigned to such term in Section 2.07.

" Compensation Reductions " shall mean, with respect to the Borrower or any Subsidiary, the reduction of the total amount of compensation, including wages and benefits, paid to its United States employees so that, by no later than December 31, 2009, the average of such total amount, per hour and per person, is an amount that is competitive with the average total amount of such compensation, as certified by the Secretary of the United States Department of Labor, paid per hour and per person to employees of Nissan Motor Company, Toyota Motor Corporation, or American Honda Motor Company whose site of employment is in the United States.

" Consolidated " refers to the consolidation of accounts in accordance with GAAP.

" Contractual Obligation " shall mean, as to any Person, any material provision of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound or any material provision of any security issued by such Person.

" Controlled Affiliate " shall have the meaning assigned to such term in Section 6.19.

" Controlled Foreign Subsidiary " shall mean any Subsidiary that is a "controlled foreign corporation" within the meaning of the Code. For this purpose, a "controlled foreign corporation" includes any Subsidiary (i) classified as a corporation for U.S. federal income tax purposes, substantially all of the assets of which consist of stock of one or more controlled foreign corporations, or (ii) classified

as a partnership or disregarded entity for U.S. federal income tax purposes, any assets of which consist of stock of one or more controlled foreign corporations.

" Copyright Licenses " shall mean all licenses, contracts or other agreements, whether written or oral, naming a Loan Party as licensee or licensor and providing for the grant of any right to reproduce, publicly display, publicly perform, distribute, create derivative works of or otherwise exploit any works covered by any Copyright (including, without limitation, all Copyright Licenses set forth in **Schedule 6.26** hereto).

" Copyrights " shall mean all domestic and foreign copyrights, whether registered or unregistered, including, without limitation, all copyright rights throughout the universe (whether now or hereafter arising) in any and all media (whether now or hereafter developed), in and to all original works of authorship (including, without limitation, all marketing materials created by or on behalf of any Loan Party) **,** acquired or owned by a Loan Party (including, without limitation, all copyrights described in **Schedule 6.26** hereto), all applications, registrations and recordings thereof (including, without limitation, applications, registrations and recordings in the United States Copyright Office or in any similar office or agency of the United States or any other country or any political subdivision thereof), and all reissues, renewals, restorations, extensions or revisions thereof.

" Default " shall mean an event that with the giving of notice or the passage of time or both, would become an Event of Default.

" Disposition " shall mean with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof (other than (i) exclusive Licenses that do not materially impair the relevant Loan Party's ability to use or exploit the relevant Intellectual Property as it has been used or exploited by the Loan Parties as of the Effective Date or (ii) nonexclusive Licenses); and the terms " Dispose " and " Disposed of " shall have correlative meanings.

" Dollars " or " $ " shall mean lawful currency of the United States.

" Domestic Subsidiary " shall mean any Subsidiary that is organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia.

" Due Diligence Review " shall mean the performance by or on behalf of the Lender of any or all of the reviews permitted under Section 11.16, as desired by the Lender from time to time.

" EESA " shall mean the Emergency Economic Stabilization Act of 2008, Public Law No: 110-343, effective as of October 3, 2008, as amended from time to time.

" Effective Date " shall have the meaning set forth in Appendix A.

" EISA " shall mean the Energy Independence and Security Act of 2007 (Public Law 110-140; 42 U.S.C. 17013), as amended.

" Electronic Transmission " shall mean the delivery of information by electronic mail, facsimile or other electronic format acceptable to the Lender. An Electronic Transmission shall be considered written notice for all purposes hereof.

" Environmental Indemnity " shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by the applicable Loan Parties in connection with the Advances for

the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

" Equity Interests " shall mean any and all equity interests, including any shares of stock, membership or partnership interests, participations or other equivalents whether certificated or uncertificated (however designated) of a corporation, limited liability company, partnership or any other entity, and any and all similar ownership interests in a Person and any and all warrants or options to purchase any of the foregoing.

" Equity Pledge Agreement " shall mean that certain pledge agreement, dated as of the date hereof, by each Pledgor in favor of the Lender.

" ERISA " shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

" ERISA Affiliate " shall mean any corporation or trade or business or other entity, whether or not incorporated, that is a member of any group of organizations (i) described in Section 414(b), (c), (m) or (o) of the Code of which any Loan Party is a member or (ii) which is under common control with any Loan Party within the meaning of section 4001 of ERISA.

" ERISA Event " shall mean (i) any Reportable Event or a determination that a Plan is "at risk" (within the meaning of Section 302 of ERISA); (ii) the incurrence by the Borrower or any ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan or the withdrawal or partial withdrawal of the Borrower or any of its respective ERISA Affiliates from any Plan or Multiemployer Plan; (iii) the receipt by the Borrower or any ERISA Affiliates from the PBGC or a plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (iv) the receipt by the Borrower or any ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; or (v) the occurrence of a nonexempt "prohibited transaction" with respect to which the Borrower, the other Loan Parties or their ERISA Affiliates is a "disqualified person" (within the meaning of Section 4975 of the Code) or with respect to which the Borrower or any ERISA Affiliate could otherwise be liable.

" Event of Default " shall have the meaning provided in Section 9.01.

" Excluded Collateral " shall mean any Property to the extent that a grant of a security interest therein (a) is prohibited by any Applicable Law, or requires a consent pursuant to Applicable Law that has not been obtained from any Governmental Authority, or (b) is contractually prohibited, or constitutes a breach or default under or results in the termination of any contract (except to the extent that such contract or the related prohibitive provisions therein are ineffective under the New York Uniform Commercial Code or other Applicable Law) or requires a consent from any other Person (other than the Borrower or any of its Affiliates) that has not been obtained, (c) in the case of any investment property (as such term is defined in the Uniform Commercial Code), is prohibited under any applicable organizational, constitutive, shareholder or similar agreement (except to the extent that such agreement or the related prohibitive provisions therein are ineffective under the Uniform Commercial Code or other Applicable Law), or (d) is Property of any of the following types:

(i) motor vehicles situated in a jurisdiction in which the perfection of a security interest is excluded from the Uniform Commercial Code;

(ii) voting Equity Interests in any Controlled Foreign Subsidiary, to the extent (but only to the extent) required to prevent the Collateral from including more than 65% of all voting Equity Interests in such Controlled Foreign Subsidiary;

(iii) any Equity Interests owned by the Borrower or other Loan Party in any Excluded Subsidiary;

(iv) assets that give rise to tax-exempt interest income within the meaning of Section 265(a)(2) of the Internal Revenue Code of 1986, as amended from time to time;

(v) any Property, including any debt or Equity Interest and any manufacturing plant or facility which is located within the continental United States, to the extent that the grant of a security interest therein to secure the Obligations will result in a lien, or an obligation to grant a lien, in such Property to secure any other obligation;

(vi) any "intent to use" United States trademark application for which a statement of use has not been filed;

(vii) any Property that is subject to a purchase option granted to any dealer of the Borrower's or any Loan Parties' products with respect to the related dealership Properties;

(viii) any Property (including any tangible embodiments of Intellectual Property that may be affixed to or embodied in any Property), including any Equity Interest, to the extent that the Borrower or any other Loan Party has assigned, pledged, or otherwise granted a security interest in or with respect to such Property to secure any indebtedness or any other obligations, including any Senior Lien Loan, prior to the Effective Date, to the extent that a grant of a security interest therein is contractually prohibited, or constitutes a breach or default under or results in the termination of any contract, or requires a consent from any other Person (other than the Borrower or any of its Affiliates) that has not been obtained;

(ix) any Property of the Borrower or any Loan Party acquired with (a) funds obtained from the Government of the United States, including proceeds of any loan obtained under Section 136 of the EISA or (b) under any other government programs or using other government funds, including proceeds of government loans, contracts, grants, cooperative agreements, or Cooperative Research and Development Agreements, to the extent that a grant of a security interest therein is contractually prohibited, or constitutes a breach or default under or results in the termination of any contract or precludes eligibility for funding described in clauses (a) or (b) above or requires a consent from any other Person (other than the Borrower or any of its Affiliates) that has not been obtained;

(x) any Property, including cash and cash equivalents, (x) pledged or deposited in connection with insurance, including worker's compensation, unemployment insurance or other types of social security or pension benefits, (y) pledged or deposited to secure the performance of bids, tenders, statutory obligations, and surety, appeal, customs or performance bonds and similar obligations, or (z) pledged or deposited to secure reimbursement obligations in respect of letters of credit issued to support any obligations or liabilities described in clauses (x) or (y) above; and

(xi) to the extent not otherwise included, all proceeds, including cash proceeds (as each such term is defined in the Uniform Commercial Code), and products of Excluded Collateral, in whatever form, including cash or cash equivalents.

" Excluded Subsidiary " shall have the meaning set forth in Appendix A.

" Excluded Taxes " shall have the meaning provided in Section 3.03(a).

" Executive Order " shall have the meaning provided in Section 6.20.

" Existing Agreements " shall mean the agreements of the Loan Parties and their Subsidiaries in effect on the Effective Date and any extensions, renewals and replacements thereof so long as any such extension, renewal and replacement could not reasonably be expected to have a material adverse effect on the rights and remedies of the Lender under any of the Loan Documents.

" Expense Policy " shall mean the Borrower's comprehensive written policy on corporate expenses maintained and implemented in accordance with Section 7.19.

" Expiration Date " shall have the meaning set forth in Appendix A.

" Facility Account " shall have the meaning set forth in Appendix A.

" Facility Collateral " shall mean collectively, (i) the Collateral pledged hereunder, (ii) the Collateral (as defined in the Equity Pledge Agreement) pledged to the Lender under the Equity Pledge Agreement, (iii) the Collateral (as defined in the Intellectual Property Pledge Agreement), pledged to the Lender under the Intellectual Property Agreement, (iv) the Guaranty Collateral (as defined in the Guaranty), pledged to the Lender under the Guaranty, and (v) any other collateral security pledged to Lender under any other Loan Document, including without limitation each Mortgage; provided that Facility Collateral shall exclude any Property constituting Excluded Collateral.

" Foreign Subsidiary " shall mean any Subsidiary that is not a Domestic Subsidiary.

" Funding Date " shall have the meaning set forth in Appendix A.

" GAAP " shall mean generally accepted accounting principles as in effect from time to time in the United States.

" Governmental Authority " shall mean, with respect to any Person, any nation or government, any state or other political subdivision, agency or instrumentality thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any court or arbitrator having jurisdiction over such Person, any of its Subsidiaries or any of its properties.

" Guarantee " shall mean, as to any Person, any obligation of such Person directly or indirectly guaranteeing any Indebtedness of any other Person or in any manner providing for the payment of any Indebtedness of any other Person or otherwise protecting the holder of such Indebtedness against loss (whether by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, or to take-or-pay or otherwise), provided that the term "Guarantee" shall not include (i) endorsements for collection or deposit in the ordinary course of business, or (ii) obligations to make servicing advances for delinquent taxes and insurance, or other obligations in respect of a mortgaged property, to the extent required by the Lender. The amount of any Guarantee of a Person shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith. The terms "Guarantee" and "Guaranteed" used as verbs shall have correlative meanings.

" Guarantors " shall mean those Persons listed on **Schedule 1.2** .

" Guaranty " shall mean that certain Guaranty and Security Agreement, dated as of the date hereof, by each Guarantor in favor of the Lender guarantying the Obligations of the Borrower.

" Hedging Agreement " means any (i) interest rate swap agreement, interest rate cap agreement or other agreement designed to protect against fluctuations in interest rates or (ii) foreign exchange forward contract, currency swap agreement or other agreement designed to protect against fluctuations in foreign exchange rates or (iii) commodity or raw material futures contract or other agreement designed to protect against fluctuations in raw material prices.

" Indebtedness " shall mean, for any Person: (a) obligations created, issued or incurred by such Person for borrowed money (whether by loan, the issuance and sale of debt securities or the sale of Property to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such Property from such Person); (b) obligations of such Person to pay the deferred purchase or acquisition price of Property or services; (c) indebtedness of others of the type referred to in clauses (a), (b), (d), (e), (f) and (g) of this definition secured by a Lien on the Property of such Person, whether or not the respective indebtedness so secured has been assumed by such Person; (d) obligations (contingent or otherwise) of such Person in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions for the account of such Person; (e) Capital Lease Obligations of such Person; (f) obligations of such Person under repurchase agreements or like arrangements; (g) indebtedness of others of the type referred to in clauses (a), (b), (d), (e), (f) and (g) of this definition Guaranteed by such Person; (h) all obligations of such Person incurred in connection with the acquisition or carrying of fixed assets by such Person; (i) indebtedness of general partnerships of which such Person is a general partner unless the terms of such indebtedness expressly provide that such Person is not liable therefor; and (j) any other indebtedness of such Person evidenced by a note, bond, debenture or similar instrument.

" Individual Property " shall mean each parcel of real property, the improvements thereon and all personal property owned by the applicable Loan Party and encumbered by a Mortgage, together with all rights pertaining to such real property, improvements and personal property, as more particularly described in Article 1 of each Mortgage and referred to therein as the "Property".

" Intellectual Property " shall mean all Patents, Trademarks and Copyrights owned by any Loan Party, and all rights under any Licenses to which a Loan Party is a party **.**

" Intellectual Property Pledge Agreement " shall mean that certain Intellectual Property Pledge Agreement, dated as of the date hereof, by and among each Loan Party and the Lender.

" Interest Payment Date " shall have the meaning set forth in Appendix A.

" Interest Period " shall mean, with respect to any Advance, (i) initially, the period commencing on the Funding Date with respect to such Advance and ending on the calendar day prior to the next succeeding Interest Payment Date, and (ii) thereafter, each period commencing on an Interest Payment Date and ending on the calendar day prior to the next succeeding Interest Payment Date. Notwithstanding the foregoing, no Interest Period may end after the Maturity Date.

" Investment " shall mean any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase of any Equity Interests, bonds, notes, debentures or other debt securities of, or any assets constituting a business unit of, or any other similar investment in, any Person.

" Investment Company Act " shall mean the Investment Company Act of 1940, as amended from time to time, including all rules and regulations promulgated thereunder.

" Joint Venture " shall mean any joint venture, partnership or similar arrangement between any Loan Party or one of its Subsidiaries and independent third parties which are not Subsidiaries of a Loan Party.

" JV Agreement " shall mean each partnership or limited liability company agreement (or similar agreement) between a Loan Party or one of its Subsidiaries and the relevant JV Partner as the same may be amended, restated, supplemented or otherwise modified from time to time, in accordance with the terms hereof.

" JV Partner " shall mean each Person party to a JV Agreement that is not a Loan Party or one of its Subsidiaries.

" Labor Modifications " shall mean, collectively, the Compensation Reductions, the Severance Rationalization and the Work Rule Modifications.

" Lender " shall have the meaning assigned thereto in the preamble hereof.

" LIBOR " shall mean with respect to each Advance, the greater of (a) the LIBOR Floor and (b) the rate (adjusted for statutory reserve requirements for eurocurrency liabilities) for eurodollar deposits for a period equal to three months appearing on Reuters Screen LIBOR01 Page or if such rate ceases to appear on Reuters Screen LIBOR01 Page, on any other service providing comparable rate quotations at approximately 11:00 a.m., London time. LIBOR shall be determined on the Effective Date and reset on each Interest Payment Date.

" LIBOR Floor " shall have the meaning set forth in Appendix A.

" Licenses " shall mean the Copyright Licenses, the Trademark Licenses and the Patent Licenses.

" Lien " shall mean any mortgage, pledge, security interest, lien or other charge or encumbrance (in the nature of a security interest and other than licenses of Intellectual Property), including the lien or retained security title of a conditional vendor, upon or with respect to any property or assets.

" Loan Agreement " shall mean this Loan and Security Agreement, as may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof.

" Loan Documents " shall mean the documents set forth on Appendix A, together with all other such documentation entered into in connection with the transactions contemplated under such documents and to fully evidence and secure the Borrower's Obligations hereunder.

" Loan Parties " shall mean the Borrower, the Guarantors, and the Pledgors, and "Loan Party" shall mean each of them.

" Mandatory Prepayment " shall have the meaning ascribed thereto in Section 2.07.

" Material Adverse Effect " shall mean a material adverse effect on (a) the business, operations, property, condition (financial or otherwise) or prospects of the Loan Parties and their

Subsidiaries (taken as a whole), (b) the ability of the Loan Parties (taken as a whole) to perform any of their obligations under any of the Loan Documents to which they are a party, (c) the validity or enforceability in any material respect of any of the Loan Documents to which they are a party, (d) the rights and remedies of the Lender under any of the Loan Documents, or (e) the Facility Collateral (taken as a whole).

" Maturity Date " shall mean the earlier of (i) the Expiration Date, (ii) the date specified in Section 2.05(a)(ii), or (iii) the occurrence of an Event of Default, at the option of the Lender.

" Maximum Loan Amount " shall have the meaning set forth in Appendix A.

" Moody's " shall mean Moody's Investors Service, Inc.

" Mortgage " shall mean, with respect to each Individual Property, that certain Mortgage (or Deed of Trust or Deed to Secure Debt, as applicable), Assignment of Leases and Rents, and Security Agreement or similar agreement, executed and delivered by a Loan Party as security for the Advances and encumbering such Individual Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

" Multiemployer Plan " shall mean a multiemployer plan defined as such in Section 3(37) of ERISA to which contributions are required to be made by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate may have any direct or indirect liability or obligation contingent or otherwise.

" Net Proceeds " shall mean, with respect to any event, (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, net of (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, (ii) in the case of a Disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than the Advances) secured by such asset or otherwise subject to mandatory prepayment as a result of such event and (iii) the amount of all taxes paid (or reasonably estimated to be payable, including under any tax sharing arrangements) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case that are directly attributable to such event (as determined reasonably and in good faith by a Responsible Person).

" Non-Excluded Taxes " shall have the meaning provided in Section 3.03(a).

" Note " shall mean the promissory note provided for by Section 2.02(a) for the Advances and any promissory note delivered in substitution or exchange therefor, in each case as the same shall be modified and supplemented and in effect from time to time.

" Obligations " shall mean (a) all of the Borrower's obligations to repay the Advances on the Maturity Date, to pay interest on an Interest Payment Date and all other obligations and liabilities of the Borrower to the Lender, or any other Person arising under, or in connection with, the Loan Documents, whether now existing or hereafter arising; (b) any and all sums paid by the Lender pursuant to the Loan Documents in order to preserve any Facility Collateral or the interest of the Lender therein;

(c) in the event of any proceeding for the collection or enforcement of any of the Borrower's obligations or liabilities referred to in clause (a), the reasonable expenses of retaking, holding, collecting, preparing for sale, selling or otherwise disposing of or realizing on any Facility Collateral, or of any exercise by the Lender of its rights under the Loan Documents, including without limitation, reasonable attorneys' fees and disbursements and court costs; and (d) all of the Borrower's indemnity obligations to the Lender pursuant to the Loan Documents.

" OFAC " shall mean the Office of Foreign Assets Control of the United States Department of the Treasury.

" Other Taxes " shall mean any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Loan Agreement or any other Loan Document (excluding, in each case, amounts imposed on an assignment, a grant of a participation or other transfer of an interest in an Advance or Loan Document), except pursuant to Section 3.03.

" Patent Licenses " shall mean all licenses, contracts or other agreements, whether written or oral, naming a Loan Party as licensee or licensor and providing for the grant of any right to manufacture, use, lease, or sell any invention, design, idea, concept, method, technique, or process covered by any Patent (including, without limitation, all Patent Licenses set forth in **Schedule 6.26** hereto).

" Patents " shall mean all domestic and foreign letters patent, design patents, utility patents, industrial designs, and all intellectual property rights in inventions, trade secrets, ideas, concepts, methods, techniques, processes, proprietary information, technology, know-how, formulae, and other general intangibles of like nature, now existing or hereafter acquired or owned by a Loan Party (including, without limitation, all domestic and foreign letters patent, design patents, utility patents, industrial designs, inventions, trade secrets, ideas, concepts, methods, techniques, processes, proprietary information, technology, know-how and formulae described in **Schedule 6.26** hereto), all applications, registrations and recordings thereof (including, without limitation, applications, registrations and recordings in the United States Patent and Trademark Office, or in any similar office or agency of the United States or any other country or any political subdivision thereof), and all reissues, divisions, continuations, continuations in part and extensions or renewals thereof.

" PBGC " shall mean the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

" Permitted Capped Call " shall mean any capped call, ratio capped call or other similar derivative transaction entered into by a Loan Party on or before the Effective Date.

" Permitted Indebtedness " shall mean any of the following:

(i) Indebtedness created under any Loan Document;

(ii) purchase money Indebtedness for real property, improvements thereto or equipment or personal property hereafter acquired (or, in the case of improvements, constructed) by, or Capitalized Lease Obligations of, the Borrower or any Subsidiary;

(iii) trade payables, if any, in the ordinary course of its business;

(iv) Indebtedness existing on the date hereof;

(v) Indebtedness incurred after the date hereof under Existing Agreements;

(vi) intercompany Indebtedness of a Loan Party in the ordinary course of business; provided that , the right to receive any repayment of such Indebtedness (other than Indebtedness meeting the criteria of clauses (iv) or (v) above, or any extensions, renewals, exchanges or replacements thereof) shall be subordinated to the Lender's rights to receive repayment of the Obligations;

(vii) Indebtedness consisting of loans made, or guaranteed, by any Specified Governmental Authority;

(viii) Indebtedness existing at the time any Person merges with or into or becomes a Loan Party and not incurred in connection with, or in contemplation of, such Person merging with or into or becoming a Loan Party; provided that any such merger shall comply with Section 8.01;

(ix) Hedging Agreements not entered into for speculative purposes;

(x) other unsecured Indebtedness of the Loan Parties incurred in the ordinary course of business; provided that such Indebtedness shall not mature, and there shall be no scheduled principal payments due under such Indebtedness, prior to the date that is six (6) months after the Maturity Date;

(xi) Indebtedness with respect to (x) letters of credit, bankers' acceptances and similar instruments issued in the ordinary course of business, including letters of credit, bankers' acceptances and similar instruments in respect of the financing of insurance premiums, customs, stay, performance, bid, surety or appeal bonds and similar obligations, completion guaranties, "take or pay" obligations in supply agreements, reimbursement obligations regarding workers' compensation claims, indemnification, adjustment of purchase price and similar obligations incurred in connection with the acquisition or disposition of any business or assets **,** and sales contracts, coverage of long-term counterparty risk in respect of insurance companies, purchasing and supply agreements, rental deposits, judicial appeals and service contracts and (y) appeal, bid, performance, surety, customs or similar bonds issued for the account of the Borrower or any of its Subsidiaries in the ordinary course of business;

(xii) Indebtedness incurred in the ordinary course of business in connection with cash management and deposit accounts and operations, netting services, employee credit card programs and similar arrangements and Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, provided that such Indebtedness is extinguished within five (5) Business Days of its incurrence;

(xiii) any guarantee by any Loan Party of Permitted Indebtedness;

(xiv) Indebtedness entered into under Section 136 of EISA;

(xv) any extensions, renewals, exchanges or replacements of Indebtedness of the kind in clauses (i), (iv), (v), (vii), (viii), (xiv), (xv) and (xvii) of this definition to the extent (a) the principal amount of or commitment for such Indebtedness is not increased (except by an

amount equal to unpaid accrued interest and premium thereon plus other reasonable fees and expenses incurred in connection with such extension, renewals or replacement), (b) neither the final maturity nor the weighted average life to maturity of such Indebtedness is decreased and (c) such Indebtedness, if subordinated in right of payment to the Lender of the Indebtedness under this Loan Agreement, remains so subordinated on terms no less favorable to the Lender;

(xvi) other Indebtedness not incurred under any other clause of this definition in an amount not to exceed an aggregate principal balance of $100,000,000 outstanding at any one time; and

(xvii) any other Permitted Indebtedness set forth on Appendix A.

" Permitted Investments " shall mean any of the following:

(i) any Investment in Cash Equivalents;

(ii) any Investment by a Loan Party in the Borrower or another Loan Party or a Pledged Entity that is a Domestic Subsidiary;

(iii) any Investment by a Loan Party in any Domestic Subsidiary that is neither a Loan Party nor a Pledged Entity, in an aggregate amount not to exceed $100,000,000 in the aggregate at any one time outstanding;

(iv) Investments in Foreign Subsidiaries, only (A) prior to the Certification Deadline, in accordance with Appendix A, or (B) from and after the Certification Deadline, pursuant to a Restructuring Plan that has been approved by the President's Designee;

(v) any Investment existing on the Effective Date or made pursuant to binding commitments in effect on the Effective Date or an investment consisting of any extension, modification or renewal of any Investment existing on the Effective Date; provided that the amount of any such Investment is not increased through such extension, modification or renewal;

(vi) any Investment acquired solely in exchange for Equity Interests of the Borrower;

(vii) Investments in Joint Ventures in an aggregate amount, taken together with all other Investments made in reliance on this clause, not to exceed $25,000,000 in the aggregate at any one time outstanding plus the aggregate cash distributions received by the Borrower and the Loan Parties from Joint Ventures after the Effective Date;

(viii) Investments in Joint Ventures to the extent funded by grants from, Investments in the Borrower and the Subsidiaries by, or Indebtedness of the Borrower and the Subsidiaries guaranteed by, any Specified Governmental Authority and required to be so invested by the terms of the related arrangements with such Specified Governmental Authority;

(ix) any Investment otherwise permitted under the Loan Agreement;

(x) Investments in Indebtedness of, or Investments guaranteed by, Specified Governmental Authorities, in connection with industrial revenue, municipal, pollution control, development or other bonds or similar financing arrangements;

(xi) any Permitted Capped Call;

(xii) Trade Credit;

(xiii) to the extent not otherwise addressed in this definition, Investments in the ordinary course of such Loan Party's business if the value of such Investments do not exceed $25,000,000 in the aggregate at any one time outstanding for all Loan Parties;

(xiv) Investments not in the ordinary course of such Loan Party's business or if the value of such Investment exceeds $100,000,000, and, in each case, such Loan Party has provided at least twenty (20) days' prior written notice to the President's Designee of such Investments and the details thereof (or such lesser time as may be agreed by the President's Designee), and the President's Designee has not notified such Loan Party that he or she has determined that such Investment would be inconsistent with, or detrimental to, the long-term viability of such Loan Party;

(xv) loans and advances to directors, officers and employees in the ordinary course of business (including for travel, entertainment and relocation expenses consistent with the Expense Policy);

(xvi) Investments (i) received in satisfaction or partial satisfaction of delinquent accounts and disputes with customers or suppliers in the ordinary course of business, or (ii) acquired as a result of foreclosure of a Lien securing an Investment or the transfer of the assets subject to such Lien in lieu of foreclosure;

(xvii) Investments constituting non-cash consideration useful in the operation of the business of the Borrower or any of its Subsidiaries and acquired in connection with a Disposition permitted by this Loan Agreement;

(xviii) commercial transactions in the ordinary course of business with the Borrower or any of its Subsidiaries to the extent such transactions would constitute an Investment;

(xix) conveyance of Facility Collateral in an arms length transaction to a Subsidiary that is not a Loan Party or an Affiliate of the Borrower for non-cash consideration consisting of Trade Credit or other Property to become Facility Collateral having a fair market value equal to or greater than the fair market value of the conveyed Facility Collateral; and

(xx) Investments in dealerships in the ordinary course of business; and

(xxi) any other Permitted Investment set forth in Appendix A.

For the avoidance of doubt, no Investment may be made in a Foreign Subsidiary other than in accordance with subclauses (iv) and (xii) of this definition.

" Permitted Liens " shall mean, with respect to any Property of the Borrower or any Loan Party:

(i) Liens created under the Loan Documents;

(ii) Liens on Property of a Loan Party existing on the date hereof (including Liens on Property of a Loan Party pursuant to Existing Agreements; provided that such Liens shall secure only those obligations that they secure on the date hereof);

(iii) any Lien existing on any Property prior to the acquisition thereof by a Loan Party or existing on any Property of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Loan Party, as the case may be; provided that (x) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Loan Party, (y) such Lien does not apply to any other Property or assets of a Loan Party, and (z) such Lien secures only those obligations that it secures on the date of such acquisition or the date such Person becomes a Loan Party, as the case may be; Liens for taxes and utility charges not yet due or that are being contested in compliance with Section 6.07;

(iv) Liens for taxes and utility charges not yet due or that are being contested in compliance with Section 6.07;

(v) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business and securing obligations that are not due and payable or that are being contested in compliance with Section 7.12;

(vi) Liens securing reimbursement obligations with respect to letters of credit that encumber documents and other property relating to such letters of credit and the proceeds thereof;

(vii) Liens securing Hedging Agreements permitted hereunder;

(viii) Liens created in the ordinary course of business in favor of banks and other financial institutions over balances of any accounts held at such banks or financial institutions or over investment property held in a securities account, as the case may be, to facilitate the operation of cash pooling, cash management or interest set-off arrangements;

(ix) customary Liens in favor of trustees and escrow agents, and netting and set-off rights, banker's liens and the like in favor of counterparties to financial obligations and instruments, including, without limitation, Hedging Agreements;

(x) Liens securing Indebtedness incurred under Section 136 of EISA;

(xi) pledges and deposits made in the ordinary course of business in compliance with workmen's compensation, unemployment or other insurance and other social security laws or regulations;

(xii) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory obligations, surety, customs and appeal bonds, performance bonds and other obligations of a like nature, or to secure the payment of import or customs duties, in each case incurred in the ordinary course of business;

(xiii) zoning restrictions, easements, rights-of-way, restrictions on use of real property and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and do not materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries;

(xiv) purchase money security interests in real property, improvements thereto or equipment hereafter acquired (or, in the case of improvements, constructed) by a Loan Party, including pursuant to Capital Lease Obligations; provided that (w) such security interests secure Indebtedness permitted by Section 8.10, (x) such security interests are incurred, and the Indebtedness secured thereby is created, within 90 days after such acquisition (or construction), (y) the Indebtedness secured thereby does not exceed the lesser of the cost or the fair market value of such real property, improvements or equipment at the time of such acquisition (or construction) and (z) such security interests do not apply to any other property or assets of the Borrower or any Subsidiary;

(xv) judgment Liens securing judgments not constituting an Event of Default under Section 9.01(g);

(xvi) any Lien consisting of rights reserved to or vested in any Governmental Authority by statutory provision;

(xvii) Liens securing Indebtedness described in clause (vi) or clause (vii) of the definition of Permitted Indebtedness;

(xviii) pledges or deposits made to secure reimbursement obligations in respect of letters of credit issued to support any obligations or liabilities described in clauses (xi) or (xii) of this definition;

(xix) other Liens created or assumed in the ordinary course of business of a Loan Party; provided that the obligations secured by all such Liens shall not exceed the principal amount of $50,000,000 in the aggregate at any one time outstanding; and

(xx) any other Permitted Lien set forth on Appendix A.

" Person " shall mean any individual, corporation, company, voluntary association, partnership, joint venture, limited liability company, trust, unincorporated association or government (or any agency, instrumentality or political subdivision thereof).

" Plan " shall mean an employee benefit or other plan covered by Title IV of ERISA, other than a Multiemployer Plan which is sponsored, established, contributed to or maintained by any Loan Party or any ERISA Affiliate, or for which any of the Loan Parties or any of their respective ERISA Affiliates could have any liability, whether actual or contingent (whether pursuant to section 4069 of ERISA or otherwise) or to which any of the Loan Parties or any of their respective ERISA Affiliates previously maintained or contributed to during the six years prior to the Effective Date.

" Plan Completion Certification " shall mean the certification of the President's Designee delivered in accordance with Section 7.23.

" Pledged Entity " shall mean a Subsidiary of a Loan Party whose Equity Interests are Pledged Equity pursuant to the Equity Pledge Agreement.

" Pledged Equity " shall mean all of the Equity Interests of a Pledged Entity (or such lesser amount as may be required pursuant to the Pledge Limitation (as defined in the Equity Pledge Agreement)), together with all ownership certificates, options or rights of any nature whatsoever which may be issued, granted or pledged by the owners of such interests to the Lender while this Loan Agreement is in effect.

" Pledgors " shall mean the Persons set forth on **Schedule 1.1** hereof.

" Post-Closing Letter Agreement " shall mean that certain Post-Closing Letter Agreement, dated as of the date hereof, by and between the Borrower and the Lender.

" Post-Default Rate " shall mean, in respect of any principal of any Advance or any other amount under this Loan Agreement, the Note or any other Loan Document that is not paid when due to the Lender (whether at stated maturity, by acceleration or mandatory prepayment or otherwise), a rate per annum during the period from and including the due date to but excluding the date on which such amount is paid in full equal to 5.00% per annum, plus (x) the interest rate otherwise applicable to such Advance or other amount, or (y) if no interest rate is otherwise applicable, the sum of (i) LIBOR plus (ii) the Spread Amount.

" Prepayment Event " shall mean the occurrence of any of the following events:

(i) the Disposition of any Facility Collateral to any Person other than to any Loan Party or Pledged Entity;

(ii) the incurrence by any Loan Party of any Indebtedness (other than the incurrence of Indebtedness that constitutes Permitted Indebtedness) or any equity or other capital raises (other than (x) contributions of indemnity payments received by the Borrower and required to be applied to satisfy (or reimburse a payment made in respect of) obligations and liabilities of the Borrower or any of its Subsidiaries or (y) the proceeds of the Advances), either public or private, whether in connection with a primary securities offering, a business combination of any kind, or otherwise; or

(iii) the Disposition of unencumbered assets of the Borrower other than in the ordinary course of business (including aircraft divestments).

" President's Designee " shall mean (i) one or more officers from the Executive Branch appointed by the President to monitor and oversee the restructuring of the U.S. domestic automobile industry and (ii) if no such officer has been appointed, the Secretary of the Treasury.

" proceeds " shall have the meaning assigned to such term under the Uniform Commercial Code.

" Prohibited Jurisdiction " shall mean, any country or jurisdiction, from time to time, that is the subject of a prohibition order (or any similar order or directive), sanctions or restrictions promulgated or administered by any Governmental Authority of the United States.

" Prohibited Person " shall mean any Person:

(i) listed in the Annex to (the " Annex "), or otherwise subject to the provisions of the Executive Order;

(ii) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) with whom the Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;

(iv) who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order;

(v) that is named as a "specially designated national and blocked person" on the most current list published by the OFAC at its official website, http://www.treas.gov.ofac/t11sdn.pdf or at any replacement website or other replacement official publication of such list; or

(vi) who is an Affiliate of or affiliated with a Person listed above.

" Property " shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

" Records " shall mean all books, instruments, agreements, customer lists, credit files, computer files, storage media, tapes, disks, cards, software, data, computer programs, printouts and other computer materials and records generated by other media for the storage of information maintained by any Person with respect to the business and operations of the Loan Parties and the Facility Collateral.

" Relevant Companies " shall have the meaning set forth in Appendix A.

" Reportable Event " shall mean any of the events set forth in Section 4043(b) of ERISA, other than those events as to which the thirty day notice period is waived.

" Requirement of Law " shall mean as to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

" Responsible Person " shall mean, as to any Person, the chief executive officer or, with respect to financial matters, the chief financial officer of such Person, an individual so designated from time to time by such Person's board of directors or, in the event any such officer is unavailable at any time he or she is required to take any action hereunder, Responsible Person shall mean any officer authorized to act on such officer's behalf as demonstrated by a certificate of corporate resolution (or equivalent); provided that the Lender is notified in writing of the identity of such Responsible Person.

" Restricted Payments " shall mean with respect to any Person, collectively, all direct or indirect dividends or other distributions of any nature (cash, securities, assets or otherwise) on, and all payments for, the purchase, redemption, defeasance or retirement or other acquisition for value of, any class of Equity Interests issued by such Person, whether such securities are now or may hereafter be authorized or outstanding, and any distribution in respect of any of the foregoing, whether directly or indirectly.

" Restructuring Plan " shall mean the plan to achieve and sustain the long-term viability, international competitiveness and energy efficiency of the Borrower and its Subsidiaries required by Section 7.20.

" Restructuring Plan Report " shall mean the report to be submitted by the Borrower to the President's Designee in accordance with Section 7.22.

" Reuters Screen LIBOR01 Page " shall mean the display page currently so designated on the Reuters Monitor Money Rates Service (or such other page as may replace that page on that service for the purpose of displaying comparable rates or prices).

" S&P " shall mean Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc.

" Senior Employee " shall mean, with respect to the Loan Parties collectively, any of the twenty-five (25) most highly compensated employees (including the SEOs).

" Senior Lien " shall mean the Lien granted to or for the benefit of a Senior Lien Lender on Facility Collateral pursuant to a Senior Lien Loan Agreement that is senior in priority to the Lien thereon granted to Lender hereunder or under any other Loan Documents and in effect as of the Effective Date.

" Senior Lien Lender " shall mean the lenders under the Senior Lien Loan Agreements, together with their successors and assigns.

" Senior Lien Loan Agreements " shall mean those certain loan agreements identified as such on **Schedule 6.22** in effect as of the Effective Date between any Loan Party and a Senior Lien Lender.

" Senior Lien Loans " shall mean those certain loans made by Senior Lien Lender to a Loan Party pursuant to the Senior Lien Loan Agreements, which are secured by Senior Liens.

" SEO " shall mean a senior executive officer within the meaning of section 111(b)(3) of EESA and any interpretation of the United States Department of the Treasury thereunder, including the rules set forth in 31 C.F.R. Part 30.

" Severance Rationalization " shall mean elimination of the payment of any compensation or benefits to U.S. employees of the Borrower or any of its Subsidiaries who have been fired, laid-off, furloughed, or idled, other than customary severance pay.

" Specified Governmental Authority " shall mean any nation or government, any state or other political subdivision, agency or instrumentality thereof or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any quasi-governmental entity, including any international organization or agency.

" Spread Amount " shall have the meaning set forth in Appendix A.

" Subsidiary " shall mean, with respect to any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

" supporting obligations " shall have the meaning assigned to such term under the Uniform Commercial Code.

" Termination Event " shall mean if the President's Designee shall not have issued the Plan Completion Certification by the Certification Deadline.

" Trade Credit " shall mean accounts receivable, trade credit or other advances extended to, or investment made in, customers or suppliers, including intercompany, in the ordinary course of business.

" Trademark Licenses " shall mean all licenses, contracts or other agreements, whether written or oral, naming any Loan Party as licensor or licensee and providing for the grant of any right concerning any Trademark, together with any goodwill connected with and symbolized by any such trademark licenses, contracts or agreements and the right to prepare for sale or lease and sell or lease any and all Inventory now or hereafter owned by any Loan Party and now or hereafter covered by such licenses (including, without limitation, all Trademark Licenses described in **Schedule 6.26** hereto).

" Trademarks " shall mean all domestic and foreign trademarks, service marks, collective marks, certification marks, trade dress, trade names, business names, d/b/a's, Internet domain names, trade styles, designs, logos and other source or business identifiers and all general intangibles of like nature, now or hereafter owned, adopted or acquired by any Loan Party (including, without limitation, all domestic and foreign trademarks, service marks, collective marks, certification marks, trade dress, trade names, business names, d/b/a's, Internet domain names, trade styles, designs, logos and other source or business identifiers described in **Schedule 6.26** hereto), all applications, registrations and recordings thereof (including, without limitation, applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof), and all reissues, extensions or renewals thereof, together with all goodwill of the business symbolized by such marks.

" Uniform Commercial Code " shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interest in any Facility Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, "Uniform Commercial Code" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection.

" Union " shall mean the leadership of each major United States labor organization that represents the employees of the Borrower and its Subsidiaries.

" United States " or " U.S. " shall mean the United States of America.

" VEBA " shall mean a voluntary employees' beneficiary association authorized under Section 501(c)(9) of the Code.

" VEBA Modifications " shall mean provision that not less than one-half of the value of each future payment or contribution made by the Borrower and its Subsidiaries or any of them to the VEBA account (or similar account) of a labor organization representing their employees (or as otherwise provided in Appendix A) shall be made in the form of the stock of the Borrower or one of its Subsidiaries, and the total value of any such payment or contribution shall not exceed the amount of any such payment or contribution that was required for such time period under the collective bargaining agreement that applied as of the date set forth in Appendix A.

" Work Rule Modifications " shall mean application of work rules for the U.S. employees of the Borrower and its Subsidiaries, beginning not later than December 31, 2009, in a manner that is competitive with the work rules for employees of Nissan Motor Company, Toyota Motor Corporation, or American Honda Motor Company whose site of employment is in the United States.

1.02 Interpretation . The following rules of this Section 1.02 apply unless the context requires otherwise. A gender includes all genders. Where a word or phrase is defined, its other grammatical forms have a corresponding meaning. A reference to a subsection, Section, Appendix, Annex or Exhibit is, unless otherwise specified, a reference to a Section of, or annex or exhibit to, this Loan Agreement. A reference to a party to this Loan Agreement or another agreement or document includes the party's successors and permitted substitutes or assigns. A reference to an agreement or document (including any Loan Document) is to the agreement or document as amended, restated, modified, novated, supplemented or replaced, except to the extent prohibited thereby or by any Loan Document and in effect from time to time in accordance with the terms thereof. A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it. A reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form. A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing. The words "hereof", "herein", "hereunder" and similar words refer to this Loan Agreement as a whole and not to any particular provision of this Loan Agreement. The term "including" is not limiting and means "including without limitation". In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including", the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including".

Except where otherwise provided in this Loan Agreement, any determination, consent, approval, statement or certificate made or confirmed in writing with notice to the Borrower by the Lender or an authorized officer of the Lender provided for in this Loan Agreement is conclusive and binds the parties in the absence of manifest error. A reference to an agreement includes a security interest, guarantee, agreement or legally enforceable arrangement whether or not in writing related to such agreement.

A reference to a document includes an agreement (as so defined) in writing or a certificate, notice, instrument or document, or any information recorded in computer disk form. Where a Loan Party is required to provide any document to the Lender under the terms of this Loan Agreement, the relevant document shall be provided in writing or printed form unless the Lender requests otherwise. At the request of the Lender, the document shall be provided in computer disk form or both printed and computer disk form.

This Loan Agreement is hereby modified where indicated in Appendix A hereto.

This Loan Agreement is the result of negotiations among, and has been reviewed by counsel to, the Lender and the Loan Parties, and is the product of all parties. In the interpretation of this Loan Agreement, no rule of construction shall apply to disadvantage one party on the ground that such party proposed or was involved in the preparation of any particular provision of this Loan Agreement or this Loan Agreement itself. Except where otherwise expressly stated, the Lender may give or withhold, or give conditionally, approvals and consents and may form opinions and make determinations at its absolute discretion. Any requirement of good faith, discretion or judgment by the Lender shall not be construed to require the Lender to request or await receipt of information or documentation not immediately available from or with respect to the Borrower, any other Loan Party, any other Person, or the Facility Collateral themselves.

SECTION 4. COLLATERAL SECURITY .

4.01 Collateral; Security Interest .

(a) Subject to any amendments, restatements, supplements or other modifications in Section 4.01 of Appendix A, as security for the prompt and complete payment when due of the Obligations and the performance by the Borrower of all the covenants and obligations to be performed by it pursuant to this Loan Agreement and the other Loan Documents, the Borrower hereby mortgages, pledges and grants to the Lender a Lien on and security interest in all of its rights, title and interest in and to all personal property and real property wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, of every kind and description, tangible or intangible, including without limitation, the following, whether now or hereafter existing and wherever located:

(i) all Intellectual Property as well as royalties therefrom;

(ii) each Individual Property;

(iii) all cash and Cash Equivalents, and all other property from time to time deposited in any account or deposit account and the monies and property in the possession or under the control of Lender or any affiliate, representative, agent or correspondent of Lender related to the foregoing;

(iv) all other tangible and intangible personal property of the Borrower (whether or not subject to the Uniform Commercial Code), including, without limitation, all bank and other accounts and all cash and all investments therein, all rights to receive cash and investments, including without limitation, state, Federal or local tax refunds, intercompany debt, all proceeds, products, offspring, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the property of the Borrower described in the preceding clauses of this Section 4.01(a) (including, without limitation, any proceeds of insurance thereon and all causes of action, claims and warranties now or hereafter held by the Borrower in respect of any of the items listed above), and all books, correspondence, files and other Records in the possession or under the control of the Borrower or any other Person from time to time acting for the Borrower that at any time evidence or contain information relating to any of the property described in the preceding clauses of this Section 4.01(a) or are otherwise necessary or helpful in the collection or realization thereof;

(v) all rights, title and interest of the Borrower (but not any of the obligations, liabilities or indemnifications of the Borrower) in, to and under the Loan Documents;

(vi) all “accounts,” “chattel paper,” “commercial tort claims,” “deposit accounts,” “documents,” “equipment,” “general intangibles” (including without limitation, uncertificated Equity Interests), “goods,” “instruments,” “inventory,” “investment property,” “letter of credit rights,” and “securities’ accounts,” as each of those terms is defined in the Uniform Commercial Code;

(vii) and all products and proceeds relating to or constituting any or all of the foregoing (clauses (i) through (vii) collectively, the “ Collateral ”);

in each case howsoever the Borrower's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise), provided that , notwithstanding anything to the contrary contained herein or in any other Loan Document, the term "Collateral" and each other term used in the definition thereof shall not include, and the Borrower is not pledging or granting a security interest in, any Property to the extent that such Property constitutes Excluded Collateral; provided further that if and when, and to the extent that, any Property ceases to be Excluded Collateral, the Borrower hereby grants to the Lender, and at all times from and after such date, the Lender shall have, a first priority or junior priority, as applicable, Lien in and on such Property (subject to Permitted Liens) and the Borrower shall cooperate in all respects to ensure the prompt perfection of the Lender's security interest therein.

The Liens granted to Lender hereinabove shall be first priority Liens on all of the Collateral (subject to Permitted Liens and to the extent legally and contractually permissible); provided that , with respect to the Collateral which is subject to a Senior Lien, as set forth on **Schedule 6.28** , the Lien shall be of junior priority (subject to Permitted Liens and to the extent legally and contractually permissible).

The Obligations of the Borrower under the Loan Documents constitute recourse obligations of the Borrower, and therefore, their satisfaction is not limited to payments from the Facility Collateral.

(b) With respect to each right to payment or performance included in the Collateral from time to time, the Lien granted therein includes a continuing security interest in (i) any supporting obligation that supports such payment or performance and (ii) any Lien that (A) secures such right to payment or performance or (B) secures any such supporting obligation.

4.02 UCC Matters; Further Assurances . The Borrower, shall, at all times on and after the date hereof, and at its expense, cause Uniform Commercial Code financing statements and continuation statements to be filed in all applicable jurisdictions as required to continue the perfection of the security interests created by this Loan Agreement. The Borrower shall, from time to time, at its expense and in such manner and form as the Lender may reasonably require, execute, deliver, file and record any other statement, continuation statement, specific assignment or other instrument or document and take any other action that may be necessary, or that the Lender, may reasonably request, to create, evidence, preserve, perfect or validate the security interests created hereunder or to enable the Lender to exercise and enforce its rights hereunder with respect to any of the Facility Collateral. To the extent contemplated in the Post-Closing Letter Agreement, the Borrower agrees that, if the grant of a security interest in any Property to Lender requires a consent to such grant from any other Person (other than the Borrower or any of its Affiliates), the Borrower shall use its best efforts to procure such consent. Further, the Borrower agrees that if any Excluded Collateral should, at any time following the Effective Date, become Collateral on which the Lender is permitted to take a Lien, the Borrower shall so notify the Lender and cooperate with and shall take all steps as may be reasonably required by the Lender to enable and continue the perfection of the Lender's security interests therein and shall comply with the provisions of Section 7.16 hereof in connection therewith, to the extent applicable. Without limiting the generality of the foregoing, the Borrower shall: upon the request of the Lender, execute and file such Uniform Commercial Code financing or continuation statements, or amendments thereto or assignments thereof, Mortgages, and such other instruments or notices, as may be necessary or appropriate or as the Lender may request. The Borrower hereby authorizes the Lender to file one or more Uniform Commercial Code financing or continuation statements, and amendments thereto and assignments thereof, relative to all or any of the Collateral now existing or hereafter arising without the signature of the Borrower where permitted by law. A carbon, photographic or other reproduction of this Loan Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement.

4.03 Changes in Locations, Name, etc. If the Borrower shall (i) change the location of its chief executive office/chief place of business from that specified in Section 6.10 hereof, (ii) change

Objection deadline: June 24, by Agreement with Debtors
Hearing date: June 30, 2009 at 9:45 am

GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue, 47th Floor
New York, New York 10166
Telephone: (212) 351-4000
Facsimile: (212) 351-4035
David Feldman (DF-8070)
Matthew J. Williams (MW-4081)
Adam H. Offenhartz (AO-0952)

ATTORNEYS FOR WILMINGTON TRUST COMPANY

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

JOINDER OF WILMINGTON TRUST COMPANY TO LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105, 363(b), (f), (k), AND (m), AND 365 AND FED. R. BANKR. P. 2002, 6004, AND 6006, TO (I) APPROVE (A) THE SALE PURSUANT TO THE MASTER SALE AND PURCHASE AGREEMENT WITH VEHICLE ACQUISITION HOLDINGS LLC, A U.S. TREASURY-SPONSORED PURCHASER, FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (C) OTHER RELIEF; AND (II) SCHEDULE SALE APPROVAL HEARING

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

Wilmington Trust Company, as Indenture Trustee ("**WTC**"), by and through its undersigned counsel, hereby submits this joinder ("**Joinder**") to the Limited Objection of the Official Committee of Unsecured Creditors (the "**Committee**") to Debtors' Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (I) Approve (A) the Sale Pursuant to the Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens,

Claims, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Other Relief; and (II) Schedule Sale Approval Hearing (the "**Limited Objection**"), and adopts and incorporates by reference the facts and arguments set forth in the Limited Objection.[1]

BACKGROUND

1. On June 1, 2009, Debtors each commenced a voluntary case with this Court under chapter 11 of title 11, United States Code (collectively, the "**Chapter 11 Cases**"). The Debtors now seek the entry of an order authorizing and approving the U.S. Treasury-sponsored sale ("**Sale**") pursuant to 11 U.S.C. §§ 105, 363(b), (f), and (m), and 365, and Federal Rules of Bankruptcy Procedure 6004 and 6006.

2. WTC is the indenture trustee for approximately $23 billion in unsecured bonds issued by General Motors Corporation ("**GM**").[2] In this capacity, WTC has a duty to represent the interests of all of its constituent bondholders, from large multi-billion dollar institutions to individual retirees and investors on fixed incomes. WTC's goal is to maximize distributions to *all* of these constituent bondholders, and to ensure that their interests are vigorously represented in this complex and fast-moving bankruptcy case.

---

[1] Capitalized terms not otherwise defined herein have the meaning ascribed thereto in the Limited Objection.

[2] WTC is the successor indenture trustee to Citibank, N.A. (**"Citibank"**), under two indenture agreements with GM pursuant to which GM issued senior unsecured debt securities: (i) a Senior Indenture, dated as of December 7, 1995, as amended; and (ii) a Senior Indenture, dated as of November 15, 1990 (collectively, the **"Indentures"**). The outstanding series of notes issued pursuant to the 1995 Indenture are represented by CUSIP numbers: 370442AT2; 370442AU9; 370442AV7; 370442AZ8; 370442BB0; 370442816; 370442774; 370442766; 370442758; 370442741; 370442733; 370442725; 370442BQ7; 370442BT1; 370442717; 370442BW4; 370442BS3; 370442121; and 370442691. The outstanding series of notes issued pursuant to the 1990 Indenture are represented by CUSIP numbers: 370442AN5; 370442AJ4; 370442AR6; 37045EAG3; and 37045EAS7. As of June 1, 2009, the principal amount of the debtentures that remained outstanding totaled $21,435,281,912 under the 1995 Indenture and $1,324,590,000 under the 1990 Indenture.

3. On June 3, 2009, the Office of the United States Trustee appointed WTC and fourteen other members to the Creditors' Committee. WTC was elected chairperson of the Creditors' Committee by the other Committee members.

4. As chairperson of the Creditors' Committee, WTC has taken an active role in Creditors' Committee discussions and deliberations. Specifically, WTC has taken extensive steps to analyze the Chapter 11 Cases and the Sale, including but not limited to: (a) reviewing, analyzing and engaging in extensive discussions and deliberations regarding the various motions, legal issues, and business concerns surrounding the Chapter 11 Cases and the Sale; (b) fielding and addressing the concerns of GM's bondholders; and (c) reviewing and analyzing reports and other analyses of the Sale, the Sale consideration, and liquidation scenarios prepared by the Debtors, Committee counsel and Committee financial professionals.

JOINDER

5. WTC has very serious reservations about many of the sale's terms, in particular the proposed treatment of bondholders. But after performing the analyses set forth above, and after speaking to numerous bondholders and their representatives, WTC has come to the conclusion that the proposed Sale appears to be the *only* means of providing any meaningful recovery to bondholders. Indeed, it appears the liquidation that would likely result but for the Sale would provide bondholders with no recovery.

6. While WTC supports a Sale under the current circumstances, WTC is of the view that there are certain provisions of the Sale that put bondholder recoveries so at risk as to mandate the filing of this Joinder. Notably (and as argued in more detail in the Limited Objection), given the size of this case it is wholly uncertain whether the post-sale assets left behind at Old GM will be even remotely sufficient to pay the administrative and priority expenses of the estates. Equally troubling is the fact that if the entity purchasing GM's assets is

authorized (notwithstanding applicable law) to cut off liability for present and future tort and successor liability claims, these unknowable and currently unquantifiable claims would be left against Old GM, a result that could substantially dilute estimated creditor distributions by an unknowable amount and could delay distributions to unsecured creditors for an unfairly indefinite period of time.[3]

7. Put simply, although WTC understands (and indeed supports) GM's desire for speed and certainty in this case, a speedy and certain sale of GM's assets that results in an uncertain and indefinite distribution scheme to unsecured creditors is not, in WTC's view, a successful or even remotely appropriate outcome here. Bondholders in this case are being asked to sacrifice an immense amount—perhaps more than any other constituency—and at the very least, the bondholders that WTC serves are entitled to some idea as to the amount and timing of the likely distribution they may ultimately receive. Accordingly, while WTC is, under the circumstances, supportive of the Sale in principal, the Sale should not be approved unless and until the infirmities raised in the Limited Objection are adequately addressed.

---

[3] WTC further adopts the objections raised in Exhibit A to the Limited Objection.

CONCLUSION

8. WHEREFORE, WTC respectfully requests that the Court approve the Sale Order provided that it is amended to address the infirmities set forth herein and further set forth in the Limited Objection.

Dated: New York, New York
June 24, 2009

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

/s/ David Feldman _____
David Feldman (DF-8070)
Matthew J. Williams (MW-4081)
Adam H. Offenhartz (AO-0952)
200 Park Avenue, 47th Floor
New York, New York 10166
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

ATTORNEYS FOR WILMINGTON TRUST COMPANY

CLERK OF COURT

United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, N.Y. 10004-1408

Lead Case # 09-50026

In Re:	)	
	)	**Chapter 11**
GENERAL MOTORS CORP., et. al,,	)	**Case # 09-0950026**
Debtors	)	(Gerber)
	)	Jointly Administered

OBJECTION TO PROPOSED "363 SALE" AS PER 6-2-2009 MOTION OF THE BANKRUPT, GENERAL MOTORS CORPORATION

My name is Radha Ramana Murty Narumanchi. I am a Creditor of General Motors Corporation. Proof of Claim has been mailed on 6-13-2009 and Notice of Appearance is being filed now separately.

I object to the proposed "363 Sale" as nothing short of fraud being perpetrated on various creditors, especially on the unsecured bondholders, of which I am a class member, at the behest of the federal government. Even otherwise, the sale is illegal and against all equities involved in this case.

A memorandum of law could not be filed as part of this objection, because **the notice of the motion was received by us on Saturday, 6-13-2009**, and there is not enough time to do any legal research within 96 hours. Such a memorandum of law will be filed in due course.

PLEASE NOTE THAT I WILL ACTIVELY PARTICIPATE IN THE PROPOSED HEARING.

Dated at New Haven, Connecticut, this 15th day of June, 2009.

CREDITOR (*Pro se*)

6/15/2009

(Radha R.M. Narumanchi)
657 Middletown Avenue
New Haven, Conn. 06513
Phone: (203) 562-0536
Email: rrm_narumanchi@hotmail.com

Certificate of Service

I hereby certify that I have mailed the above mentioned Objection to the proposed "363 Sale" to the following addresses, by first class mail, postage duly paid, this 15th day of June 2009.

The Clerk, United States Bankruptcy Court, Southern District of New York, One Bowling Green New York, N.Y. 10004-1408.

Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, N.Y. 10153 (Attn: Harvey R. Miller, Stephen Karotkin, and Joseph H. Smolinsky).

Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, N.Y. 10281 (Attn: John J. Rapisardi).

Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, N.Y. 10006 (Attn: James L. Bromley).

Cohen, Weiss and Simon LLP, 330 W. 42nd Street, New york, N.Y. 10036 (Attn: Babette Ceccotti).

Vedder Price, P.C., 1633 Broadway, 47th floor, New York, N.Y. 10019 (Attn: Michael J. Edelman and Michael L. Schein).

Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st floor, New York, N.Y. 10004 (Attn: Diana G. Adams).

U.S. Attorney's Office, S.D. N.Y., 86 Chambers Street, 3rd floor, New York, N.Y. 10007 (Attn: David S. Jones and Matthew L. Schwartz).

Chambers of Honorable Robert E. Gerber,United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, N.Y. 10004-1408

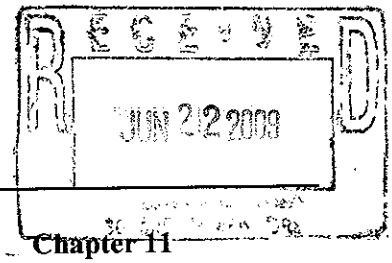
6/15/2009

(Radha R.M. Narumanchi)

ORIGINAL
CLERK OF COURT

United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, N.Y. 10004-1408

Lead Case # 09-50026



In Re:	)	
	)	**Chapter 11**
GENERAL MOTORS CORP., et. al,,	)	**Case # 09-0950026**
Debtors	)	(Gerber)
	)	Jointly Administered
		HEARING ON 6-30-2009

MEMORANDUM OF LAW IN OPPOSITION TO SECTION 363 SALE

Part One -- Preliminaries

On 6-15-2009 we wrote to honorable judge that the extremely late notice we received from attorneys for GM did not give us enough time to do legal research in order to prepare necessary "Memorandum of Law" as part of our objection to the 363 Sale, to be heard on **6-30-2009**, since we are *pro se* creditors and not professional attorneys [1]. Hence, we sent a preliminary objection on 6-16-2009 (actually filed). Now, we submit the necessary Memorandum of Law in opposition to the proposed 363 sale.

Part Two -- Background Information

According to the 6-1-2009 affidavit filed by GM's President and CEO, Mr. Frederick A. Henderson, GM had an infusion of $4,000,000,000 cash from the U.S. Treasury on 12-31-2008 and another $4,500,000,000 on 2-17-2009 [2]. Reciprocally, GM granted a first lien substantially on all its unencumbered assets, and a junior lien on all its encumbered assets. This means that there are no more

[1] We also filed an adversarial complaint on 6-16-2009.

[2] Here, the total cash infusion agreed to was $13.4 billion, and between 2-17-2009 and 4-22-2009 the balance cash was drawn by GM. .

free assets left, on which the unsecured bondholders (**holding $22,000,000,000 + bond debt**). In order to get this cash infusion, GM had very generously agreed to U.S. Treasury's very onerous demands that the prior unsecured debt of GM be reduced from $27,000,000,000 to ***not less than* 1/3rd of it**, i.e. **to *no more than* $9,000,000,000**. This means that the U.S. Treasury had demanded that GM **wipe out more than $18,000,000,000** of its unsecured bondholders debt, by hook or crook.

Later, on 3-30-2009, President Obama rejected GM's Viability Plan # II [3].

Again, according to Mr. Henderson's affidavit, on 4-24-2009 GM drew another $2,000,000,000 as per a 4-22-2009 amendment, so that the total draw from U.S. Treasury, by GM was $15,400,000,000.

Prior to all this cash draw, the following were the positions of GM with regard to net losses and stockholders' deficit., according to page 29 of 4-27-2009 GM's Exchange Offer::

(In Millions of Dollars)

	Amount of Net Income/ (Net Loss) for the	Net worth or Stockholders' Equity/(Deficit) At the end of
Year 2005	**($10,417)**	$14,442
Year 2006	**($ 1,978)**	**($5,652)**[4]
Year 2007	**($38,732)**	**($37,094)**
Year 2008	**($30,860)**	**($86,154)**

The red ink continued and in the 1st quarter of 2009, GM suffered **a net loss** of $5,100,000,000. Worse than that, GM had suffered a **negative cash flow** of a massive **$9,400,000,000** [5].

---

[3] **It must be remembered here that Mr. Henderson's predecessor, Mr. Rick Wagoner, was mercilessly forced out of GM, at the behest of U.S. Treasury and President Obama's Auto Task Force (ATF), especially at the fiat of a Mr. Steven Rattner, because Mr. Wagoner had advocated that the bondholders of GM, holding unsecured debt of about $22,000,000,000 + should get a 90% equity in any reorganized GM, according to traditional bankruptcy procedures, inasmuch as the stockholders' equity was totally wiped out, as back as the year 2006.**

[4] This is when GM became an insolvent company.

[5] Page 29 of Mr. Henderson's affidavit.

So, GM drew another $4,000,000,000 on 5-22-2009, thus making the total draw out from the U.S. Treasury to $19,400,000,000. There was also a small draw of about $361,000,000 on 5-27-2009. If GM's 4-27-2009 bond exchange offer did not go through, with 90% of the bondholders consenting, GM expected to realize the following debt reduction in a Chapter 11 filing, when a U.S. Treasury sponsored Good GM could buy the Old (Bad) GM in a quick 363 Sale (a very diabolical plan hatched by President's Auto Task Force).:

U.S. Treasury – Reduce its debt to **$8.00 billion in notes plus $2.0 billion in preferred** equity and rest in common stock, representing **72.5% control** of a U.S. Treasury sponsored New GM's capital [6];

GM Unsecured Bondholders - **Stiff the bondholders by about $27,000,000,000** and just give them some 4 cents common stock, which would constitute **10%** of a proposed U.S. Treasury sponsored New GM's capital [7]; and

Workers' Union - **$6.5 billion** in **preferred** that would guarantee a 9% return, **$2.5 billion in Notes, plus common stock** which would constitute **17.5%** of a U.S. sponsored New GM

So, here we are with a diabolical scheme hatched by the U.S. Treasury and the President's ATF to administer an "artificial insemination" and create a New GM baby out of the Old (Bad) GM, with this honorable court acting as a mid-wife, if you will. By this time, every one knew or should have known that the bankrupt GM had lost its vitality and virility, and it has become just a dud, and a one cent puppet

---

[6] The U.S. Treasury sponsored New GM would acquire all Old (Bad) GM's core assets **(bereft of its crown jewels the bankrupt GM will be christened as Bad GM)** in an expedited 363 sale, free of all liens, encumbrances, and entanglements with bankruptcy cases, for its total stake of $50.00 billion. **There is also a dire and stern warning from the U.S. Treasury (and President's ATF) here: Delay the 363 sale, and lose billions of dollars in DIP financing. Their mantra is: In we go with dirty hands and out we come with clean hands. The reality, unfortunately, is opposite of what they want the public to perceive and believe.**

Mr. Henderson's prognosis about New GM is that absent DIP financing, GM will have no chance but to liquidate. We believe the bankrupt GM is already comatose, and on a temporary and tenuous life support system, which does not guarantee its revival and/or survival for long. Mr. Henderson's assertion, we believe is also tantamount to blackmailing one and all, in the hearing on the 363 sale, on 6-30-2009.

[7] The U.S. Treasury has also graciously agreed to give warrants to unsecured bondholders to purchase up to 15% of the total common stock if the unsecured debt does not exceed $35 billion !!!.

in the hands of the U.S. Treasury and the President's Auto Task Force (ATF).

Part Three – Discussion

We want to come to the heart of the problem right away. This New GM will be nothing but an ill conceived illegitimate child, to be born at an inauspicious moment, and no one really knows who the real father of this baby is – is it the Obama administration, the UAW, the U.S. Treasury Department, or the Auto Task Force ? Do we have time to determine this by having a DNA test (i.e. if the Supreme Court permits it as a constitutional right) ? We guess not.

Issue No. One: About 192,500 U.S. households that had invested $12,420,000,000 in unsecured GM bonds will get a bum rap through this 363 sale.

We know that GM had 610,505,273 common shares which were wiped out, some time in the year 2006 [8]. Those shares were held by roughly by 329,407 U.S. households [9]. GM had also heavily borrowed from the middle class households, **to the tune of $27,000,000,000**, by promoting the slogan **"what is good for GM is good for America"** and, of course, not *vice versa*. By the last count, roughly 193,000 U.S. households bought into this myth[10], and blindly put their life savings in these unsecured bonds of GM. Of course, we should exclude about 500 greedy and vulture institutional investors who bought the damaged GM bonds with a **par** value of $14,580,000,000 (i.e. 54% of total *par* value of unsecured bonds), for a few cents on the dollar – **cost basis** may be just $729,000,000, and they will not suffer much from any 363 sale [11]. These greedy institutional investors were pressured by President's Auto Task

---

[8] There are always speculators in the market place that create some artificial sale to lure unwary investors.

[9] See Schedule 5 of GM's 6-1-2009 Chapter 11 filing.

[10] Pages 77 and 78 in bankruptcy court filing by GM on 6-1-2009.

[11] We do not really know what kind of *quid pro quo* is offered to these institutional investors, behind the scenes. ***Even otherwise, they will hold 5.4% of common stock in the New GM. So, it is a good and profitable deal to them.***

Force (ATF) to file their consent in this Chapter 11 filing, so that other non-consenting unsecured family bondholders (holding 46% of the *par* value of unsecured bond debt of GM) can be cornered and the honorable court can be requested to impose on them a similar position. Remember that about 46% of the unsecured bond debt of GM, with a *par* value of **$12,420,000,000**, is held by **192,500 U.S. family** households which works out to an average investment of **$64,500** per U.S. family household, **where the cost basis is almost the same as the *par* value**. The U.S. Treasury and ATF, in their graciousness and generosity **are offering these 192,500 U.S. family households a 4.6%** of common stock stake in the New GM (what we referred to as an illegitimate child) after the 363 sale is approved by the court. Assuming the fundamental equation:

"fair value of assets given up = fair value of assets received",

the fair market value of New GM should be worth about **$270,000,000,000, which is pipe dream that can never become a reality.**

Alternatively, if the 4.6% stake in the new GM is worth no more than $460,000,000 (its real intrinsic value), then **the 192,500 U.S. family households** that did not consent to the exchange offer **will suffer a huge loss of $11,960,000,000 . Moreover, at least for a whole generation to come, it is unlikely** that the New GM will be in a position to declare and pay any dividend, because it will take years and years for any New GM to break even (this is the most optimistic assessment), and any future profits could and will be easily gobbled up by the union workers of GM who will hold a 17.5% stake in the company, by demanding hefty wage increases for their so-called sacrifices in the past. For workers, self-interest is the best interest (and who can blame for that philosophy !!) and why should they care for bondholders converted into shareholders? These workers had verily learnt and practiced the art of biting the hand that fed them – the sole reason why we are here discussing their employer's plight.

In short, about 192,500 U.S. family households that had invested $12,420,000,000 in

unsecured GM bonds will get a bum rap through this 363 sale. Most of these individuals are 65 + years of age and they desperately need interest income from these investments [12]. So, we oppose the 363 sale on the basis of the unjust conditions and grounds proposed by the U.S. Treasury and the President's Auto Task Force.

Issue No. Two: Funds made available by U.S. Treasury to GM are, in fact, capital contribution

As explained earlier, the Bush administration in December 2008, and the Obama administration and his Auto Task Force since January 2009 knew pretty much that the now bankrupt GM was actually insolvent[13] from the first quarter of the year 2006. They had known or they should have known that the massive deficit of $86,000,000,000 **raked up in just under three years between 2006 and 2008 will never allow GM to re-pay any advances made (or to be made) by the U.S. Treasury.**

In fact, if any thing, through such advances and the resulting *de facto* control they gained, the U.S. Treasury and ATF had become "**insiders**" of GM from day number one, and they caused the deepening of the insolvency of GM, to the detriment of unsecured bondholders. The U.S. Treasury and the President's Auto Task Force (ATF) also took full *de facto* control of GM[14], and articulated, demanded, and directed its personnel to do their bidding. In this process, they made GM to breach its

---

[12] **We request this honorable court to very seriously consider whether Age Discrimination is at the root of the proposals by the U.S. Treasury and the ATF to stiff these senior citizens.**

[13] Under Delaware law, a corporation is insolvent if it has: (1) a deficiency of assets below liabilities with no reasonable prospect that the business can be successfully continued in the face thereof, or (2) an inability to meet maturing obligations as they fall due in the ordinary course of business.

[14] Under the "**internal affairs**" doctrine, anyone controlling a Delaware corporation is subject to Delaware law on fiduciary obligations to the corporation and other relevant stakeholders. See *In re Topps Co. S'holders Litig*, 924 A.2d 951, 960 (Del. Ch. 2007) (Strine, V.C.) (Explaining that the law of fiduciary obligations is one of the most important ways a state regulates a corporation's internal affairs); RESTATEMENT (SECOND) OF CONFLICT OF LAWS, Section 306. **So, we submit that the U.S. Treasury, besides GM have the fiduciary duty, obligation, and responsibility to protect the interests of unsecured bondholders.**

fiduciary duty to unsecured bondholders in various ways, to wit, to allow the U.S. Treasury to secure all its assets in violation of the 1995 trust indenture; to have marching orders given to ex-President and CEO, Rick Wagoner, because he had advocated giving a 99% equity interest to unsecured creditors; to aid and abet in the violation and breach of the trust indenture, to violate the fiduciary duty, obligation, and duties to unsecured bondholders etc[15].

Attorneys for these groups may have thought that an artificial contemporaneous documents created will help save all the misdeeds narrated above. Glorification of form over substance will not work. Bankruptcy courts have typically applied an eleven factor test to determine whether monetary advances to corporation should be considered "loans" or "capital contributions" see *Roth Steel Tube Co. v. Commissioner*, 800 F.2d 625 (6th Cir. 1986) and these (together with our comments) are:

1) Names given to instruments, if any, evidencing indebtedness: This is elevating "form" over "substance" and where *ab initio* the evidence is overwhelming that recovery of advances are slim to nothing, the "form" should be of no use and hence discarded [16].

2) Presence or absence of fixed maturity date and schedule of payments: Once again, if evidence shows that the borrowing corporation has no capacity to make scheduled payments, the "form" will be of little value [17].

3) Presence or absence of fixed rate of interest and interrest payments: Same as in No. 2 above.

---

[15] **We strongly advocate and request this honorable court to hold an evidentiary hearing, after a period of discovery by parties of interest, before an actual hearing could take place on the 363 sale motion.**

[16] Schedule-12 filed by GM on 6-1-2009 clearly shows that even with massive doses of cash infusion (in billions of dollars) by the U.S. Treasury, between December 2008 and May 2009, GM anticipates cash receipts of $2.1 billion and cash disbursements of $7.8 billion for the month of June 2009, i.e. a net cash shortfall of $5.7 billion for June 2009. This position is unlikely to reverse for several years to come and the U.S. Treasury and the Auto Task Force knew this cash shortfall situation when those documents were created in the months of December 2008, January 2009, February 2009, March 2009, April 2009, and May 2009..

[17] See footnote # 14 above.

4) Source of Repayments: None whatsoever. No plans were ever indicated. GM became a *persona non grata* for any loans, bond issues, or raising equity capital. GM's Henderson will attest to this situation.

5) Adequacy or inadequacy of capitalization: GM raked up a cumulative deficit of $86 billion, in just 3 to 4 years. There is absolutely no chance to raise any new equity from open capital markets until and unless GM becomes profitable and erases its accumulated deficit, and thus be in a position to pay regular dividends to its shareholders.

6) Identity of interest between creditor and stockholder: By virtue of gaining *de facto* control over GM's affairs, under the guise of making billions of dollars available to it, the U.S. Treasury and the President's Auto Task Force became "insiders" of GM, and thus fiduciaries for unsecured creditors.

7) Security, if any, for advances: Illegal security interest was created in breach of the 1995 indenture, to the detriment of unsecured bondholders. **GM** breached the indenture document, and the U.S. Treasury instigated, and aided and abetted in such a breach. This action also violated their fiduciary responsibilities, duties, and obligations towards unsecured bondholders (i.e. by both GM and the U.S. Treasury).

8) Corporation's ability to obtain financing from outside lending instituions: None. See the earlier comments. ("The fact that no reasonable creditor would [lend funds] is strong evidence that the advances were **capital contributions rather than loans.**" *Roth*, 81100 F.2d at 631).(emphasis supplied).

9) Extent to which these advances were subordinated to claims of outside creditors: None.

10) Extent to which advances were used to acquire capital assets: No capital improvements took place. The cash draws from the U.S. Treasury were used by GM to meet its operating cash shortfalls.

11) Presence or absence of sinking fund to provide repayment: None to the best of our 8knowledge.

We understand that no one factor is controlling and the court must look to particular circumstances of each case, *In re AutoSTYLE PLASTICS, INC.*, 238 B.R. 346 (Bankr. W.D. Michigan 1999), *In re Cold Harbor Associates, L.P.* 204 B.R. 904 (Bankr. E.D. Va. 1997).

We submit that on balance, the *Roth* factors being considered, this honorable court should come to the conclusion that **all cash advances made by the U.S. Treasury to GM prior to this Chapter 11 filing should be reclassified as capital contributions, rather than loans.** This conclusion will also be in consonance with the U.S. Treasury's present move to create a New GM in which it wants to hold a 72.5% equity stake. We also submit that this honorable court should condemn the U.S. Treasury's circumnavigation to acquire and nationalize GM, rather than following a straight path of buying the company outright (at its fair market value), if that is how it wants to help the political allies of President Obama..

If this honorable court were to grant this request, we are sure, that the purchase price equation in the proposed 363 Sale will change drastically, and the debtor GM and the U.S. Treasury, and the President's Auto Task Force will have to come back to this court with a more equitable plan that would protect the interests of the unsecured creditors, and especially the unsecured bondholders.

Issue No. Three -- What about deferred tax refund assets ?

The debtor had raked up about $86,000,000,000 worth of operating losses through the year 2008 and then in the first quarter you may add another $5,000,000,000, for a grand total of $91,000,000,000 in operating losses. The tax code allows the corporation to go back for two years and recover some tax payments (refunds to be claimed) and any unused balance of operating loss (NOL) can be carried forward for a period of 20 years. This means that potentially there will be less tax payments of $31,850,000,000. in the future. We submit that this issue was not addressed properly in the proposed 363 Sale.

In fine, for the various reasons mentioned herein above, we oppose the proposed 363 Sale of the "Crown Jewels" of the current bankrupt GM to a New GM, thereby leaving trashy trinkets to Old (Bad) GM.

Respectfully submitted..

Dated at New Haven, this 19th day of June, 2009.

CREDITORS (*Pro Se*)

6/19/2009

(Radha R.M. Narumanchi) (Radha B.D. Narumanchi)
657 Middletown Avenue
New Haven, Ct. 06513
101010Phone: (203) 562-0536
Email: rrm_narumanchi@hotmail.com

Certificate of Service

Certified that the aforementioned "Memorandum of Law" in Opposition to the 363 Sale" has been mailed to the following parties, this 19th of June, 2009, postage duty paid in full.

The Clerk, United States Bankruptcy Court, Southern District of New York, One Bowling Green New York, N.Y. 10004-1408

Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, N.Y. 10153 (Attn: Harvey R. Miller, Stephen Karotkin, and Joseph H. Smolinsky).

Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, N.Y. 10281 (Attn: John J. Rapisardi)

Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, N.Y. 10006 (Attn: James L. Bromley).

Cohen, Weiss and Simon LLP, 330 W. 42nd Street, New york, N.Y. 10036 (Attn: Babette Ceccotti).

Vedder Price, P.C., 1633 Broadway, 47th floor, New York, N.Y. 10019 (Attn: Michael J. Edelman and Michael L. Schein).

Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st floor, New York, N.Y. 10004 (Attn: Diana G. Adams).

U.S. Attorney's Office, S.D. N.Y., 86 Chambers Street, 3rd floor, New York, N.Y. 10007 (Attn: David S. Jones and Matthew L. Schwartz).

Chambers of Honorable Robert E. Gerber,United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, N.Y. 10004-1408.

6/19/2009

(Radha R.M. Narumanchi)

CLERK OF COURT

ORIGINAL

United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, N.Y. 10004-1408

Lead Case # 09-50026

In Re:	)	
	)	**Chapter 11**
GENERAL MOTORS CORP., et. al,,	)	**Case # 09-0950026**
Debtors	)	(Gerber)
	)	Jointly Administered

Re: 363 Sale Hearing on 6-30-2009 – Notice of Creditor Radha Ramana Murty about participation in the Hearing

This is to notify all concerned that Radha R.M. Narumanchi ("Murty"), a Creditor in this case, who had filed his objection to the proposed Motion for 363 Sale on Legal Grounds will participate in the Hearing on 6-30-2009, and at any adjourned dates of the Hearing, in the following manner:

1) **Murty will not offer any fact witnesses or expert witnesses of his own;**

2) **Murty reserves the right to examine or cross-examine any fact witnesses or expert witnesses presented during the Hearing(s) by any other parties; and**

3) **Murty reserves the right to make a presentation of his own in the closing arguments on this Motion.**

Respectfully submitted..

Dated at New Haven, this 28th day of June, 2009.

CREDITOR (*Pro Se*)

6/28/2009

(Radha R.M. Narumanchi)
657 Middletown Avenue
New Haven, Ct. 06513
Phone: (203) 562-0536
Email: rrm_narumanchi@hotmail.com

Certificate of Service

Certified that the aforementioned "Memorandum of Law" in Opposition to the 363 Sale" has

been mailed to the following parties, this 28th of June, 2009, postage duty paid in full.

The Clerk, United States Bankruptcy Court, Southern District of New York, One Bowling Green New York, N.Y. 10004-1408

Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, N.Y. 10153 (Attn: Harvey R. Miller, Stephen Karotkin, and Joseph H. Smolinsky).

Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, N.Y. 10281 (Attn: John J. Rapisardi)

Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, N.Y. 10006 (Attn: James L. Bromley).

Cohen, Weiss and Simon LLP, 330 W. 42nd Street, New york, N.Y. 10036 (Attn: Babette Ceccotti).

Vedder Price, P.C., 1633 Broadway, 47th floor, New York, N.Y. 10019 (Attn: Michael J. Edelman and Michael L. Schein).

Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st floor, New York, N.Y. 10004 (Attn: Diana G. Adams).

U.S. Attorney's Office, S.D. N.Y., 86 Chambers Street, 3rd floor, New York, N.Y. 10007 (Attn: David S.Jones and Matthew L. Schwartz;

Chambers of Honorable Robert E. Gerber,United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, N.Y. 10004-1408.

6/28/2009

(Radha R.M. Narumanchi)

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

- -x

In the Matter of:

GENERAL MOTORS CORPORATION, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 2, 2009

9:02 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

HEARING re Motion of the Debtors for Entry of Order Pursuant to 11 U.S.C. § 363(b) Authorizing and Approving Settlement Agreements with Certain Unions

HEARING re Debtors' Motion Pursuant to Bankruptcy Code §§ 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 to Amend DIP Credit Facility

HEARING re Continuation of GM 363 Sale Hearing

Transcribed by: Lisa Bar-Leib

A P P E A R A N C E S :

WEIL, GOTSHAL & MANGES LLP

Attorneys for Debtor General Motors Corporation

767 Fifth Avenue

New York, NY 10153

BY: HARVEY R. MILLER, ESQ.

STEPHEN KAROTKIN, ESQ.

JOSEPH H. SMOLINSKY, ESQ.

JOHN A. NEUWIRTH, ESQ.

IRWIN WARREN, ESQ.

HONIGMAN MILLER SCHWARTZ & COHN

Special Counsel for General Motors Corporation

2290 First National Building

660 Woodward Avenue

Detroit, MI 48226

BY: ROBERT B. WEISS, ESQ.

SETH A. DRUCKER, ESQ. (TELEPHONICALLY)

JENNER & BLOCK LLP
Special Counsel for Debtors and Debtors-in-Possession
919 Third Avenue
37th Floor
New York, NY 10022

BY: PATRICK J. TROSTLE, ESQ.

JENNER & BLOCK LLP
Special Counsel for Debtors and Debtors-in-Possession
330 North Wabash Avenue
Chicago, IL 60611

BY: DANIEL R. MURRAY, ESQ.

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Attorneys for Official Committee of Unsecured Creditors
1177 Avenue of the Americas
New York, NY 10036

BY: KENNETH ECKSTEIN, ESQ.
ADAM ROSOFF, ESQ.
THOMAS MOERS MAYER, ESQ.
ROBERT T. SCHMIDT, ESQ.

UNITED STATES DEPARTMENT OF JUSTICE
Office of the United States Trustee
33 Whitehall Street
21st Floor
New York, NY 10004

BY: TRACY HOPE DAVIS, ESQ.
BRIAN MASUMOTO, ESQ.

U.S. DEPARTMENT OF JUSTICE
United States Attorney's Office
Southern District of New York
86 Chambers Street
New York, NY 10007

BY: MATTHEW L. SCHWARTZ, AUSA
DAVID S. JONES, AUSA

ARENT FOX LLP

Attorneys for The Timken Company, Superior Industries International, Inc., Discovery Communications, LLC, Harman Becker Automotive Systems and its affiliated companies, Toyota Boshoku America, Inc., and JJF Management Services, Inc.

1675 Broadway

New York, NY 10019

BY: JAMES M. SULLIVAN, ESQ.

ATTORNEY GENERAL OF TEXAS

Counsel to State of Texas On Behalf of Texas Department of Transportation

P.O. Box 12548

Austin, TX 78711

BY: J. CASEY ROY, ASSISTANT ATTORNEY GENERAL

BINGHAM MCCUTCHEN LLP
Attorneys for Wells Fargo Bank, as Indenture Trustee
399 Park Avenue
New York, NY 10022

BY: ERIN H. MAUTNER, ESQ.

CADWALADER, WICKERSHAM & TAFT LLP
Attorneys for U.S. Treasury Auto Task Force
One World Financial Center
New York, NY 10281

BY: JOHN RAPISARDI, ESQ.

CADWALADER, WICKERSHAM & TAFT LLP
Attorneys for U.S. Treasury Auto Task Force
1201 F Street, N.W.
Washington, DC 20004

BY: PETER M. FRIEDMAN, ESQ.
JILL KAYLOR, ESQ. (TELEPHONICALLY)

CAPLIN & DRYSDALE, CHARTERED
Attorneys for Mark Buttita
375 Park Avenue
35th Floor
New York, NY 10152

BY: RITA C. TOBIN, ESQ.

CAPLIN & DRYSDALE, CHARTERED
Attorneys for Mark Buttita
One Thomas Circle N.W.
Suite 1100
Washington, DC 20005

BY: RONALD E. REINSEL, ESQ.

CLEARY GOTTLIEB STEEN & HAMILTON LLP
Attorneys for The International Union, United Automobile Aerospace and Agricultural Implement Workers of America, AFL-CIO
One Liberty Plaza
New York, NY 10006

BY: AVRAM E. LUFT, ESQ.
JAMES BROMLEY, ESQ.

CLIFFORD CHANCE US LLP
Attorneys for ABN AMRO BANK N.V., RBS Citizens N.A., Royal Bank of Scotland plc
31 West 52nd Street
New York, NY 10019

BY: ANDREW BROZMAN, ESQ.

COHEN, WEISS AND SIMON LLP
Attorneys for United Auto Workers
330 West 42nd Street
New York, NY 10036

BY: BABETTE CECCOTTI, ESQ.

THE COLEMAN LAW FIRM
Attorneys for Product Liability Claimants: Callan Campbell, Kevin Junso, et al.; Edwin Agosto, Kevin Chadwick, et al., and Joseph Berlingieri
77 West Wacker Drive
Suite 4800
Chicago, IL 60601

BY: STEVE JAKUBOWSKI, ESQ.

CONNOLLY BOVE LODGE & HUTZ LLP
Attorneys for Connecticut General
The Nemours Building
1007 North Orange Street
Wilmington, DE 19899

BY: JEFFREY C. WISLER, ESQ.

COVINGTON & BURLING LLP

Attorneys for Union Pacific Railroad Company

The New York Times Building

620 Eighth Avenue

New York, NY 10018

BY: MARTIN E. BEELER, ESQ.

DLA PIPER US LLP

Attorneys for Hewlett-Packard Company and all of its Affiliates, Domestic and International, Including but not Limited to Electronic Data Systems Corporation, and HP Company and Hewlett-Packard Financial Services Company

550 South Hope Street

Suite 2300

Los Angeles, CA 90071

BY: KAROL K. DENNISTON, ESQ.

DICKINSON WRIGHT PLLC
Attorneys for Multimatic Inc.
301 East Liberty
Suite 500
Ann Arbor, MI 48104

BY: TRENT B. COLLIER, ESQ.

DRINKER BIDDLE & REATH LLP
Attorneys for Cross-Complainant/Defendant, Manufacturers and Trust Company and Wells Fargo Bank Northwest
1500 K Street, N.W.
Washington, DC 20005

BY: STEPHANIE WICKOUSKI, ESQ.

FORMAN HOLT ELIADES & RAVIN LLC
Attorneys for Rose Cole, Guardian of Timothy L. Montis, a Disabled Adult
80 Route 4 East
Paramus, NJ 07652

BY: KIMBERLY J. SALOMON, ESQ.

GIBSON, DUNN & CRUTCHER LLP
Attorneys for Wilmington Trust Co., as Indenture Trustee
200 Park Avenue
New York, NY 10166

BY: MATTHEW J. WILLIAMS, ESQ.
DAVID M. FELDMAN, ESQ.

GORLICK, KRAVITZ & LISTHAUS, P.C.
Attorneys for International Union of Operating Engineers Local 18S, 101S and 832S, United Steelworkers, IUE- CWA
17 State Street
4th Floor
New York, NY 10004

BY: BARBARA S. MEHLSACK, ESQ.

HISCOCK & BARCLAYS
Attorneys for The Schaeffer Group
One Park Place
300 South State Street
Syracuse, NY 13202

BY: SUSAN R. KATZOFF, ESQ.

KELLEY DRYE & WARREN LLP
Attorneys for Law Debenture Trust Company of New York, as Successor Indenture Trustee
101 Park Avenue
New York, NY 10178

BY: JENNIFER A. CHRISTIAN, ESQ.
ROBERT L. LEHANE, ESQ.

KENNEDY JENNIK AND MURRAY, PC
Attorneys for IUE-CWA
113 University Place
Floor 7
New York, NY 10003

BY: THOMAS M. KENNEDY, ESQ.
JOHN HOFFMAN, ESQ.

KIRKLAND & ELLIS LLP
Citigroup Center
153 East 53rd Street
New York, NY 10022

BY: MARC A. LEWINSTEIN, ESQ.

KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS LLP
Attorneys for Manufactures Traders & Trust
260 South Broad Street
Philadelphia, PA 19102

BY: BRIAN CROWLEY, ESQ.

LATHAM & WATKINS LLP
Attorneys for GE Capital Corp.
Sears Tower
Suite 5800
233 South Wacker Drive
Chicago, IL 60606

BY: DOUGLAS BACON, ESQ.

LAW OFFICES OF OLIVER ADDISON PARKER
Attorney Pro Se
4900 North Ocean Blvd.
Suite 421
Lauderdale By the Sea, FL 33308

BY: OLIVER A. PARKER, ESQ.

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.
Attorneys for Henry Case Class Plaintiffs
1350 Broadway
Suite 501
New York, NY 10018

BY: EDWARD J. LOBELLO, ESQ.
HANAN KOLKO, ESQ.

N.W. BERNSTEIN & ASSOCIATES, LLC
Attorneys for Environmental Conservation and Chemical Corporation Site Trust Fund
800 Westchester Avenue
Suite N319
Rye Brook, NY 10573

BY: NORMAN W. BERNSTEIN, ESQ.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
2030 M Street, NW
8th Floor
Washington, DC 20036

BY: KAREN CORDRY, ESQ.

PUBLIC CITIZEN LITIGATION GROUP

Attorneys for Product Liability Claimants: Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety, National Association of Consumer Advocates, and Public Citizen

1600 20th Street NW

Washington, DC 20009

BY: ADINA H. ROSENBAUM, ESQ.

ALLISON M. ZIEVE, ESQ.

ORRICK, HERRINGTON & SUTCLIFFE LLP

Attorneys for GM Unofficial Dealer Committee

Columbia Center

1152 15th Street, NW

Washington, DC 20005

BY: RICHARD H. WYRON, ESQ.

ROGER FRANKEL, ESQ.

ORRICK, HERRINGTON & SUTCLIFFE LLP
Attorneys for Finmeccenica S.p.A. and Ansaldo Ricercke S.p.A.; Ad Hoc Dealer Committee
666 Fifth Avenue
New York, NY 10103

BY: ROBERT M. ISACKSON, ESQ.
ALYSSA D. ENGLUND, ESQ.

PATTON BOGGS LLP
Attorneys for Unofficial Committee of Family Bondholders
1185 Avenue of the Americas
30th Floor
New York, NY 10036

BY: MICHAEL P. RICHMAN, ESQ.

PATTON BOGGS LLP
Attorneys for Unofficial Committee of Family Bondholders
2550 M Street, NW
Washington, DC 20037

BY: MARK A. SALZBERG, ESQ.

PATTON BOGGS LLP
Attorneys for Unofficial Committee of Family Bondholders
2001 Ross Avenue
Suite 3000
Dallas, TX 75201

BY: JAMES CHADWICK, ESQ.
(TELEPHONICALLY)

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
Attorneys for Ad Hoc Bondholders Group
1285 Avenue of the Americas
New York, NY 10019

BY: ANDREW N. ROSENBERG, ESQ.
JONATHAN KOEVARY, ESQ. (TELEPHONICALLY)

PENSION BENEFIT GUARANTY CORPORATION
United States Government Agency
1200 K Street NW
Washington, DC 20005

BY: MICHAEL A. MARICCO, ESQ.
ANDREA WONG, Assistant Chief Counsel

ROBINSON BROG LEINWAND GREENE GENOVESE & GLUCK P.C.
Attorneys for Greater New York Automobile Dealers Association
1345 Avenue of the Americas
New York, NY 10105

BY: RUSSELL P. MCRORY, ESQ.

ROBINSON WATERS & O'DORISIO, PC
Attorneys for Environmental Testing Corporation
1099 18th Street
Suite 2600
Denver, CO 80202

BY: ANTHONY L. LEFFERT, ESQ.

SCHNADER HARRISON SEGAL & LEWIS LLP
Attorneys for Ad Hoc Committee Consumer Victims
1600 Market Street
Suite 3600
Philadelphia, PA 19103

BY: BARRY E. BRESSLER, ESQ.

SCHNADER HARRISON SEGAL & LEWIS LLP
Attorneys for Ad Hoc Committee Consumer Victims
824 North Market Street
Suite 1001
Wilmington, DE 19801

BY: RICHARD A. BARKASY, ESQ.

STATE OF MICHIGAN
Office of the State Attorney General
G. Mennen Williams Building
525 West Ottawa Street
6th Floor
Lansing, MI 48909

BY: CELESTE R. GILL, Assistant Attorney General

STATE OF NEW YORK
Office of the Attorney General
The Capitol
Albany, NY 12224

BY: MAUREEN F. LEARY, Assistant Attorney General

STATE OF NEW YORK
Office of the Attorney General
120 Broadway
New York, NY 10271

BY: KATHERINE KENNEDY, Special Deputy Attorney General

STEMBERG FEINSTEIN DOYLE & PAYNE, LLC
Attorneys for Class Representatives in Henry Case
1007 Mt. Royal Blvd.
Pittsburgh, PA 15223

BY: WILLIAM T. PAYNE, ESQ.

STUTZMAN, BROMBERG, ESSERMAN & PLIFKA, P.C.
Attorneys for Ad Hoc Committee of Unsecured Creditors
2323 Bryan Street
Suite 2200
Dallas, TX 75201

BY: SANDER L. ESSERMAN, ESQ.)

VEDDER PRICE P.C.
Attorneys for Export Development Canada
1633 Broadway
47th Floor
New York, NY 10019

BY: MICHAEL L. SCHEIN, ESQ.

WILMER CURLER PICKERING HALE AND DORR LLP
Attorneys for Pension Benefit Guaranty Corporation
399 Park Avenue
New York, NY 10022

BY: PHILIP D. ANKER, ESQ.

WINDELS MARK LANE & MITTENDORF, LLP
Attorneys for Lloyd Good; Plastic Omanna et al.;
Progressive Stamping Company; Morgan Adhesives Co. d/b/a
MACTAC; Western Flyer Express
156 West 56th Street
New York, NY 10019

BY: LESLIE S. BARR, ESQ.

TELEPHONIC APPEARANCES:

ALLARD & FISH, P.C.

Attorneys for Creditor Severstal North America, Inc.

535 Griswold

Suite 2600

Detroit, MI 48226

BY: DEBORAH L. FISH, ESQ.

(TELEPHONICALLY)

ARNALL GOLDEN & GREGORY LLP

Attorneys for Verizon Communications

171 17TH Street NW

Suite 1200

Atlanta, GA 30363

BY: DARRYL S. LADDIN, ESQ.

FRANK N. WHITE, ESQ.

(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF CALIFORNIA
Attorneys for State of California
California Dept. of Justice
P.O. Box 744255
Sacramento, CA 94244

BY: MARGARITA PACFILLA, ESQ.
(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF ILLINOIS
Attorneys for State of Illinois
100 West Randolph Street
Chicago, IL 60601

BY: JAMES NEWBOLD, ESQ.
(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF MICHIGAN
State of Michigan Department of Treasury
G. Mennen Williams Building
7th Floor
525 West Ottawa Street
Lansing, MI 48909

BY: JULIUS O. CURTING, ESQ.
(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF NEW JERSEY
Attorneys for State of New Jersey Department of Environmental Protection Agency
Richard J. Hughes Justice Complex
8th Floor, West Wing
25 Market Street
Trenton, NJ 08625

BY: RACHEL LEHR, ESQ.
(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF TENNESSEE
Attorneys for Tennessee Department of Revenue
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202

BY: MARVIN CLEMENTS, ESQ.
(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF TEXAS
Attorneys for Texas Department of Transportation Motor Vehicle Division
300 West 15th Street
Austin, TX 78701

BY: HAL F. MORRIS, ESQ.
RON DEL VENTO, ESQ.
(TELEPHONICALLY)

DAVIS POLK & WARDWELL
Attorneys for Interested Party Ford Motor Company
450 Lexington Avenue
New York, NY 10017

BY: BRIAN M. RESNICK, ESQ.
(TELEPHONICALLY)

DLA PIPER LLP U.S.
Attorneys for Creditor Hewlett Packard
550 South Hope Street
Suite 2300
Los Angeles, CA 90071

BY: KAROL K. DENNISTON, ESQ.
(TELEPHONICALLY)

FOLEY & LARDNER LLP
Attorneys for Toyota Motor Corp.
One Detroit Center
500 Woodward Avenue
Suite 2700
Detroit, MI 48226

BY: KATHERINE R. CALANESE, ESQ.
JOHN A. SIMON, ESQ.
(TELEPHONICALLY)

FOLEY & LARDNER LLP
Attorneys for Toyota Motor Corp.
407 West Broadway
Suite 2100
San Diego, CA 92101

BY: MATTHEW J. RIOPELLE, ESQ.
(TELEPHONICALLY)

FREEBORN & PETERS LLP
Attorneys for Trico Products & PGW LLC
311 South Wacker Drive
Suite 3000
Chicago, IL 620606

BY: THOMAS R. FAWKES, ESQ.
(TELEPHONICALLY)

FROST BROWN TODD LLC
Lexington Financial Center
250 West Main
Suite 2800
Lexington, KY 40507

BY: ROBERT V. SARTIN, ESQ.
(TELEPHONICALLY)

FULBRIGHT & JAWORSKI L.L.P
Attorneys for Bell Atlantic
2200 Ross Avenue
Suite 2800
Dallas, TX 75201

BY: ELIZABETH N. BOYDSTON, ESQ.
(TELEPHONICALLY)

GOULSTON & STORRS P.C.
Attorneys for Creditor 767 Fifth Partners, LLC
400 Atlantic Avenue
Boston, MA 02110

BY: DOUGLAS B. ROSNER, ESQ.
(TELEPHONICALLY)

HANGLEY ARONCHICK SEGAL & PUDLIN
Attorneys for NCR Corporation
One Logan Square
18th & Cherry Streets
27th Floor
Philadelphia, PA 19103

BY: MATTHEW A. HAMERMESH, ESQ.
(TELEPHONICALLY)

KEMP KLEIN LAW FIRM
Attorneys for Custom Automotive Services, Inc.
201 West Big Beaver Road
Suite 600
Troy, MI 48084

BY: GLORIA M. CHON, ESQ.
(TELEPHONICALLY)

MASTROMARCO FIRM
Attorneys for Gerald Haynor, Interested Party
1024 North Michigan Avenue
Saginaw, MI 48602

BY: VICTOR MASTROMARCO, ESQ.
(TELEPHONICALLY)

MCDONALD HOPKINS CO., LPA
Attorneys for Swegalok Company
39533 Woodward Avenue
Bloomfield Hills, MI 48304

BY: JAYSON B. RUFF, ESQ.
(TELEPHONICALLY)

MCNAMEE, LOCHNER, TITUS & WILLIAMS, PC
Attorneys for The Saint Regis Mohawk Tribe
677 Broadway
Albany, NY 12201

BY: JACOB F. LAMME, ESQ.
(TELEPHONICALLY)

MILLER, CANFIELD, PADOCK AND STONE, P.L.C.
Attorneys for Creditor Ford Motor Company
150 West Jefferson
Suite 2500
Detroit, MI 48226

BY: MARC N. SWANSON, ESQ.
(TELEPHONICALLY)

MORRIS JAMES LLP
Attorneys for Monster Worldwide
500 Delaware Avenue
Suite 1500
Wilmington, DE 19801

BY: CARL N. KUNZ, III, ESQ.
(TELEPHONICALLY)

OFFICE OF SANTA CLARA COUNTY COUNSEL
Attorneys for County of Santa Clara Tax Collector
70 West Hedding Street
9th Floor, East Wing
San Jose, CA 95110

BY: NEYSA A. FIGOR, ESQ.
(TELEPHONICALLY)

OHIO ATTORNEY GENERAL'S OFFICE
Attorneys for State of Ohio
State Office Tower
30 East Broad Street
17th Floor
Columbus, OH 43215

BY: LUCAS C. WARD, ESQ.
(TELEPHONICALLY)

PEPPER HAMILTON LLP
Attorneys for Creditor SKF USA Inc.
400 Berwyn Park
899 Cassatt Road
Berwyn, PA 19312

BY: HENRY J. JAFFE, ESQ.
(TELEPHONICALLY)

PERDUE, BRANDON, FIELDER, COLLINS & MOTT LLP
Attorneys for Arlington ISD et al.
4025 South Woodland Park Boulevard
Suite 300
Arlington, TX 76013

BY: ELIZABETH BANDA, ESQ.
(TELEPHONICALLY)

ROTH & DEMPSEY P.C.
Attorneys for Burton Taft
436 Jefferson Avenue
Scranton, PA 18510

BY: MICHAEL G. GALLACHER, ESQ.
(TELEPHONICALLY)

SCHIFF HARDIN LLP
Attorneys for Columbia Gas of Ohio; Columbia Gas of Virginia
233 South Wacker Drive
Suite 6600
Chicago, IL 60606

BY: JASON TORF, ESQ.
(TELEPHONICALLY)

SINGER & LEVICK, P.C.
Attorneys for ACS Affiliated Computers Services, Inc.
16200 Addison Road
Suite 140
Addison, TX 75001

BY: LARRY A. LEVICK, ESQ.
(TELEPHONICALLY)

WOLFSON BOLTON PLLC
Attorneys for Guardian Industries
3150 Livernois
Suite 275
Troy, MI 48084

BY: SCOTT A. WOLFSON, ESQ.
(TELEPHONICALLY)

P R O C E E D I N G S

THE COURT: Good morning, folks.

MR. MILLER: Good morning.

THE COURT: Have seats, everybody. Come on up, please.

MR. WEISS: Good morning, Your Honor. Robert Weiss of Honigman Miller Schwartz & Cohen, special counsel for General Motors Corporation.

THE COURT: Right, Mr. Weiss.

MR. WEISS: When we ended last evening, I indicated that we had arrived upon a stipulation order resolving objection to sale motion with regard to GECC and some equipment leases that are critical to the sale of the company should it proceed based upon this Court's order.

I'm pleased to advise the Court that we have come to a final resolution in the form of a stipulation and order resolving objection to sale motion. We have consulted with counsel for the creditors' committee whose input is incorporated within the final terms of the stipulation.

Your Honor, just very briefly, if I may, the subject of the leases are very substantial equipment for both manufacturing and assembly that's included in a number of different General Motors facilities. The stipulation is only effective if the Court approves the sale and the sale closes. In that period of time, the debtor has not yet elected whether

it will assume or reject these leases. This stipulation permits the use of this equipment post closing in the period before a decision is made as to whether to assume and assign or reject these leases. All rights and interests of the parties are protected and we believe that this is a stipulation that is very much in the interest of both constituents. I would ask that the Court approve it.

THE COURT: Okay, Mr. Weiss. Anybody else want to comment? Mr. Schmidt, creditors' committee?

MR. SCHMIDT: Good morning, Your Honor. Robert Schmidt, Kramer Levin, on behalf of the committee. Your Honor, Mr. Weiss presented the stip to me a little while ago. He's represented that one of my colleagues has signed off on it. I have no reason to not believe that but I just want to take a quick look at it and we'll advise the Court at a break.

THE COURT: I'm going to be tied up for the next hour or two --

MR. SCHMIDT: I suspect we'll have plenty of time to read it.

THE COURT: Fair enough. Mr. Weiss, would it be helpful more than just that? Would it be necessary -- would you like an order entered on that today assuming the creditors' committee is so (indiscernible)?

MR. WEISS: Yes, we would, Your Honor. And I can represent to the Court that, as Mr. Bacon can attest to, we had

a number of different conversations with Adam Rogoff. And he has, in fact, signed off on the stipulation in the form in which we're going to present it.

MR. BACON: And by email as well.

THE COURT: Sure. The practical problem that a lot of parties are having in this case is that this is a complicated case. You can't do it with one lawyer. And people have to kind of have enough time to talk to each other when they're so busy on other things.

MR. WEISS: Sure.

THE COURT: So that's fine. Mr. Schmidt, could I simply ask you if either you or Mr. Rogoff or somebody communicate with my chambers perhaps by lunchtime just to give me comfort that you guys are okay with it?

MR. SCHMIDT: Absolutely, Your Honor.

THE COURT: Thank you. Thank you.

MR. WEISS: Your Honor, shall I --

THE COURT: Yes, Mr. Weiss?

MR. WEISS: Would you like me to present to the Court a copy of the stip and order at this time?

THE COURT: Well, actually, giving it to me is not going to be that helpful right now. So, yeah, you can give it to me but I won't really be able to look at it until next recess at the earliest or maybe after we're done today.

MR. WEISS: May I approach the bench?

THE COURT: Oh, sure. Sure. Thank you.

MR. WEISS: So just so I understand, assuming that the creditors' committee confirms that the form of the order is satisfactory to them, we need to appear before the Court again on this matter?

THE COURT: I wouldn't think you need to.

MR. WEISS: Okay. Thank you, Your Honor.

MR. SCHMIDT: Thank you, Your Honor.

THE COURT: Thank you. Do we have other housekeeping matters before -- yes?

MR. WARREN: Good morning, Your Honor. Irwin Warren, Weil Gotshal & Manges, for the debtors. Two housekeeping matters. On the record yesterday, I believe it was, there was discussion about provisions of the loan security agreement between the Treasury and the debtors, in particular with respect to the question of what collateral did or did not have liens. Going to Mr. Parker's question, we advised the Court we would provide a letter with the relevant sections. And if I may hand that up to Your Honor, we have done that. We've provided it to Mr. Parker and to all other counsel for the objectors. The particularly important provision is the exclusion of collateral which is in here and the definition of excluded collateral basically says it's any property to the extent that the grant of a lien on it would give rise to a lien under any other document. So it's sort of elegant in its

simplicity of addressing the question of whether a lien has been granted. If it would grant a lien and it would have done what Mr. Parker says, the government doesn't have it.

If I may hand up that letter?

THE COURT: Yes, Mr. Warren. Thank you.

MR. WARREN: The second housekeeping matter, Your Honor, is Mr. Bressler had indicated that rather than putting a witness on for certain of the questioning, he would designate certain testimony from the depositions and Your Honor had said we should counter designate by this morning. The IUE also chose to designate not just with respect to Mr. Henderson but with respect to Mr. Raleigh. We have put together our counter designations. Those will be filed but Your Honor had asked that marked copies of the transcripts be provided color-coded to indicate who are the objectors.

THE COURT: I say color coded. I simply meant so that I could tell whose is what.

MR. WARREN: We figured the easiest --

THE COURT: Black and white, that's equally satisfactory.

MR. WARREN: We thought color might work. We have taken the liberty of taking all of the objectors designations and put them in yellow. Ours are in pink. And if I may hand those up to Your Honor, these are the Henderson and Raleigh transcripts. Hopefully, this will be of assistance.

of -- I object to the process, and I've objected in my objections, to the process chosen by the debtor. This is not a criticism of the Court or of yourself; this is a criticism of the process they chose.

I don't believe that there has been adequate time to prepare a response to their motion. For example, and after making the example I'll move onto another point, for example, they criticize, or in their oral argument to the Court they have emphasized, that they're the only ones who've provided any valuation scenarios for General Motors. Well, of course, they had several months to prepare those valuation scenarios. We've had less than thirty days. The time frame -- I mean, I filed my objection on June 19th, so I've basically had eleven days. In eleven days you can't find an expert, have an expert get access to the records and create a valuation report. I don't think it can be done. So I'm objecting on those grounds.

But I'll move on. One of the things I'm objecting to, and I believe I'm the only one who's objecting on this, is the limitation-on-liens argument. The -- I rest upon two documents -- well, three documents: first, the 1995 indenture, which I believe is Debtors' Exhibit 10 in evidence, if my notes are correct. Section 1408 provides that it's governed by New York and is to be interpreted by New York law. Section 406 contains a limitation-on-liens provision, which I think the Court can read; I don't think the Court needs me to repeat it.

In addition, there's Parker's Exhibit 1 in evidence, which I believe is my only exhibit, which is a prospectus supplement dated June 26, 2003 for six and a quarter Series C convertible debentures due in 2033, with an attached prospectus dated June 19th, 2003. If you look at page 23 of the June 19th prospectus, the one that's attached to the supplement, you'll find that the identical limitation-on-liens provision is found in that prospectus and that it applies to my bonds. The prospectus also states that my bonds are issued under the 1995 indenture.

Now, the third document that I'm relying upon is -- I believe it's Debtors' Exhibit 6. Again, back there it's difficult to keep track of which exhibit is which, but it's the loan and security agreement dated December 31st, 2008. And if you'll give me one second to get the agreement. Here we go. If you go to page 35 of Exhibit 6, which -- and I'm using the numbers on the top right-hand corner --

THE COURT: Go on.

MR. PARKER: Do yours have the same pagination? Otherwise, I'll use the pagination from the original document.

THE COURT: Why don't you speak to it, because it'll take me a little bit of time to find it. But --

MR. PARKER: Sure, if I may.

THE COURT: -- I'll assume, unless somebody disagrees, that you're accurately reading to me. And I'm

familiar with the issue. What I want you to focus on is excluded assets within the meaning of the December 31st, 2008 agreement.

MR. PARKER: Yes, sir, I know, I'm getting there. Paragraph -- or I should say section 4.01(a) creates a lien on all real and personal property wherever located, except where excluded. Okay, section -- subsection - sub-subsection (a)(6) provides a lien on all personalty; it gives a nonexclusive definition of personalty, including equipment and instruments.

Section 4.02 provides that General Motors is to provide UCC filings in order to perfect the government's liens on all equipment. And there's a schedule of all the properties where equipment is located that UCC liens are to be filed for; that's section .402 (sic) on page 36. And, again, I'm using the pagination 36 of 111 in the top right-hand corner.

Section 6.09 has excluded collateral, and it refers one to schedule 6.29. It states that section 6.29 is a complete and accurate list -- by the way, that's 6.29, I'm sorry, not 6.09. Section 6.29, which is on page 51 of 111, states that, on excluded collateral, "See, set forth on Schedule 6.29, is a complete and accurate list of all excluded collateral of each property." When you go to schedule 6.29, you get a blank page. It says "Schedule 6.29, Blank". So apparently there is no excluded property.

It then goes on --

THE COURT: Mr. Parker, are you going to eventually get to subsection v --

MR. PARKER: Yes, yes.

THE COURT: -- romanette v, one of the definitions of excluded collateral?

MR. PARKER: Yes, sir, but -- okay. I am eventually. My point about what I -- to summarize, I was going through the documents to show you -- I realize that there is a subsection v on -- bear with me a second -- section 4.01, subsection v, defines excluded -- has a definition of excluded property but says "any property, including any debt or equity interest, any manufacturing plant or facility which is located within the continental United States, to the extent that the grant of a security interest therein to secure the obligations will result in a lien or an obligation to grant a lien in such property to secure other obligation". I understand that that's there. What I'm trying to show the Court is that even though that's there they still went and filed liens on property. And I don't think you can file liens on property and get an excuse for it by saying oh, well, I filed someplace else a statement that if I did it I didn't mean it.

The documents show that -- I might add, if you go to section 6.30, Mortgaged Real Estate, that's actually the only section that I've been able to find where they have language that says we do not have a lien on mortgaged real estate if the

lien would give rise to a lien in favor of a person as set forth in schedule 30 hereto. By the way, schedule 30 hereto is also blank.

It seems to me that they have, whether they were allowed to or not, and whether they've excused themselves from doing it or not, filed liens on two classes of property that I would like to bring to the Court's attention. The first class of property is listed in schedule 6.25, which is the UCC filings. They have filed the UCC filing -- lien on the following -- on the manufacturing and equipment of the following localities: the Doraville Assembly Center, the Janesville Assembly Center, the Moraine Assembly Center, the Massena Castings, Pittsburg Metal Stamping, Grand Rapids Metal Stamping, Spring Hill Manufacturing Campus, Wilson Run (ph.) PDC, Latsina (ph.) PDC, Pontiac North Pitt 17, Pontiac North PC, Yps -- I can't even pronounce it -- Ypsilanti Vehicle Center, Beavertown PDC, Grand Blanc Metal Center, Former Cherry Town Assembly, Former Validation Center, Former Lansing Plants 1, 2, 3, and 6.

Finally, Your Honor, under schedules 1.1 and 1.2, they've made it clear that among the assets that have been liened are Saturn. Saturn is -- at least according to the testimony of Mr. Fritz Henderson, Saturn is the only manufacturing -- American manufacturing subsidiary of General Motors. They've liened that. And indeed, because they liened

that, I believe that Saturn is a -- has an accompanying bankruptcy proceeding that's consolidated with this one.

Now, I realize they say they gave themselves an escape clause and if we lien something and we shouldn't have it as liened. But in point of fact, they did lien it. And the escape clause shows that they knew that they had obligations not to lien it. And when they liened it, when they liened these facilities and when they liened Saturn, under the terms of the bond indenture, the 1995 bond indenture, the bondholders acquired liens equal and ratable to that of the government.

THE COURT: Mr. Parker, do you think that if Mr. Schwartz had come in to me and said I got a lien on that stuff and any other party-in-interest in the case showed me romanette v he wouldn't have been left out of court?

MR. PARKER: I don't know, Your Honor. I do know that they attempted to perfect a lien on these assets even though they were prohibited from doing so. And, Your Honor, if nothing else, I believe that that goes toward the issue of bad faith. I believe -- which, by the way, gets us to the next issue that I wish to discuss.

THE COURT: Good time to do it.

MR. PARKER: Pardon?

THE COURT: Go ahead, please.

MR. PARKER: Give me a second to get there.

In order to approve a 363 sale, the government must

THE COURT: Thank you.

MS. TAYLOR: Thank you.

THE COURT: Okay. Mr. Roy, you're coming up.

MR. ROY: I'm coming up in thirty seconds, Your Honor.

THE COURT: Okay.

(Pause)

MR. ROY: Your Honor, for the record, Casey Roy from the Texas Attorney General's Office on behalf of the State of Texas.

We filed a limited standalone objection. We've reached an agreement with the debtors, subject to entry of that agreement on the record, we will be prepared to withdraw.

THE COURT: Okay.

MR. ROY: Thank you, Your Honor.

THE COURT: Thank you.

MR. MOTIF: I'm not an attorney. I'm coming to you --

THE COURT: Just a minute. Is there -- I announced earlier in the hearing that I wasn't going to hear oral argument on all the objections. Come up, tell me your status so I can make a judgment as to whether you should be resting on your papers.

MR. MOTIF: My name is Normaji, last name is Motif.

We bought GM's bonds, 400,000 paying the same amount.

And I --

THE COURT: Sir, you're a bondholder?

MR. MOTIF: Yes, sir. Unsecured.

THE COURT: Unsecured bondholder. Do you have any points that weren't made by either Mr. Richman, Mr. Parker or the two indentured trustee?

MR. MOTIF: That's correct.

THE COURT: And you filed a written objection.

MR. MOTIF: I did, but I want to make this.

In the master purchase and sales agreement they never really splintered the phrase going concern. As a grave concern this needs to be sorted fast enough so that the value doesn't go down. I'm not sure whether they're talking about the legal term of grave concern or the accounting term of grave concern. No matter whether we go on the legal term or the accounting term, that phrase cannot be used. GM operations like the (indiscernible) cooperation which I read the (indiscernible) very frequently they use of the word grave concern. They took operations and cooperated in Delaware. And Delaware's (indiscernible) law with regard to the cooperation applies. Even if this case is filed in New York State I would like the Court to take analyze that usage of the going concern as a property of (indiscernible). I can understand that it's an operating concern, they will be borrowing money and running the business. But definitely it is not a grave concern whether it

is a legal usage or accounting usage.

The (indiscernible) cooperation -- I mean, the GM cooperation whether you want to use the title GAAP. GAAP means the general acts of accounting principals, or you want to use the fair market values of some of the methodology that you use. The corporation became insolvent three year ago. And since then especially with the loan agreement signed by the Treasury it seems that even though they have created documents stating that this is the loan agreement, actually nobody, if especially, if the government is going to be approving commercial businessman would never lend money. So the expectation was a situation created and not a reality. And you have seen what Mr. Henderson and Mr. Wilson and others saying that if the loan never came through then GM could not have functioned, like what happened in the case of Chrysler.

Now, there are rules in the corporation's law of Delaware saying that at a particular stage if the money was lent not as a businessman but for other reasons, and especially if control of the corporation has been taken over indefinitely, then that entity should be treated as insiders. And so, therefore, the loans must be subordinated to the equity and to the unsecured bondholders. Because it would not be treated as a loan as a creditor, but would be treated as insider, and so therefore it is a capital contribution.

The important reason for that is if that is the

capital contribution and not a law then --

THE COURT: The recharacterization subordination points were made in many briefs, I understood them.

MR. MOTIF: I'm ready to come to the other important point.

If the Court determines that it is a capital contribution and not a loan per se, then the participation fails because in the proposals out of 19.4 billion dollars that was the pre-petition advances made, two million dollars worth of (indiscernible) being taken by the New GM with approximately about eight billion dollars of (indiscernible) and so that leaves about nine million dollars as the big money so there will be a shortage in the bid amount, even if you include the DIP money less the other things. I believe that this money was given here, that the total purchase price of the total value was between fifty and sixty billion dollars. If that is the case then it is my submission that the Treasury bring down that nine million dollars and give it to the Old GM as part of the purchase price. Plus also the eight billion dollars for eight million dollars of the note, plus two billion dollars that also must come for a total of 19.4 billion dollars, must come to the Old GM.

Now, the other argument is that --

THE COURT: Are you getting near the end, sir?

MR. MOTIF: Yes, give me five minutes.

THE COURT: Five more minutes.

MR. MOTIF: Yes. Because this is a very crucial case and I need to explain that clearly. May I proceed?

THE COURT: Yes.

MR. MOTIF: Now, I raised an issue that as an unsecured bondholder there is a breach of contract by GM when they --

THE COURT: GM has breached its contract to everyone of its twenty-eight --

MR. MOTIF: I know, I know. But I'm coming to the final points, Your Honor. There were secured bondholders and there were unsecured bondholders, you've got two categories before September 31 of 2008. I do not know that the secured bondholders are fully secured or partially secured. And I have no idea as to what properties are fully secured, or partially secured by the secured bondholders. Now, when they borrowed 13.4 billion dollars from the Treasury they put a first lien on the property, which is not covered by the secured bondholders. And with regard to the secured bondholders property they put a second lien. The document indenture of 1995 is clear that the moment a lien is put then the unsecured bondholders must be repeated on par with the --

THE COURT: Is that the exact point Mr. Parker made?

MR. MOTIF: No, I'm going to go further, Your Honor. He made one point, but he did not elaborate more.

Accurately, he admitted in his brief that they realized this lien problem. So if you read the brief he acknowledges my brief --

THE COURT: I did read his brief.

MR. MOTIF: Pardon?

THE COURT: I did read his brief.

MR. MOTIF: Yeah. And he acknowledges that he got the idea from me.

THE COURT: Okay.

MR. MOTIF: Here is the question. I read the Chrysler opinion by Judge Gonzalez. He said with regard to the unsecured creditors the takings clause -- and I think he said might apply because they don't have a lien. But if this Court were to decide that the fact that a lien was put on that and that automatically triggered the other problem which is that the unsecured bondholders also has liens on par with the treasury, both with regard to the first lien that decided with regard to the other property, and the second lien that decided on the secured bondholders' property. Then we have a right to argue that the takings clause under the Fifth Amendment do apply.

So with that, Your Honor, thank you very much.

THE COURT: Thank you. Now, putting aside deals on the record and so forth, which we can deal with later, is there any other substantive argument of a non-duplicative nature to

up the purported bluff of the U.S. Treasury and that's an awesome responsibility that he wants to impose on your shoulders.

With respect to, Your Honor, to Mr. Parker, we have submitted, Your Honor, and I'm not going to speak further on it, the statements and the arguments made by Mr. Parker with respect to the equal and ratable clauses in the indentures, are just not accurate. Mr. Parker has not established and he's not produced any certifications or a record of any lien filings with respect to the excluded assets, and the agreements are quite clear that if there were no liens granted to the federal government, the U.S. Treasure in connection with the security agreement of 12/31/08 that was subject to those indentures.

THE COURT: Let me go back to the Secured Financing 101. UCC-1 perfects the security interests but the security interest has to -- it's separately granted, am I correct?

MR. MILLER: That's correct, Your Honor.

THE COURT: And romanette v says that (indiscernible) will be granting the security interest?

MR. MILLER: I'm sorry, sir?

THE COURT: And romanette v says, in its excluded assets -- or excluded liens provision, that there isn't a grant of security?

MR. MILLER: That's correct, Your Honor.

THE COURT: Okay.

MR. MILLER: And Mr. Henderson testified at length, Your Honor, that there were no liens granted in violation of the indentures.

Bad faith. Mr. Parker says that the purchaser has not acted in good faith. Yet the record is to the contrary. The record establishes the extent and nature of the negotiations, how they were conducted, and that they were consistent with the standards of good faith under the cases.

The TARP argument. Again, Your Honor, that argument was raised in Chrysler, and Judge Gonzalez ruled on that. It involved the DDSA and TARP, and that argument was not successful and was continually raised by the Indiana pension plans that you can't use TARP money for these purposes. And in this circuit, Your Honor, at least, that is not an argument that can stand.

Mr. Parker also complains about the scheme of distribution. And again, the basis of his argument on the scheme of distribution is the UAW is just getting too much, while the record is replete with the rationalization and reasons why the UAW ended up in that position. There are sometimes, Your Honor, when union membership is a good thing. Sometimes not. But these active employees are critical to this transaction. If we did not have these employees, there would not be a 363 transaction. And more importantly, Your Honor, the consideration that is being given to the UAW VEBA is coming

Hearing Date: June 30, 2009 at 9:45 A.M.
Original Objection Deadline: June 19, 2009 at 5:00 P.M.
Extended Objection Deadline: June 22, 2009 at 12:00 Noon

Oliver Addison Parker, Pro Se
283 Codrington Drive
Lauderdale By The Sea, FL 33308
Ph: (954) 599-6468
Fax: (954) 772-6468
splitapart@prodigy.net
Florida Bar No. 235891

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

---------- x

In re

GENERAL MOTORS CORP., *et al.*,

Debtors.

Chapter 11

Case No. 09-50026 (REG)

(Jointly Administered)

---------- x

AMENDMENT TO OBJECTION OF OLIVER ADDISON PARKER TO THE DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105, 363(b), (f), (k), AND (m), AND 365 AND FED. R. BANKR. P. 2002, 6004, AND 6006, TO (I) APPROVE (A) THE SALE PURSUANT TO THE MASTER SALE AND PURCHASE AGREEMENT WITH VEHICLE ACQUISITION HOLDINGS LLC, A U.S. TREASURY-SPONSORED PURCHASER, FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (C) OTHER RELIEF; AND (II) SCHEDULE SALE APPROVAL HEARING

AND

JOINDER IN AND ADOPTION OF THE UNOFFICIAL COMMITTEE OF FAMILY & DISSIDENT GM BONDHOLDERS' OBJECTION TO DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105, 363(b), (f), (k), AND (m), AND 365 AND FED. R. BANKR. P. 2002, 6004, AND 6006, TO (I) APPROVE (A) THE SALE PURSUANT TO THE MASTER SALE AND PURCHASE AGREEMENT WITH VEHICLE ACQUISITION HOLDINGS LLC, A U.S. TREASURY-SPONSORED PURCHASER, FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (C) OTHER RELIEF; AND (II) SCHEDULE SALE APPROVAL HEARING

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

Oliver Addison Parker, Pro Se, ("Parker") pursuant to the provisions of F.R.C.P. 15(a) and F.R.B.P. 7015 herewith files this amendment (the "Amendment to Objection") to his previously filed objection (the "Objection") to the Motion of General Motors Corp. ("GM") and the above-captioned debtors and debtors in possession (collectively, the "Debtors"), made pursuant to U.S.C. §§ 105, 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (I) approve (A) the sale pursuant to the Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-sponsored purchaser ("the Purchaser"), free and clear of liens, claims, encumbrances, and other interests; (B) the assumption and assignment of certain executory contracts and unexpired leases; and (C) other relief; and (II) Schedule Sale Approval Hearing [Docket No. 92] (the "Sale Motion"). In support of his Amendment to Objection, Parker respectfully states and represents as follows:

GROUNDS FOR ALLOWING AMENDMENT

1. Parker is a bondholder and more specifically is the owner and holder of 200,000 shares of 6.250% Series C Convertible Senior Debentures Due 2033 (stock symbol GPM) issued July 2, 2003 with a principle value of $5,000,000.00 plus accrued interest as of June 1, 2009 of $130,208.33, for a total indebtedness owed by GM to Parker as creditor of $5,130,208.33.

2. On June 19, 2009 at 8:51 A.M., Parker timely filed his Objection to the proposed 363 "sale".

3. Subsequent to the timely filing of his Objection on June 19th, Parker discovered that these bonds contained the following limitation on the power of GM to mortgage their assets

(the "limitation on liens provision"):[1]

> ***Limitation on Liens.*** For the benefit of the senior debt securities, we will not … issue or assume any Debt secured by a Mortgage upon any Principal Domestic Manufacturing Property of ours or any Manufacturing Subsidiary or upon any shares of stock or indebtedness of any Manufacturing Subsidiary (whether … now owned or hereafter acquired) **without in any such case effectively providing concurrently with the issuance or assumption of any such Debt that the senior debt securities … shall be secured equally and ratably with such Debt**, unless the aggregate amount of Debt issued or assumed and so secured by Mortgages, together with all other Debt of ours and our Manufacturing Subsidiaries … does not at the time exceed 20% of the stockholders equity of us and our consolidated subsidiaries, as determined in accordance with accounting principles generally accepted in the U.S. and shown on the audited consolidated balance sheet contained in the latest published annual report to our stockholders.
>
> The above restrictions shall not apply to Debt secured by:
>
> …
>
> (v) Mortgages on property of ours or a Manufacturing Subsidiary in favor of the United States of America … or any department, agency or instrumentality … thereof … to secure partial, progress, advance or other payments pursuant to any contract or statute or to secure any indebtedness incurred for the purpose of financing all or any part of the purchase price or the cost of construction of the property subject to such Mortgages; …
>
> The subordinated debt indenture does not include any limitation on our ability to incur these types of liens. [Emphasis mine.]

(See Page 23 of the Prospectus dated June 19, 2003 and attached to the Prospectus Supplement for the $4,000,000,000 in General Motors Corporation 6.250% Series C Convertible Senior Debentures Due 2033, the pertinent portions of which are attached hereto as Exhibit 4.) To the best of Parker's knowledge, information and belief, all of the senior debt bonds issued by GM contain a similar limitation on liens provision.

[1] Parker discovered the limitations on liens provision by reading the Adversarial Complaint by the Narumanchis . [Docket No. 1568] and then checking his prospectus, the relevant portions of which are attached hereto as Exhibit 4.

4. The fact that Parker's bonds (and most probably, all GM senior debt bonds) contains this limitation on liens provision provides additional grounds for objecting to the proposed 363 "sale" in that under its terms either (1) Parker (and the other senior bondholders) now have a third lien of equal rank and priority with that of the United States Government upon virtually all property owned by GM or (2) the Government does not have a lien on said assets (or at least not a lien that is superior to the interests of the bondholders), or (3) if the Government does have a lien on said assets that is superior to the interests of the bondholders, then the Government wrongfully acquired said lien, and its actions in doing so (a) constitutes a tortuous interference with the bondholders contractual rights under the bonds, (b) establishes bad faith and wrongful conduct on the part of both the Government and GM, (c) is further evidence demonstrating the Government's control of GM, (d) goes to the issue of equitable subordination, and (e) is additional grounds for Parker's claim that the Government's actions constitute a taking of the bondholders property without just compensation in violation of the 5th Amendment.

5. Without abandoning his original Objection, Parker (by means of this Amendment to Objection) wants to amend said original Objection so as to include these additional grounds for objecting to the proposed 363 "sale".

6. Also subsequent to the timely filing of his Objection on June 19th, Parker discovered that the Unofficial Committee of Family & Dissident GM Bondholders had timely filed their own objection (the "Dissidents' Objection" [Docket No. 1969]) to the proposed 363 "sale".

7. Without abandoning his original Objection or the additional grounds set forth in this Amendment to Objection, Parker wants to join in and adopt as additional grounds for objecting to the proposed 363 "sale" the grounds set forth in the Dissidents' Objection.

8. Under the provisions of F.R.C.P. 15(a) and F.R.B.P. 7015 "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served."

9. As of this time, no response to the Objection has been served. However, an objection is a pleading that does not usually require a response. The Objection was filed and served on Friday, June 19, 2009. This Amendment to Objection is being filed on Monday Morning, June 22, 2009 (the next business day) and is being served on June 22, 2009 by United States Mail, postage prepaid, and by telephonic facsimile. Thus this Amendment to Objection may be made without leave of Court and is timely under the provisions of F.R.C.P. 15(a) and F.R.B.P. 7015.

10. Pursuant to the provisions of F.R.C.P. 15(c) and F.R.B.P. 7015 the Amendment to Objection relates back to the original Objection, and since the original Objection was timely filed pursuant to the provisions of this Court's June 2, 2009 Order Approving Procedure for Sale, the Amendment to Objection is also timely filed pursuant to the provisions of said Order.

11. Alternatively, if leave of Court is required for amendment, F.R.C.P. 15(a) and F.R.B.P. 7015 further provides that "[o]therwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires."

12. The Financial Times has reported that the Official Committee of Unsecured Creditors has obtained an extension for filing objections until June 22, 2009. (See "GM plans comeback a month early" by Bernard Simon in Toronto Published: June 18 2009, a copy of

which is attached hereto as Exhibit 5). Thus, this Amendment to Objection is timely pursuant to the provisions of this Court's June 2, 2009 Order Approving Procedure for Sale [Docket No. 274] as extended. That the Creditors Committee has obtained such an extension demonstrates that the Debtors and other parties will not be prejudiced by allowing the amendment.

13. Even if the Financial Times is mistaken and the Court has not extended the deadline for objections until June 22, 2009, this Amendment to Objection is being filed and served on the next business day after the filing and service of the original Objection; the Debtors and other parties will not be materially prejudiced by allowing the amendment[2]; and the amendment will allow issues to be heard that in justice ought to be heard and resolved prior to the Court's decision regarding the proposed 363 "sale". Under these circumstances, justice would seem to require allowing the amendment.

AMENDMENT TO OBJECTION OF OLIVER ADDISON PARKER

14. Without abandoning his original Objection filed June 19, 2009, Parker herewith amends said Objection so as to include these additional grounds for objecting to the proposed 363 "sale".

BACKGROUND[3]

15. The 6.250% Series C Convertible Senior Debentures Due 2033 (stock symbol GPM) that Parker owns were issued on July 2, 2003. These bonds contained the following limitation on the power of GM to mortgage their assets (the "limitation on liens provision"):

[2] The Debtors are already on notice that these issues will be raised. See the Adversarial Complaint by the Narumanchis [Docket No. 1568] regarding the limitations on liens provision of the senior bonds and see the "Dissident's Objection". [Docket No. 1969] for the remaining issues.

[3] Certain of the facts set forth herein are based upon the representations of the Debtors in the Sale Motion. Others are based upon the affidavit of Frederick A. Henderson, GM's CEO. Parker reserves the right to challenge such representations, and nothing herein shall constitute a waiver of such right.

> ***Limitation on Liens.*** For the benefit of the senior debt securities, we will not … issue or assume any Debt secured by a Mortgage upon any Principal Domestic Manufacturing Property of ours or any Manufacturing Subsidiary or upon any shares of stock or indebtedness of any Manufacturing Subsidiary (whether … now owned or hereafter acquired) **without in any such case effectively providing concurrently with the issuance or assumption of any such Debt that the senior debt securities … shall be secured equally and ratably with such Debt**, unless the aggregate amount of Debt issued or assumed and so secured by Mortgages, together with all other Debt of ours and our Manufacturing Subsidiaries … does not at the time exceed 20% of the stockholders equity of us and our consolidated subsidiaries, as determined in accordance with accounting principles generally accepted in the U.S. and shown on the audited consolidated balance sheet contained in the latest published annual report to our stockholders.
>
> The above restrictions shall not apply to Debt secured by:
>
> ****
>
> (v) Mortgages on property of ours or a Manufacturing Subsidiary in favor of the United States of America … or any department, agency or instrumentality … thereof … to secure partial, progress, advance or other payments pursuant to any contract or statute or to secure any indebtedness incurred for the purpose of financing all or any part of the purchase price or the cost of construction of the property subject to such Mortgages; …
>
> The subordinated debt indenture does not include any limitation on our ability to incur these types of liens. [Emphasis mine.]

(See Page 23 of the Prospectus dated June 19, 2003 and attached to the Prospectus Supplement for the $4,000,000,000 in General Motors Corporation 6.250% Series C Convertible Senior Debentures Due 2033, the pertinent portions of which are attached hereto as Exhibit 4.) To the best of Parker's knowledge, information and belief, all of the senior debt bonds issued by GM contain a similar limitation on liens provision.

16. On December 31, 2008, GM and the U.S. Treasury entered into an agreement (the "U.S. Treasury Loan Agreement") that provided the Debtors with emergency financing of up to

an initial $13.4 billion (later increased to $19.4 billion[4]) pursuant to a secured term loan facility (the "U.S. Treasury Facility"). (See Henderson Aff. ¶¶ 54.) Under the terms of the U.S. Treasury Loan Agreement, the U.S. Treasury Facility is secured by a first priority lien on and security interest in substantially all the unencumbered assets of GM and the guarantors, as well as a junior lien on encumbered assets, subject to certain exceptions. The U.S. Treasury Facility is also secured by a pledge of the equity interests held by GM and the guarantors in certain foreign subsidiaries, also subject to certain exceptions. (See Henderson Aff. ¶¶ 55.)

17. In their Sale Motion, the Debtors seek authority to "sell" substantially all of GM's assets (including approximately $87 billion in net operating losses for use as a tax loss carry forward) to the Purchaser. Under the terms of the sale the United States Government is treated as a secured debtor holding a third lien or better on essentially all of the Debtors' property, while the senior bondholders (like Parker) are treated not only as unsecured creditors, but as unsecured creditors whose claims are junior to those of the UAW VEBA and the UAW Pension Plan..

ADDITIONAL OBJECTIONS

I. The Senior Bondholders (Like Parker) Are Secured Creditors Whose Liens Enjoy Equal Rank And Priority With Those Of The Government.

18. On December 31, 2008, GM issued debt to the United States Government in the amount of $13.4 billion (subsequently increased to $19.4 billion[5]) secured by a first priority lien on and security interest in substantially all the unencumbered assets of GM and the guarantors, as well as a junior lien on encumbered assets, subject to certain exceptions. The debt was also secured by a pledge of the equity interests held by GM and the guarantors in certain foreign subsidiaries, also subject to certain exceptions. (See Henderson Aff. ¶¶ 54 – 55.)

[4] Or $20.6 billion – its not clear which.

[5] Or $20.6 billion – its not clear which.

19. The debt issued by GM to the Government and secured by a lien on and security interest in virtually everything owned by GM was not given to secure partial, progress, advance or other payments pursuant to any contract or statute or to secure any indebtedness incurred for the purpose of financing all or any part of the purchase price or the cost of construction of the property subject to such liens and security interests.

20. Furthermore, on December 31, 2008 shareholder equity was below zero – it was negative $85 billion. (See Henderson Aff. Pg. 75.)

21. Under the limitations on liens provision of the senior bondholders' bonds, GM could not grant the Government a lien on virtually everything it owned without concurrently granting to its bondholders (like Parker) an identical lien on the same property securing the bond debt equally and ratably with the debt of the Government. Thus, under the terms of the senior bond debt instruments (like that given to Parker), when GM gave the Government a lien on virtually all of its assets it simultaneously gave the same identical lien to the bondholders on the same assets which lien has equal priority with that of the Government. In other words, there is not a lien on virtually all of the Debtors' assets securing payment of $19.4 billion that is owed to the Government, rather there is an equal and ratable lien on virtually all of the Debtors assets securing payment of $47.4 billion, 59% of which is owed to the senior bondholders (like Parker) and 41% of which is owed to the Government.

A. The Proposed 363 "Sale" Is An Unconstitutional Taking In Violation Of The Fifth Amendment.

22. As part of its proposed 363 "sale", the Government proposes to sell virtually all of the Debtors' assets to the Purchaser free and clear of the above described liens held by the senior bondholders on said property. Further, the Government does not propose to divide the proceeds of the sale ratably between the parties, to wit, 59% to the bondholders and 41% to the

Government. Instead the Government proposes to give approximately 8% of the equity in the Purchaser[6] to the senior bondholders (like Parker) in full satisfaction of their 28 billion in claims and liens, while giving themselves 60% of the equity in the Purchaser, plus approximately $9 billion in assumed (and presumably secured) debt and Preferred Stock in satisfaction of 19.4 billion in claims and liens and while giving the UAW VEBA (which is an unsecured creditor who is owed $30 billion[7]) 17.5% of the equity in the Purchaser, plus approximately $9 billion in new promissory notes and Preferred Stock plus $9.4 billion in cash[8] and while fully assuming or paying (without reduction) the following debts: $5.9 billion owed to the other secured creditors (whose claims are apparently senior to those of the bondholders and the Government)[9], $5.4 billion to trade creditors (whose claims are unsecured) and approximately $30 billion to the UAW and non-UAW Pension Plans (whose claims are unsecured). In other words, everyone but the senior bondholders and the unsecured non-trade creditors get paid between 67 cents on the dollar and 100 cents on the dollar while the senior bondholders and the unsecured non-trade creditors get paid less than 3 cents on the dollar.

23. The Supreme Court long ago recognized that a secured creditor's interest in specific property is protected in bankruptcy under the Fifth Amendment. Louisville Joint Stock

[6] While the Government proposes to give 10% of the equity in the purchaser to the Debtors for distribution to the bondholders, the bondholders must share this with the unsecured non-trade creditors. Since the unsecured non-trade creditors are owed an estimated $6 billion, the bondholders will only receive 8% of the Purchaser's equity.

[7] This includes $9.4 billion in cash or cash equivalents presently held in an internal escrow account by GM for payment to the UAW VEBA in January 1, 2010.

[8] As part of the transaction, GM is transferring to Purchaser approximately $9.4 billion in cash or cash equivalents presently held in an internal escrow account by GM. While GM is contractually obligated to pay said $9.4 billion to the UAW VEBA on January 1, 2010, said obligation has not yet matured and the monies are not yet due and payable.

[9] Parker is no longer sure that the claims of said secured creditors are in fact senior to those of the senior bondholders and demands strict proof of said seniority.

Land Bank v. Radford, 295 U.S. 555, 589, 594 (1935). That case involved a Depression-era statute that was intended to help bankrupt farmers avoid losing their land in mortgage foreclosure. But rather than mandate some form of moratorium, which had been upheld, see Home Building & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934), the statute in Radford took a unique approach to the bankruptcy process. The bankrupt debtor could achieve a release of the security interests either (i) with the lender's consent, purchasing the property at its then appraised value by making deferred payments for two to six years at statutorily-set interest rates; or (ii) if the lender refused the purchase option, by having the bankruptcy court stay the proceedings for up to five years during which time the debtor could use the property by paying a rent set by the court, which payments would be for the benefit of all creditors, with a purchase option at the end of that period. Id. at 575-76.

24. Justice Brandeis noted that the "essence of a mortgage" is the right of the secured party "to insist upon full payment before giving up his security [i.e., the property pledged]." Id. at 580. In invalidating the statute, the Court noted that no bankruptcy law had ever "sought to compel the holder of a mortgage to surrender to the bankrupt either the possession of the mortgaged property or the title, so long as any part of the debt thereby secured remained unpaid." Id. at 581-82. Commenting on the law allowing the debtor to repay less than the full amount owing and keep the property, the Court also noted that no prior law had "attempted to enlarge the rights or privileges of the mortgagor as against the mortgagee" including by going beyond reducing the debtor's liabilities to "supply [the debtor] with capital with which to engage in business in the future." Id. at 582.

25. Holding that secured creditors could not be treated this way, the Court stated that

"[t]he bankruptcy power . . . is subject to the Fifth Amendment," and that the pernicious aspect of this law was its "taking of substantive rights in specific property acquired by the bank prior to the act." Id. at 589-90.[10] Thus, Congress could not pass a law that could be used to deny to secured creditors their rights to realize upon the specific property pledged to them or "the right to control meanwhile the property during the period of default." Id. at 595.[11] That is precisely what the Government would have the Debtors do here.

26. The Government is demanding that the collateral that secures the debts that are owed to the senior bondholders (like Parker) be stripped away from the senior bondholders' liens—thereby impairing the rights of the senior bondholders to realize upon those assets—so that it may be put in the Purchaser. The plan is then to use those assets to benefit both the Government (whose lien is of equal priority with that of the bondholders) and unsecured creditors in this proceeding, all of whom will then recover substantially more (between 67 and 100 cents on the dollar) than the senior bondholders (who receive less than 3 cents on the dollar). Radford specifically disallowed this type of procedure as antithetical to the idea of a lien on property. That the Government would do this to help the United States address difficult economic times is not an answer. Indeed, the same justification was expressly rejected in Radford, where Justice Brandeis noted that a statute which violated secured creditors' rights, but which was passed for sound public purposes relating to the Great Depression, could not be saved because "the Fifth

[10] The legislative history relating to adequate protection under section 363 echoes this commitment under the Fifth Amendment to protecting the value of property pledged to secured creditors. See S. Rep. No. 95-989, at 49, 53, *reprinted in* 1978 U.S.C.C.A.N. 5787, 5835, 5839 (citing Radford and finding that "the purpose of the section is to insure that the secured creditor receives the value for which he bargained"); H.R. Rep. No. 95-595, at 339, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6295 (to similar effect).

[11] Tellingly, in Wright v. Union Central Life Ins. Co., 311 U.S. 273, 278 (1940), the Court upheld the revised version of the statute at issue in Radford based on safeguards "to protect the rights of secured creditors, throughout the proceedings, to the extent of the value of the [pledged] property."

Amendment commands that, however great the nation's need, private property shall not be thus taken even for a wholly public use without just compensation." Id. at 602.

B. The Debtors Have Failed To Satisfy The Requirements Of 11 U.S.C. § 363(f)

27. A sale free and clear of third party interests must comply with one of the provisions of section 363(f)(1) though (5). The Debtors Sale Motion does not address section 363(f), and therefore the motion is defective.[12]

C. The Proposed Sale Eliminates The Senior Bondholders' Right To Credit Bid Granted By Section 363(k)

28. Under a sale pursuant to section 363 of the Bankruptcy Code, a holder of a secured claim, such as the senior bondholders have the right to credit bid for the purchase of the asset that is the subject of the sale. The secured party's right to credit bid is expressly granted by statute:

> At a sale under subsection (b) of this section of property that is subject to a lien that secured an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

11 U.S.C. § 363(k). Credit bidding permits a secured creditor to bid its debt and take title to the property in order to, among other things, protect against a debtor's sale of its collateral for less than its debt. The Debtors here propose to abrogate the senior bondholders' right to credit bid granted by section 363(k), without compensation or cause.

29. Courts have consistently held that if the creditor has a valid lien on the property, the secured creditor can credit bid the face amount of its claim, even if the claim is potentially

[12] It is the Debtors burden to establish their right to conduct a 363 "sale". If the Debtors claim that the requirements of section 363(f) are satisfied, the bondholders have a right to know which subsection(s) of (1) through (5) they rely upon prior to the hearing on their motion.

undersecured. See In re SubMicron Sys. Corp., 432 F.3d 448, 459 (3d Cir. 2006) ("It is well settled among district and bankruptcy courts that creditors can bid the full face value of their secured claims under § 363(k)."); In re SunCruz Casinos, LLC, 298 B.R. 833, 839 (Bankr. S.D. Fla. 2003) ("[A] secured creditor may credit bid the entire amount of its claim, including the unsecured portion thereof."); In re Realty Inv., Ltd. V, 72 B.R. 143, 146 (Bankr. C.D. Cal. 1987) (finding that the "allowed claim" for purposes of credit bidding is the creditor's total claim without reference to the "value" of the property); 3 COLLIER ON BANKRUPTCY ¶ 363.09 (15th ed. rev. 2008). A secured creditor's claims are treated as equal to cash for the purposes of credit bidding. See In re HNRC Dissolution Co., 340 B.R. 818 (E.D. Ky. 2006) ("Clearly 11 U.S.C. § 363(k) treats credit bids as a method of payment—the same as if the secured creditor has paid cash and then immediately reclaimed the cash in payment of the secured debt.").[13]

30. The sale procedures adopted by the Court do not permit the secured bondholders to credit bid their $28 billion in claims at the sale. The secured bondholders' right to credit bid cannot be abrogated without some compensation or adequate protection, yet that is just what the Debtors seek to do through the proposed sale.

D. The Sale And Redistribution Of Value Favors Certain Creditors And/Or Classes Of Creditors And Is Unfair

31. A fundamental tenet of bankruptcy law is that unfair treatment of creditors is prohibited, and that the debtors bear the burden to prove that creditors are being treated fairly. Channel One, 117 B.R. at 496; see also In re Engman, 395 B.R. at 620 (sale must be made in "good faith" and must be "in the best interests of the estate and creditors"); In re Dow Corning Corp., 198 B.R. 214, 222 (Bankr. E.D. Mich. 1996) (sale must be "fair and equitable," "in good faith" and "in the best interests of the estate").

32. As part of its proposed 363 "sale", the Government proposes to sell virtually all of the Debtors' assets to the Purchaser free and clear of the above described liens held by the senior bondholders on said property. Further, the Government does not propose to divide the proceeds of the sale ratably between the parties, to wit, 59% to the bondholders and 41% to the Government. Instead the Government proposes to give approximately 8% of the equity in the Purchaser[13] to the senior bondholders (like Parker) in full satisfaction of their $28 billion in claims and liens, while giving themselves 60% of the equity in the Purchaser, plus approximately $9 billion in assumed (and presumably secured) debt and Preferred Stock in satisfaction of 19.4 billion in claims and liens and while giving the UAW VEBA (which is an unsecured creditor who is owed $30 billion[14]) 17.5% of the equity in the Purchaser, plus approximately $9 billion in new promissory notes and Preferred Stock plus $9.4 billion in cash[15] and while fully assuming or paying (without reduction) the following debts: $5.9 billion owed to the other secured creditors (whose claims are apparently senior to those of the bondholders and the Government)[16], $5.4 billion to trade creditors (whose claims are unsecured) and approximately $30 billion to the UAW and non-UAW Pension Plans (whose claims are unsecured). In other words, everyone but the senior bondholders and the unsecured non-trade creditors get paid between 67 cents on the

[13] While the Government proposes to give 10% of the equity in the purchaser to the Debtors for distribution to the bondholders, the bondholders must share this with the unsecured non-trade creditors. Since the unsecured non-trade creditors are owed an estimated $6 billion, the bondholders will only receive 8% of the Purchaser's equity.

[14] This includes $9.4 billion in cash or cash equivalents presently held in an internal escrow account by GM for payment to the UAW VEBA in January 1, 2010.

[15] As part of the transaction, GM is transferring to Purchaser approximately $9.4 billion in cash or cash equivalents presently held in an internal escrow account by GM. While GM is contractually obligated to pay said $9.4 billion to the UAW VEBA on January 1, 2010, said obligation has not yet matured and the monies are not yet due and payable.

[16] Parker is no longer sure that the claims of said secured creditors are in fact senior to those of the senior bondholders and demands strict proof of said seniority.

dollar and 100 cents on the dollar while the senior bondholders and the unsecured non-trade creditors get paid less than 3 cents on the dollar.

33. Further, it appears that the Government will continue to have a lien against the property sold to the Purchaser for approximately $7 billion of debt and that the other secured creditors whose liens are allegedly senior to the bondholders and the Government will also retain their liens whereas the bondholders' lien will be extinguished for less than 3 cents on the dollar.

34. It is obvious that the proposed 363 "sale" is neither fair nor reasonable. The Debtors therefore cannot show that the proposed sale treats the bondholders fairly.

II. The Government's Lien Is Not Senior To The Bondholders' Claims

35. The limitations on liens provision of the senior bondholders' bonds prohibited, GM from granting the Government a lien on virtually everything it owned without concurrently granting to its senior bondholders (like Parker) an identical lien on the same property securing the bond debt equally and ratably with the debt of the Government. Assuming, *arguendo*, despite the limitations on liens provision, that somehow the Government acquired a lien on virtually everything that GM owned while the senior bondholders did not, it would still be true that GM did not have the power to give the Government a lien on its assets that was superior to the claims of the bondholders. While the Government may have a lien on those assets that is superior to every other unsecured GM creditor, under the terms of the senior bondholders' bonds, the Government does not have a lien that is superior to the claims of the bondholders.

36. A fundamental tenet of bankruptcy law is that unfair treatment of creditors is prohibited, and that the debtors bear the burden to prove that creditors are being treated fairly. Channel One, 117 B.R. at 496; see also In re Engman, 395 B.R. at 620 (sale must be made in "good faith" and must be "in the best interests of the estate and creditors"); In re Dow Corning

Corp., 198 B.R. 214, 222 (Bankr. E.D. Mich. 1996) (sale must be "fair and equitable," "in good faith" and "in the best interests of the estate").

37. Despite the fact that the Government does not have a lien that is superior to the claims of the senior bondholders, the Debtors' proposed 363 "sale" would give to the Government in satisfaction of $19.4 billion in debt 60% of the equity in the Purchaser, plus approximately $9 billion in assumed (and presumably secured) debt and Preferred Stock, not to mention what is given to the UAW VEBA, the other secured creditors, the trade creditors and the UAW and non-UAW Pension Plans. Each of these creditors would receive between 67 and 100 cents on the dollar while the senior bondholders receive less than 3 cents on the dollar. This is discriminatory, this is unfair and this is inequitable. Accordingly, the Debtors' proposed 363 "sale" of the Debtors' business should be denied.

III. If The Government's Lien Is Senior To The Bondholders' Claims Then The Government Wrongfully Acquired Said Lien

38. The limitations on liens provision of the senior bondholders' bonds prohibited, GM from granting the Government a lien on virtually everything it owned without concurrently granting to its bondholders (like Parker) an identical lien on the same property securing the bond debt equally and ratably with the debt of the Government. Assuming, *arguendo*, despite the limitations on liens provision, that somehow the Government both (1) acquired a lien on virtually everything that GM owned while the senior bondholders did not, and that (2) the Government's lien on the Debtors' assets are superior to the claims of the bondholders, then the Government's acquisition of this lien was wrongful.

39. It was wrongful because the Debtors' could not grant the Government the lien without violating the limitations on liens provision of the senior bondholders' bonds.

40. It was wrongful because the Government could not acquire this lien without tortuously interfering with the bondholders' contractual rights under the bonds.

41. It was wrongful because contractual rights and especially corporate bonds (like those held by Parker) are a form of intangible personal property protected by both Article I, Section 10 of the United States Constitution and by the Fifth Amendment. Under the takings clause of the Fifth Amendment, the Government cannot take away property rights, incuding intangible personal property rights, without paying just compensation. The limitations on liens provision of the senior bondholders bonds created just such intangible personal property rights. When the Government accepted the lien on virtually all of the Debtors' property, it violated the senior bondholders' property rights. That is, it took those rights away from bondholders. But it did not pay compensation. Thus the Government's acquisition of its lien was wrongful and in violation of the takings clause of the Fifth Amendment.

42. The Supreme Court long ago recognized that property rights are protected in bankruptcy proceedings under the Fifth Amendment. See Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555, 589, 594 (1935), holding explicitly that "[t]he bankruptcy power . . . is subject to the Fifth Amendment," Id. at 589-90. Thus, Congress could not pass a law that would take one person's property and give it to another under the guise of a bankruptcy proceeding.[17] Yet that is precisely what the Government is attempting to do here, take money that under Chapter 11 of the Bankruptcy Code ought to be paid to the senior bondholders and give it instead to the Government and to UAW retirees through their VEBA and to other favored creditors.

43. The Government is demanding that the Debtors assets be stripped away from them and given to the Purchaser—thereby impairing the rights of the senior bondholders to

[17] Section 1129(b)(1) of the Bankruptcy Code acknowledges this prohibition by requiring, among other things, that a plan of reorganization may not unfairly discriminate among similarly situated creditors and must be both fair and equitable.

realize a recovery upon those assets—so that those assets may be used to benefit the Government, the UAW retirees and other favored creditors. These favored creditors will then recover between 67 and 100 cents on the dollar, which is substantially more than the less than 3 cents on the dollar that senior bondholders can expect to recover. Radford specifically disallowed this type of procedure as antithetical to the constitutional protections afforded to property rights. That the Government would do this to help the United States address difficult economic times is not an answer. Indeed, the same justification was expressly rejected in Radford, where Justice Brandeis noted that a statute which violates property rights, but which was passed for sound public purposes relating to the Great Depression, could not be saved because "the Fifth Amendment commands that, however great the nation's need, private property shall not be thus taken even for a wholly public use without just compensation." Id. at 602.41.

44. The Government's actions both in wrongfully acquiring its lien and now in its demand that the Debtors assets be stripped away from them and given to the Purchaser—thereby impairing the rights of the senior bondholders to realize a recovery upon those assets—so that those assets may be used to benefit the Government, the UAW retirees and other favored creditors, establishes bad faith.

45. The Government's actions both in wrongfully acquiring its lien and now in its demand that the Debtors assets be stripped away from them and given to the Purchaser—thereby impairing the rights of the senior bondholders to realize a recovery upon those assets—so that those assets may be used to benefit the Government, the UAW retirees and other favored creditors, is further evidence demonstrating the Government's control of the Debtors,

46. The Government's actions both in wrongfully acquiring its lien and now in its demand that the Debtors assets be stripped away from them and given to the Purchaser—thereby

impairing the rights of the senior bondholders to realize a recovery upon those assets—so that those assets may be used to benefit the Government, the UAW retirees and other favored creditors, also goes to the issue of equitable subordination. Because of its wrongful conduct and evident bad faith, the Government's secured claim for $19.4 billion should be equitably subordinated to the $28 billion claims of the senior bondholders.

JOINDER IN AND ADOPTION OF THE OBJECTION OF THE UNOFFICIAL COMMITTEE OF FAMILY & DISSIDENT GM BONDHOLDERS

47. Without abandoning either his original Objection filed June 19, 2009, or the above and foregoing Amendment to Objection, Parker herewith joins in and adopts as if more fully set forth herein the Objection of the Unofficial Committee of Family & Dissident GM Bondholders (the "Dissidents' Objection" [Docket No. 1969]) so as to include as additional grounds for objecting to the proposed 363 "sale" the grounds stated in said Dissidents' Objection.

MEMORANDUM OF LAW

48. The legal bases of Parker's original Objection are incorporated in said Objection. The legal bases of Parker's above and foregoing Amendment to Objection are incorporated said Amended Objection. And the legal bases of the Dissidents' Objection in which Parker joins and adopts are incorporated in said Dissident Objection.

49. Parker therefore respectfully requests that this Court deem it satisfactory, or in the alternative, waives any further requirement of the filing of a separate memorandum of law in support of said original Objection, the above and foregoing Amendment to Objection or the Dissidents' Objection which Parker joins and adopts.

CONCLUSION

50. The Sale Motion asks this Court to approve an illegal redistribution of the

Debtors' value that flatly ignores the most basic creditor protections established by the Bankruptcy Code and bypasses the priority scheme established by the Bankruptcy Code. It also asks the Court to approve the taking of the senior bondholders property and the extinguishment ot their lien on virtually everything that the Debtors own without just compensation. The Sale Motion should therefore be denied and the Government's secured claim in the Debtors' estate should be equitably subordinated to the claims of the bondholders and the other unsecured non-trade creditors.

Prayer For Relief

WHEREFORE, Parker, respectfully requests this Honorable Court for the following relief:

(A) Allow Parker to amend his previously filed Objection so as to include both the grounds for objection stated above in this Amendment to Objection and the grounds for objection stated in the Dissidents' Objection;

(B) Entry of an order denying the Debtors' Sale Motion and granting such other and further relief as the Bankruptcy Court deems just and proper.

Dated: June 22, 2009
New York, New York

Oliver Addison Parker, Pro Se
283 Codrington Drive
Lauderdale By The Sea, FL 33308
Ph: (954) 599-6468
Fax: (954) 772-6468
splitapart@prodigy.net
Florida Bar No. 235891

By: 
Oliver Addison Parker, Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and accurate copies of the above and foregoing document have been served by both United States Mail, postage prepaid, and by telephonic facsimile this 22nd day of June, 2009 to the following named individuals:

(a) The attorneys for the Debtors:

Harvey R. Miller, Esq.
Stephen Karotkin, Esq.
Joseph H. Smolinsky, Esq
Weil, Gotshal & Manges LLP
767 Fifth Avenue,
New York, New York 10153
Fax No. 212-310-8001

(b) The attorneys for the Purchaser

John J. Rapisardi, Esq.
Cadwalader, Wickersham & Taft LLP,
One World Financial Center,
New York, New York 10281
Fax No. 212-415-8350

(c) The attorneys for the Creditors Committee;

Gordon Z. Novod, Esq.
Kramer, Levin, Naftalis & Frankel, LLP
1177 Avenue of the Americas
New York, New York 10036
Fax No. 212-715-8000

(d) The attorney for the UAW

James L. Bromley, Esq.
Cleary Gottlieb Steen & Hamilton LLP,
One Liberty Plaza
New York, New York 10006
Fax No. 212-225-3999

(e) The attorneys for the UAW,

Babette Ceccotti, Esq.
Cohen, Weiss and Simon LLP,
330 W. 42nd Street,
New York, New York 10036
Fax No. 212-695-5436

(f) The attorneys for Export Development Canada,

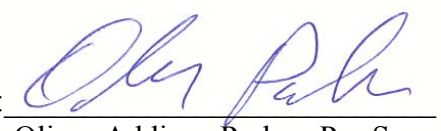
Michael J. Edelman, Esq.
Michael L. Schein, Esq.
Vedder Price, P.C.,
1633 Broadway, 47th Floor,
New York, New York 10019
Fax No. 212-407-7799

(g)

Diana G. Adams, Esq.
The Office of the United States Trustee
for the Southern District of New York
33 Whitehall Street, 21st Floor,
New York, New York 10004
Fax. No. 212-668-2255

(h)

David S. Jones, Esq. and
Matthew L. Schwartz, Esq.
The U.S. Attorney's Office, S.D.N.Y.,
86 Chambers Street, Third Floor,
New York, New York 10007
Fax No. 212-637-3750

By: 
Oliver Addison Parker, Pro Se

424B5 1 d424b5.htm PROSPECTUS SUPPLEMENT

Filed Pursuant to Rule 424(b)(5)
Registration No. 333-105949

PROSPECTUS SUPPLEMENT
(To Prospectus dated June 19, 2003)

$4,000,000,000
General Motors Corporation

6.250% Series C Convertible Senior Debentures Due 2033

We are offering $4,000,000,000 principal amount of 6.250% Series C Convertible Senior Debentures Due 2033.

The Series C debentures are convertible into shares of our $1 2/3 par value common stock, at your option, under any of the following circumstances: (1) the closing sale price of our $1 2/3 par value common stock exceeds specified thresholds, (2) the trading price of the Series C debentures falls below specified thresholds, (3) the Series C debentures are called for redemption or (4) upon the occurrence of other specified corporate events. The Series C debentures are convertible at a conversion price of $47.62 per share, which is equal to a conversion rate of 0.525 shares per $25.00 principal amount of Series C debentures, subject to adjustment. We may pay you an amount of cash equivalent to the shares of our $1 2/3 par value common stock otherwise required to be delivered upon conversion. We will pay interest on the Series C debentures on January 15 and July 15 of each year, beginning January 15, 2004. We may redeem the Series C debentures, in whole or in part, on or after July 20, 2010 for an amount in cash equal to the redemption prices set forth herein. You may require us to repurchase your Series C debentures on July 15 of 2018, 2023 and 2028, or, if any of those days is not a business day, on the next succeeding business day, for an amount equal to the principal amount plus accrued and unpaid interest. We may elect to pay the repurchase price in cash, shares of our $1 2/3 par value common stock or any combination thereof. We have listed the Series C debentures on the New York Stock Exchange under the symbol "GPM" and expect trading of the debentures to commence on June 27, 2003.

Our $1 2/3 par value common stock is listed on the New York Stock Exchange under the symbol "GM." On June 26, 2003, the last sale price of our $1 2/3 par value common stock as reported on the New York Stock Exchange was $35.94 per share.

Investing in the debentures involves risks. See "Risk Factors" beginning on page S-5.

Exhibit No. 4

• • • •

PROSPECTUS

$10,000,000,000

GENERAL MOTORS CORPORATION

Debt Securities
Common Stock (par value $1 2/3)
Class H Common Stock (par value $0.10)
Preference Stock (par value $0.10)
Preferred Stock (without par value)
Purchase Contracts
Depositary Shares
Warrants
Units

We may offer from time to time debt securities, $1 2/3 par value common stock, Class H common stock, preference stock, preferred stock, purchase contracts, depositary shares, warrants or units. The aggregate initial offering price of all securities sold by us under this prospectus will not exceed $10,000,000,000. We will provide specific terms of these securities in supplements to this prospectus. You should read this prospectus and any supplement carefully before you invest.

Our $1 2/3 par value common stock is listed in the United States on the New York Stock Exchange, the Chicago Stock Exchange, the Pacific Stock Exchange and the Philadelphia Stock Exchange under the symbol "GM." Our Class H common stock is listed on the New York Stock Exchange under the symbol "GMH."

We reserve the sole right to accept and, together with our agents from time to time, to reject in whole or in part any proposed purchase of securities to be made directly or through any agents.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

June 19, 2003

You should rely only on the information contained in or incorporated by reference into this prospectus or any accompanying supplemental prospectus. We have not authorized anyone to provide you with different information or make any additional representations. We are not making an offer of these securities in any state or other jurisdiction where the offer is not permitted. You should not assume that the information contained in or incorporated by reference into this prospectus or any prospectus supplement is accurate as of any date other than the date on the front of each of such documents. The terms "General Motors," "GM," "we," "us," and "our" refer to General Motors Corporation. The term "Hughes" refers to Hughes Electronics Corporation, a wholly owned subsidiary of GM.

TABLE OF CONTENTS

ABOUT THIS PROSPECTUS

This prospectus, along with a prospectus for General Motors Nova Scotia Finance Company, a wholly owned subsidiary of GM, is part of a registration statement that we filed with the Securities and Exchange Commission, referred to as the SEC in this prospectus, utilizing a "shelf" registration process. Under this shelf process, we may sell any combination of our securities and General Motors Nova Scotia Finance Company may sell its guaranteed debt securities, as described in the related prospectus, in one or more offerings. The aggregate initial offering price of all securities sold by us under this prospectus will not exceed $10,000,000,000. This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with additional information described below under "Incorporation of Certain Documents By Reference."

• • • •

(iii) "Manufacturing Subsidiary" means any Subsidiary (A) substantially all the property of which is located within the continental United States of America, (B) which owns a Principal Domestic Manufacturing Property and (C) in which our investment, direct or indirect and whether in the form of equity, debt, advances or otherwise, is in excess of $2,500,000,000 as shown on our books as of the end of the fiscal year immediately preceding the date of determination; provided, however, that "Manufacturing Subsidiary" shall not include Hughes Electronics Corporation and its Subsidiaries, General Motors Acceptance Corporation and its Subsidiaries (or any corporate successor of any of them) or any other Subsidiary which is principally engaged in leasing or in financing installment receivables or otherwise providing financial or insurance services to us or others or which is principally engaged in financing our operations outside the continental United States of America.

(iv) "Mortgage" means any mortgage, pledge, lien, security interest, conditional sale or other title retention agreement or other similar encumbrance.

(v) "Principal Domestic Manufacturing Property" means any manufacturing plant or facility owned by us or any Manufacturing Subsidiary which is located within the continental United States of America and, in the opinion of our Board of Directors, is of material importance to the total business conducted by us and our consolidated affiliates as an entity.

(vi) "Subsidiary" means any corporation of which at least a majority of the outstanding stock having by the terms thereof ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether or not at the time stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by us, or by one or more Subsidiaries, or by us and one or more Subsidiaries.

Limitation on Liens. For the benefit of the senior debt securities, we will not, nor will we permit any Manufacturing Subsidiary to, issue or assume any Debt secured by a Mortgage upon any Principal Domestic Manufacturing Property of ours or any Manufacturing Subsidiary or upon any shares of stock or indebtedness of any Manufacturing Subsidiary (whether such Principal Domestic Manufacturing Property, shares of stock or indebtedness are now owned or hereafter acquired) without in any such case effectively providing concurrently with the issuance or assumption of any such Debt that the senior debt securities (together with, if we shall so determine, any other indebtedness of us or such Manufacturing Subsidiary ranking equally with the senior debt securities and then existing or thereafter created) shall be secured equally and ratably with such Debt, unless the aggregate amount of Debt issued or assumed and so secured by Mortgages, together with all other Debt of ours and our Manufacturing Subsidiaries which (if originally issued or assumed at such time) would otherwise be subject to the foregoing restrictions, but not including Debt permitted to be secured under clauses (i) through (vi) of the immediately following paragraph, does not at the time exceed 20% of the stockholders equity of us and our consolidated subsidiaries, as determined in accordance with accounting principles generally accepted in the U.S. and shown on the audited consolidated balance sheet contained in the latest published annual report to our stockholders.

The above restrictions shall not apply to Debt secured by:

(i) Mortgages on property, shares of stock or indebtedness of any corporation existing at the time such corporation becomes a Manufacturing Subsidiary;

(ii) Mortgages on property existing at the time of acquisition of such property by us or a Manufacturing Subsidiary, or Mortgages to secure the payment of all or any part of the purchase price of such property upon the acquisition of such property by us or a Manufacturing Subsidiary or to secure any Debt incurred prior to, at the time of, or within 180 days after, the later of the date of acquisition of such property and the date such property is placed in service, for the purpose of financing all or any part of the purchase price thereof, or Mortgages to secure any Debt incurred for the purpose of financing the cost to us or a Manufacturing Subsidiary of improvements to such acquired property;

(iii) Mortgages securing Debt of a Manufacturing Subsidiary owing to us or to another Subsidiary;

(iv) Mortgages on property of a corporation existing at the time such corporation is merged or consolidated with us or a Manufacturing Subsidiary or at the time of a sale, lease or other disposition of the properties of a corporation as an entirety or substantially as an entirety to us or a Manufacturing Subsidiary;

(v) Mortgages on property of ours or a Manufacturing Subsidiary in favor of the United States of America or any State thereof, or any department, agency or instrumentality or political subdivision of the United States of America or any State thereof, or in favor of any other country, or any political subdivision thereof, to secure partial, progress, advance or other payments pursuant to any contract or statute or to secure any indebtedness incurred for the purpose of financing all or any part of the purchase price or the cost of construction of the property subject to such Mortgages; or

(vi) any extension, renewal or replacement (or successive extensions, renewals or replacements) in whole or in part of any Mortgage referred to in the foregoing clauses (i) to (v); provided, however, that the principal amount of Debt secured thereby shall not exceed by more than 115% the principal amount of Debt so secured at the time of such extension, renewal or replacement and that such extension, renewal or replacement shall be limited to all or a part of the property which secured the Mortgage so extended, renewed or replaced (plus improvements on such property).

The subordinated debt indenture does not include any limitation on our ability to incur these types of liens.

Limitation on Sales and Lease-Backs. For the benefit of the senior debt securities, we will not, nor will we permit any Manufacturing Subsidiary to, enter into any arrangement with any person providing for the leasing by us or any Manufacturing Subsidiary of any Principal Domestic Manufacturing Property owned by us or any Manufacturing Subsidiary on the date that the senior debt securities are originally issued (except for temporary leases for a term of not more than five years and except for leases between us and a Manufacturing Subsidiary or between Manufacturing Subsidiaries), which property has been or is to be sold or transferred by us or such Manufacturing Subsidiary to such person, unless either:

(i) we or such Manufacturing Subsidiary would be entitled, pursuant to the provisions of the covenant on limitation on liens described above, to issue, assume, extend, renew or replace Debt secured by a Mortgage upon such property equal in amount to the Attributable Debt in respect of such arrangement without equally and ratably securing the senior debt securities; provided, however, that from and after the date on which such arrangement becomes effective the Attributable Debt in respect of such arrangement shall be deemed for all purposes under the covenant on limitation on liens described above and this covenant on limitation on sale and lease-back to be Debt subject to the provisions of the covenant on limitation on liens described above (which provisions include the exceptions set forth in clauses (i) through (vi) of such covenant); or

(ii) we shall apply an amount in cash equal to the Attributable Debt in respect of such arrangement to the retirement (other than any mandatory retirement or by way of payment at maturity), within 180 days of the effective date of any such arrangement, of Debt of ours or any Manufacturing Subsidiary (other than Debt owned by us or any Manufacturing Subsidiary) which by its terms matures at or is extendible or renewable at the option of the obligor to a date more than twelve months after the date of the creation of such Debt.

The subordinated debt indenture does not include any limitations on sales and lease-backs.

Defeasance

If the terms of a particular series of debt securities so provide, we may, at our option, (a) discharge its indebtedness and its obligations under the applicable indenture with respect to such series or (b) not comply with certain covenants contained in the applicable indenture with respect to such series, in each case by depositing

GM plans comeback a month early

By By Bernard Simon in Toronto

Published: June 18 2009 22:27 | Last updated: June 18 2009 22:59

General Motors is preparing to relaunch itself as a leaner company by mid-July, a month earlier than envisaged when the Detroit carmaker filed for bankruptcy protection on June 1.

The judge overseeing GM's Chapter 11 case has set Friday as the deadline for objections to its restructuring plan for most parties.

Barring a surprise, GM and its advisers are confident that none of the roughly 500 objections submitted so far will derail the timetable, under which the court is due to consider the sale of most of its assets to a new entity on June 30.

"It really is remarkably quiet," one person familiar with the process said. According to another, the company is drawing up plans to reveal its new board of directors and possibly a raft of senior management changes around the middle of July.

Most of the objections raised so far relate to suppliers' concerns about the amount and timing of payments by the "new" GM under contracts taken on by the existing company. Assets of the "old" GM will remain in Chapter 11 to be sold or wound down for the benefit of creditors.

Possible stumbling blocks include a potential backlash from unsecured creditors as well as dissidents among holders of $27bn in unsecured bonds. A small group of dissident bondholders, holding less than 1 per cent of the securities, has asked the court to allow them to form a committee which would give them a formal voice in the proceedings.

The official committee of unsecured creditors met Fritz Henderson, GM's chief executive, last week. Tom Mayer, the committee's legal adviser, said on Thursday that the committee was still examining its options. He said the unsecured creditors had obtained an extension for objections until June 22.

At the time GM filed for court protection, holders of about 54 per cent of the bonds had approved its offer of a 10 per cent equity stake and warrants for another 15 per cent. GM is restructuring under a seldom used provision of the US bankruptcy code: a normal process would require approval of two-thirds of the securities. The US government is set to emerge as GM's biggest shareholder, with a 60 per cent stake.

Eric Ivester, a restructuring specialist at law firm Skadden Arps, said: "It's certainly unique when the government is both the acquirer and the provider of debtor-in-possession financing."

GM has taken steps to assuage the two groups – secured creditors and dealers – that worked hardest to derail Chrysler's journey through bankruptcy court. GM has pledged to repay secured claims in full.

Although GM has told 1,100 of its 6,000 dealers that their sales and service franchises will not be renewed, it has taken a more conciliatory stance than Chrysler.

Robert Gerber, the judge hearing GM's case, has a debtor-friendly reputation. If all goes to plan, the hearing will take a few days.

Exhibit No. 5

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

- -x

In the Matter of:

GENERAL MOTORS CORPORATION, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

June 30, 2009

10:07 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

HEARING re Debtors Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (i)Approve (a)the Sale Pursuant to the Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (b)the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (c)Other Relief; and (ii)Schedule Sale Approval Hearing

HEARING re Notice of Settlement of an Order Denying Motion of the Unofficial Committee of Family & Dissident GM Bondholders for an Order Directing the United States Trustee to Appoint an Official Committee of Family & Dissident Bondholders

HEARING re Debtors' First Omnibus Motion to Reject Certain Unexpired Leases of Nonresidential Real Property

HEARING re Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. §§ 105(a) and 366 (i)Approving Debtors Proposed Form of Adequate Assurance of Payment; (ii) Establishing Procedures for Resolving Objections by Utility Companies; and (iii)Prohibiting Utilities from Altering, Refusing, or Discontinuing Service

HEARING re Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. §§ 105(a), 327, 328 and 330 for Authorization to Employ Professionals Utilized in the Ordinary Course of Business

HEARING re Application of the Official Committee of Unsecured Creditors of General Motors Corporation, et al. for an Order Authorizing and Approving the Employment and Retention of Kramer Levin Naftalis & Frankel LLP as Counsel, Nunc Pro Tunc, to June 3, 2009

HEARING re Debtors' Second Omnibus Motion to Reject Certain Unexpired Leases of Nonresidential Real Property

HEARING re Greater New York Automobile Dealers Association's (i)Motion for Consideration of Amicus Curiae Statement; and (ii)Amicus Curiae Statement Regarding Debtor's Motion to Approve Sale Pursuant to Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC

Transcribed by: Lisa Bar-Leib

A P P E A R A N C E S :

WEIL, GOTSHAL & MANGES LLP

Attorneys for Debtor General Motors Corporation

767 Fifth Avenue

New York, NY 10153

BY: HARVEY R. MILLER, ESQ.

STEPHEN KAROTKIN, ESQ.

JOSEPH H. SMOLINSKY, ESQ.

JOHN A. NEUWIRTH, ESQ.

JENNER & BLOCK LLP

Proposed Special Counsel for GM

919 Third Avenue

37th Floor

New York, NY 10022

BY: PATRICK J. TROSTLE, ESQ.

JENNER & BLOCK LLP
Proposed Special Counsel for GM
330 North Wabash Avenue
Chicago, IL 60611

BY: DANIEL MURRAY, ESQ.
(TELEPHONICALLY)

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Attorneys for Official Committee of Unsecured Creditors
1177 Avenue of the Americas
New York, NY 10036

BY: KENNETH ECKSTEIN, ESQ.
ADAM ROSOFF, ESQ.
THOMAS MOERS MAYER, ESQ.
ROBERT T. SCHMIDT, ESQ.

UNITED STATES DEPARTMENT OF JUSTICE
Office of the United States Trustee
33 Whitehall Street
21st Floor
New York, NY 10004

BY: TRACY HOPE DAVIS, AUST
LINDA A. RIFFKIN, AUST

UNITED STATES DEPARTMENT OF JUSTICE
U.S. Attorney's Office
86 Chambers Street
New York, NY 10007

BY: MATTHEW L. SCHWARTZ, AUSA
DAVID S. JONES, AUSA

ARENT FOX LLP
Attorneys for The Timken Company, Superior Industries Inc., and Harman Becker Automotive Systems, Inc.
1675 Broadway
New York, NY 10019

BY: JAMES M. SULLIVAN, ESQ.

ATTORNEY GENERAL OF TEXAS

Counsel to State of Texas On Behalf of Texas Department of Transportation

P.O. Box 12548

Austin, TX 78711

BY: J. CASEY ROY, ASSISTANT ATTORNEY GENERAL

CADWALADER, WICKERSHAM & TAFT LLP

Attorneys for U.S. Treasury Auto Task Force

One World Financial Center

New York, NY 10281

BY: JOHN RAPISARDI, ESQ.

CADWALADER, WICKERSHAM & TAFT LLP

Attorneys for U.S. Treasury Auto Task Force

1201 F Street, N.W.

Washington, DC 20004

BY: PETER M. FRIEDMAN, ESQ.

CAPLIN & DRYSDALE, CHARTERED
Attorneys for Mark Buttita
375 Park Avenue
35th Floor
New York, NY 10152

BY: RITA C. TOBIN, ESQ.

CAPLIN & DRYSDALE, CHARTERED
Attorneys for Mark Buttita
One Thomas Circle N.W.
Suite 1100
Washington, DC 20005

BY: RONALD E. REINSEL, ESQ.

CLEARY GOTTLIEB STEEN & HAMILTON LLP
Attorneys for The International Union, United Automobile Aerospace and Agricultural Implement Workers of America, AFL-CIO
One Liberty Plaza
New York, NY 10006

BY: AVRAM E. LUFT, ESQ.
JAMES BROMLEY, ESQ.

CLIFFORD CHANCE US LLP
Attorneys for ABN AMRO BANK N.V., RBS Citizens N.A., Royal Bank of Scotland plc
31 West 52nd Street
New York, NY 10019

BY: ANDREW BROZMAN, ESQ.

COHEN, WEISS AND SIMON LLP
Attorneys for United Auto Workers
330 West 42nd Street
New York, NY 10036

BY: BABETTE CECCOTTI, ESQ.

COLEMAN LAW FIRM

Attorneys for Product Liability Claimants: Callan Campbell, Kevin Junso, et al.; Edwin Agosto, Kevin Chadwick, et al., and Joseph Berlingieri

77 West Wacker Drive

Suite 4800

Chicago, IL 60601

BY: STEVE JAKUBOWSKI, ESQ.

DLA PIPER US LLP

Attorneys for Hewlett-Packard Company and all of its Affiliates, Domestic and International, Including but not Limited to Electronic Data Systems Corporation, and HP Company and Hewlett-Packard Financial Services Company

550 South Hope Street

Suite 2300

Los Angeles, CA 90071

BY: KAROL K. DENNISTON, ESQ.

FORMAN HOLT ELIADES & RAVIN LLC
Attorneys for Rose Cole, Guardian of Timothy L. Montis, a Disabled Adult
80 Route 4 East
Paramus, NJ 07652

BY: KIMBERLY J. SALOMON, ESQ.

GIBSON, DUNN & CRUTCHER LLP
Attorneys for Wilmington Trust Co., as Indenture Trustee
200 Park Avenue
New York, NY 10166

BY: MATTHEW J. WILLIAMS, ESQ.
DAVID M. FELDMAN, ESQ.

GORLICK, KRAVITZ & LISTHAUS, P.C.
Attorneys for International Union of Operating Engineers Local 18S, 101S and 832S, United Steelworkers, IUE- CWA
17 State Street
4th Floor
New York, NY 10004

BY: BARBARA S. MEHLSACK, ESQ.

HISCOCK & BARCLAYS
Attorneys for The Schaeffer Group
One Park Place
300 South State Street
Syracuse, NY 13202

BY: SUSAN R. KATZOFF, ESQ.

KELLEY DRYE & WARREN LLP
Attorneys for Law Debenture Trust Company of New York, as Successor Indenture Trustee
101 Park Avenue
New York, NY 10178

BY: JENNIFER A. CHRISTIAN, ESQ.

KENNEDY JENNIK AND MURRAY, PC
Attorneys for IUE-CWA
113 University Place
Floor 7
New York, NY 10003

BY: THOMAS KENNEDY, ESQ.
JOHN HOFFMAN, ESQ.

LAW OFFICES OF OLIVER ADDISON PARKER
Attorney Pro Se
4900 North Ocean Blvd.
Suite 421
Lauderdale By the Sea, FL 33308

BY: OLIVER A. PARKER, ESQ.

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.
Attorneys for Henry Case Class Plaintiffs
1350 Broadway
Suite 501
New York, NY 10018

BY: EDWARD J. LOBELLO, ESQ.
HANAN KOLKO, ESQ.

N.W. BERNSTEIN & ASSOCIATES, LLC
Attorneys for Environmental Conservation and Chemical Corporation Site Trust Fund
800 Westchester Avenue
Suite N319
Rye Brook, NY 10573

BY: NORMAN W. BERNSTEIN, ESQ.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
2030 M Street, NW
8th Floor
Washington, DC 20036

BY: KAREN CORDRY, ESQ.

PUBLIC CITIZEN LITIGATION GROUP
Attorneys for Product Liability Claimants: Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety, National Association of Consumer Advocates, and Public Citizen
1600 20th Street NW
Washington, DC 20009

BY: ADINA H. ROSENBAUM, ESQ.
ALLISON M. ZIEVE, ESQ.

ORRICK, HERRINGTON & SUTCLIFFE LLP
Attorneys for GM Unofficial Dealer Committee
Columbia Center
1152 15th Street, NW
Washington, DC 20005

BY: RICHARD H. WYRON, ESQ.
ROGER FRANKEL, ESQ.

ORRICK, HERRINGTON & SUTCLIFFE LLP
Attorneys for Finmeccenica S.p.A. and Ansaldo Ricercke S.p.A.; Ad Hoc Dealer Committee
666 Fifth Avenue
New York, NY 10103

BY: ROBERT M. ISACKSON, ESQ.
ALYSSA D. ENGLUND, ESQ.

PATTON BOGGS LLP
Attorneys for Unofficial Committee of Family and Dissident Bondholders
1185 Avenue of the Americas
30th Floor
New York, NY 10036

BY: MICHAEL P. RICHMAN, ESQ.

PATTON BOGGS LLP
Attorneys for Unofficial Committee of Family and Dissident Bondholders
2550 M Street, NW
Washington, DC 20037

BY: MARK A. SALZBERG, ESQ.

PATTON BOGGS LLP
Attorneys for Unofficial Committee of Family Bondholders
2001 Ross Avenue
Suite 3000
Dallas, TX 75201

BY: JAMES CHADWICK, ESQ.
(TELEPHONICALLY)

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
Attorneys for Ad Hoc Bondholders Group
1285 Avenue of the Americas
New York, NY 10019

BY: ANDREW N. ROSENBERG, ESQ.
JONATHAN KOEVARY, ESQ. (TELEPHONICALLY)

PENSION BENEFIT GUARANTY CORPORATION
United States Government Agency
1200 K Street NW
Washington, DC 20005

BY: MICHAEL A. MARICCO, ESQ.
ANDREA WONG, Assistant Chief Counsel

ROBINSON BROG LEINWAND GREENE GENOVESE & GLUCK P.C.
Attorneys for Greater New York Automobile Dealers Association
1345 Avenue of the Americas
New York, NY 10105

BY: RUSSELL P. MCRORY, ESQ.

ROBINSON WATERS & O'DORISIO, PC
Attorneys for Environmental Testing Corporation
1099 18th Street
Suite 2600
Denver, CO 80202

BY: ANTHONY L. LEFFERT, ESQ.

SCHNADER HARRISON SEGAL & LEWIS LLP
Attorneys for Ad Hoc Committee of Consumer Victims
1600 Market Street
Suite 3600
Philadelphia, PA 19103

BY: BARRY E. BRESSLER, ESQ.

SCHNADER HARRISON SEGAL & LEWIS LLP
Attorneys for Ad Hoc Committee of Consumer Victims
824 North Market Street
Suite 1001
Wilmington, DE 19801

BY: RICHARD A. BARKASY, ESQ.

STATE OF MICHIGAN
Office of the State Attorney General
G. Mennen Williams Building
525 West Ottawa Street
6th Floor
Lansing, MI 48909

BY: CELESTE R. GILL, Assistant Attorney General

STATE OF NEW YORK
Office of the Attorney General
The Capitol
Albany, NY 12224

BY: MAUREEN F. LEARY, Assistant Attorney General

STATE OF NEW YORK
Office of the Attorney General
120 Broadway
New York, NY 10271

BY: KATHERINE KENNEDY, Special Deputy Attorney General

STEMBERG FEINSTEIN DOYLE & PAYNE, LLC
Attorneys for Class Representatives in Henry Case
1007 Mt. Royal Blvd.
Pittsburgh, PA 15223

BY: WILLIAM T. PAYNE, ESQ.

STUTZMAN, BROMBERG, ESSERMAN & PLIFKA, P.C.
Attorneys for Ad Hoc Committee of Unsecured Creditors
2323 Bryan Street
Suite 2200
Dallas, TX 75201

BY: SANDER L. ESSERMAN, ESQ.)

VEDDER PRICE P.C.
Attorneys for Export Development Canada
1633 Broadway
47th Floor
New York, NY 10019

BY: MICHAEL L. SCHEIN, ESQ.

WILMER CURLER PICKERING HALE AND DORR LLP
Attorneys for Pension Benefit Guaranty Corporation
399 Park Avenue
New York, NY 10022

BY: PHILIP D. ANKER, ESQ.

WINDELS MARK LANE & MITTENDORF, LLP

Attorneys for Lloyd Good; Plastic Omanna et al.; Progressive Stamping Company; Morgan Adhesives Co. d/b/a MACTAC; Western Flyer Express

156 West 56th Street

New York, NY 10019

BY: LESLIE S. BARR, ESQ.

TELEPHONIC APPEARANCES:

ALLARD & FISH, P.C.

Attorneys for Creditor Severstal North America, Inc.

535 Griswold

Suite 2600

Detroit, MI 48226

BY: DEBORAH L. FISH, ESQ.

(TELEPHONICALLY)

ARNALL GOLDEN & GREGORY LLP
Attorneys for Verizon Communications
171 17TH Street NW
Suite 1200
Atlanta, GA 30363

BY: DARRYL S. LADDIN, ESQ.
FRANK N. WHITE, ESQ.
(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF CALIFORNIA
Attorneys for State of California
California Dept. of Justice
P.O. Box 744255
Sacramento, CA 94244

BY: MARGARITA PACFILLA, ESQ.
(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF ILLINOIS
Attorneys for State of Illinois
100 West Randolph Street
Chicago, IL 60601

BY: JAMES NEWBOLD, ESQ.
(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF MICHIGAN
State of Michigan Department of Treasury
G. Mennen Williams Building
7th Floor
525 West Ottawa Street
Lansing, MI 48909

BY: JULIUS O. CURTING, ESQ.
(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF NEW JERSEY
Attorneys for State of New Jersey Department of Environmental Protection Agency
Richard J. Hughes Justice Complex
8th Floor, West Wing
25 Market Street
Trenton, NJ 08625

BY: RACHEL LEHR, ESQ.
(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF TENNESSEE
Attorneys for Tennessee Department of Revenue
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202

BY: MARVIN CLEMENTS, ESQ.
(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF TEXAS
Attorneys for Texas Department of Transportation Motor Vehicle Division
300 West 15th Street
Austin, TX 78701

BY: HAL F. MORRIS, ESQ.
RON DEL VENTO, ESQ.
(TELEPHONICALLY)

DAVIS POLK & WARDWELL
Attorneys for Interested Party Ford Motor Company
450 Lexington Avenue
New York, NY 10017

BY: BRIAN M. RESNICK, ESQ.
(TELEPHONICALLY)

DLA PIPER LLP U.S.
Attorneys for Creditor Hewlett Packard
550 South Hope Street
Suite 2300
Los Angeles, CA 90071

BY: KAROL K. DENNISTON, ESQ.
(TELEPHONICALLY)

DRINKER BIDDLE & REATH LLP
Attorneys for Cross-Complainant/Defendant, Manufacturers and Trust Company and Wells Fargo Bank Northwest
1500 K Street, N.W.
Washington, DC 20005

BY: KRISTIN K. GOING, ESQ.
STEPHANIE WICKOUSKI, ESQ.
(TELEPHONICALLY)

FOLEY & LARDNER LLP
Attorneys for Toyota Motor Corp.
One Detroit Center
500 Woodward Avenue
Suite 2700
Detroit, MI 48226

BY: KATHERINE R. CALANESE, ESQ.
JOHN A. SIMON, ESQ.

FOLEY & LARDNER LLP
Attorneys for Toyota Motor Corp.
407 West Broadway
Suite 2100
San Diego, CA 92101

BY: MATTHEW J. RIOPELLE, ESQ.
(TELEPHONICALLY)

FREEBORN & PETERS LLP
Attorneys for Trico Products & PGW LLC
311 South Wacker Drive
Suite 3000
Chicago, IL 620606

BY: THOMAS R. FAWKES, ESQ.
(TELEPHONICALLY)

FROST BROWN TODD LLC
Lexington Financial Center
250 West Main
Suite 2800
Lexington, KY 40507

BY: ROBERT V. SARTIN, ESQ.
(TELEPHONICALLY)

FULBRIGHT & JAWORSKI L.L.P
Attorneys for Bell Atlantic
2200 Ross Avenue
Suite 2800
Dallas, TX 75201

BY: ELIZABETH N. BOYDSTON, ESQ.
(TELEPHONICALLY)

GOULSTON & STORRS P.C.
Attorneys for Creditor 767 Fifth Partners, LLC
400 Atlantic Avenue
Boston, MA 02110

BY: DOUGLAS B. ROSNER, ESQ.
(TELEPHONICALLY)

HANGLEY ARONCHICK SEGAL & PUDLIN
Attorneys for NCR Corporation
One Logan Square
18th & Cherry Streets
27th Floor
Philadelphia, PA 19103

BY: MATTHEW A. HAMERMESH, ESQ.
(TELEPHONICALLY)

HONIGMAN MILLER SCHWARTZ & COHN
2290 First National Building
660 Woodward Avenue
Detroit, MI 48226

BY: SETH A. DRUCKER, ESQ.
JOSEPH R. SGROI, ESQ.
(TELEPHONICALLY)

KEMP KLEIN LAW FIRM
Attorneys for Custom Automotive Services, Inc.
201 West Big Beaver Road
Suite 600
Troy, MI 48084

BY: GLORIA M. CHON, ESQ.
(TELEPHONICALLY)

MASTROMARCO FIRM
Attorneys for Gerald Haynor, Interested Party
1024 North Michigan Avenue
Saginaw, MI 48602

BY: VICTOR MASTROMARCO, ESQ.
(TELEPHONICALLY)

MCDONALD HOPKINS CO., LPA
Attorneys for Swegalok Company
39533 Woodward Avenue
Bloomfield Hills, MI 48304

BY: JAYSON B. RUFF, ESQ.
(TELEPHONICALLY)

MCNAMEE, LOCHNER, TITUS & WILLIAMS, PC
Attorneys for The Saint Regis Mohawk Tribe
677 Broadway
Albany, NY 12201

BY: JACOB F. LAMME, ESQ.
(TELEPHONICALLY)

MILLER, CANFIELD, PADOCK AND STONE, P.L.C.
Attorneys for Creditor Ford Motor Company
150 West Jefferson
Suite 2500
Detroit, MI 48226

BY: MARC N. SWANSON, ESQ.
(TELEPHONICALLY)

MORRIS JAMES LLP

Attorneys for Monster Worldwide

500 Delaware Avenue

Suite 1500

Wilmington, DE 19801

BY: CARL N. KUNZ, III, ESQ.

(TELEPHONICALLY)

OFFICE OF SANTA CLARA COUNTY COUNSEL

Attorneys for County of Santa Clara Tax Collector

70 West Hedding Street

9th Floor, East Wing

San Jose, CA 95110

BY: NEYSA A. FIGOR, ESQ.

(TELEPHONICALLY)

OHIO ATTORNEY GENERAL'S OFFICE
Attorneys for State of Ohio
State Office Tower
30 East Broad Street
17th Floor
Columbus, OH 43215

BY: LUCAS C. WARD, ESQ.
(TELEPHONICALLY)

PEPPER HAMILTON LLP
Attorneys for Creditor SKF USA Inc.
400 Berwyn Park
899 Cassatt Road
Berwyn, PA 19312

BY: HENRY J. JAFFE, ESQ.
(TELEPHONICALLY)

PERDUE, BRANDON, FIELDER, COLLINS & MOTT LLP
Attorneys for Arlington ISD et al.
4025 South Woodland Park Boulevard
Suite 300
Arlington, TX 76013

BY: ELIZABETH BANDA, ESQ.
(TELEPHONICALLY)

ROTH & DEMPSEY P.C.
Attorneys for Burton Taft
436 Jefferson Avenue
Scranton, PA 18510

BY: MICHAEL G. GALLACHER, ESQ.
(TELEPHONICALLY)

SCHIFF HARDIN LLP
Attorneys for Columbia Gas of Ohio; Columbia Gas of Virginia
233 South Wacker Drive
Suite 6600
Chicago, IL 60606

BY: JASON TORF, ESQ.
(TELEPHONICALLY)

SINGER & LEVICK, P.C.
Attorneys for ACS Affiliated Computers Services, Inc.
16200 Addison Road
Suite 140
Addison, TX 75001

BY: LARRY A. LEVICK, ESQ.
(TELEPHONICALLY)

WOLFSON BOLTON PLLC

Attorneys for Guardian Industries

3150 Livernois

Suite 275

Troy, MI 48084

BY: SCOTT A. WOLFSON, ESQ.

(TELEPHONICALLY)

Q. And there were roughly 600 million, 650 million shares outstanding?

A. Correct.

Q. So the market value of the shares was somewhere between two and a half and three billion dollars? Maybe three and a half billion dollars?

A. Reasonable estimate.

Q. Okay. Now, in December 1st of -- sorry. In December 31st of 2008, General Motors signed a loan agreement with the United States Treasury, is that correct?

A. Correct.

Q. And under the terms of the loan agreement, you were supposed to get 13.4 billion dollars, that's billion with a B, with a first installment on December 31st of four billion. Is that correct?

A. Yes.

Q. Now, is it safe to say that four billion dollars is more than twenty percent of shareholder equity whether you use book value, which was negative, or market value which was between two and a half and three and a half billion dollars?

A. Yes.

Q. Okay. The mortgages -- the money that you borrowed from the Treasury and the mortgages that you gave the Treasury, the mortgages, the liens, the -- whatever else you want to -- security interest, were the loans for property that you bought?

Were the liens on security for the property that you bought?
A. No.
Q. Were the loans on property -- sorry. Were the security interests, the mortgages, on property that you already owned? By you, I mean General Motors.
A. General Motors? Yes.
Q. Now, had General Motors entered into any sort of a contract with United States that required General Motors to enter into a pledge or security agreement to secure partial progress, advance or other payments pursuant to contractor statute?
A. No.
Q. Okay. So this isn't a case where the government needed tanks to be built or needed whatever to be built and in order to make sure that you could do the job that required some sort of a mortgage or pledge in order to secure performance, is that correct?
A. Correct.
Q. This was just a straight out we need to borrow money, we're pledging assets we already have to get it?
A. Correct.
Q. Okay. The mortgage agreement that you entered into with -- by you, I mean, General Motors -- that General Motors entered into with the United States Treasury, what did it encumber?

A. It encumbered a series of assets, intellectual property, nonmanufacturing real estate, selected stocks in foreign subsidiaries, small amount of inventory.

Q. Credited its mortgage real estate, is that correct?

A. Nonmanufacturing related real estate.

Q. Okay. Did it mortgage General Motors equity or shares in any manufacturing subsidiaries?

A. Domestic manufacturing subsidiaries?

Q. Yes.

A. No.

Q. I see.

MR. PARKER: Just a second to find it.

Q. All right. Have you -- has General Motors introduced the loan and security agreement by and between the borrower listed on Appendix A and borrower, the United States Department of the Treasury?

MR. SCHWARTZ: Yes.

MR. PARKER: Have you entered these in as an exhibit?

MR. SCHWARTZ: Yes.

MR. PARKER: Could I ask what exhibit number it is?

MR. SCHWARTZ: 6.

MR. PARKER: Okay. So that's --

MR. SCHWARTZ: Exhibit 6.

MR. PARKER: -- GM6?

MR. SCHWARTZ: Yeah.

BY MR. PARKER:

Q. All right. Do you have a copy of GM6?

A. I have no idea, Mr. Parker, if it's in that book.

Q. All right.

MR. PARKER: Could I have a copy of GM6 to show the --

MR. MILLER: May I, Your Honor?

MR. PARKER: Thank you. May I approach the witness, Your Honor?

THE COURT: Yes.

Q. Would you please go to -- there's two paginations on this. There's a pagination that says 29. There's another pagination that says 35 of 111. The 35 of 111 is the top right-hand corner.

A. Yes, sir.

Q. Okay. Are you looking at Section 4, Collateral Security, 4.01, Collateral Security Interest?

A. Yes, sir.

Q. Okay. Does subparagraph (a) read: "Subject to any amendments, restatements, supplements or other modifications in Section --

MR. MILLER: Your Honor, the document speaks for itself. He doesn't have to read it into the record.

THE COURT: Of course the document does. If you want to call his attention, however, to a particular portion of it

and then ask him a question, you can do that. But don't ask him to simply read the document itself.

MR. PARKER: No. I'm reading it in order to get someplace, Your Honor.

THE COURT: All right. I'll overrule that objection but it would be helpful to me, Mr. Parker, if you got to the point a little more quickly.

MR. PARKER: Well, I'm trying to, Your Honor.

Q. If you'll go down, one, two, three, four -- four lines, does it say that "GM is giving a lien on and security interest in all of its right, title and interest in and to all personal property and real estate wherever located and without limitation the following whether now or here ever existed on where they're located"?

A. That's what that provision says, Mr. Parker, but it does go on to the next page to provide exceptions to that.

Q. Okay. If you would please tell me where the exceptions are.

A. The definitions are on page 30 of excluded collateral.

Q. All right. What paragraph is that in?

A. Top of page 30.

Q. 30 --

A. Top of page 36 of 111.

Q. 36 of 111.

A. Where it says "And the borrower is not pledging or

granting a security interest in" --

Q. What line is that in that paragraph?

A. In the third line, sir.

Q. Okay. Go ahead.

A. It says "The borrower is not pledging or granting a security interest in any properties except that such property constitutes excluded collateral."

Q. Okay. Now, was there a list of assets that were included anywhere?

A. Sir, my understanding is what's outlined in the document.

Q. Wasn't there a --

MR. PARKER: Bear with me a second.

Q. Wasn't there an appendix with a list of schedules to the document?

A. Sir, I didn't -- I wasn't involved in negotiating this document. There could very well be appendices but I wouldn't have necessarily reviewed them.

Q. Okay. So when I asked you on Saturday, I believe it was, in your deposition --

A. Sunday.

Q. Was it Sunday?

A. It was, sir.

Q. Okay. Sunday. You're right. When I asked you Sunday in your deposition, I believe you indicated that the excluded properties dealt with foreign properties and not with domestic

manufacturing?

MR. MILLER: Excuse me, Your Honor. If Mr. Parker has a deposition, would he show it to him?

THE COURT: That's the way we do it. Sustained. Show him the deposition transcript and ask him if he was asked this question and he gave that answer.

MR. PARKER: Very well, Your Honor. Since I don't have the deposition, I can't do that. However, let me at least -- 'cause I may be able to get it from other witnesses later. Let me at least go over a couple of things. Have you placed into evidence the 1995 indenture.

MR. MILLER: Yes.

THE COURT: What evidence number is it?

MR. SCHWARTZ: 10.

MR. PARKER: Okay. Do you recognize these as being copies of 10 so I can let him look at them? It's what you have provided me, right?

(Pause)

MR. SCHWARTZ: He's got it up there.

MR. PARKER: Oh, okay.

Q. Do you have Exhibit number 10 in that book?

MR. SCHWARTZ: That's the wrong book.

MR. PARKER: That's the wrong book?

MR. SCHWARTZ: It's not in that book.

MR. PARKER: Which book is it?

MR. SCHWARTZ: The one he was looking at before.

THE WITNESS: This book? Oh, okay, yeah.

Q. Exhibit number 10.

A. Yes, sir, I do.

Q. Could you go to Section 1408?

A. Of this Exhibit 10? 1408, okay.

Q. Yes.

A. Give me just a moment, sir. 1408 --

THE COURT: 1408?

A. -- says New York Contract.

Q. Right, right. The indenture is governed by New York law, correct?

A. Yes.

Q. Okay. Would you go to Section 406, please?

MR. PARKER: This is a horrible copy.

A. Yes, sir.

MR. SCHWARTZ: Wait a minute, please.

A. Limitations on Liens section.

Q. Limitation on Liens. It basically says, does it not, that GM will not give --

MR. MILLER: Your Honor, same objection. The document speaks --

THE COURT: Sustained.

Q. Under 406, could General Motors give a lien on its manufacturing facilities? Domestic. Domestic manufacturing

facilities.

MR. MILLER: Objection. Calls for a legal conclusion.

THE COURT: Sustained.

Q. From your business judgment, could GM give a --

MR. MILLER: Excuse me, Your Honor. It's not a question of business judgment.

MR. PARKER: Okay.

THE COURT: Sustained. Mr. Parker, I normally cut a lot of slack for pro se litigants. I don't get that many pro se litigants who are lawyers. I think under those circumstances I have to give you kind of a hybrid kind of courtesy.

MR. PARKER: Right.

THE COURT: What I would suggest is if there is exception of the document of undisputed content that you want to rely on --

MR. PARKER: Yes, sir.

THE COURT: -- read him the sentence that you have in mind. Then ask him if he has a business understanding as to what that means. This businessman's understanding isn't binding on the company or any of the other parties in the case as -- with respect to what it says it's a judgment of law that I would make after hearing appropriate argument when necessary.

MR. PARKER: Right. Okay.

THE COURT: But if and to the extent relevant you want to ask him his businessman's understanding on the provisions in the agreement, I'll let you do it notwithstanding that the fact that the legal conclusions trumps his businessman's understanding.

MR. PARKER: All right.

BY MR. PARKER:

Q. Section 406 provides that "For the benefit of the securities, the corporation will not nor will it permit any manufacturing subsidiary to issue or assume any debt secured by a mortgage upon any principal domestic manufacturing property or corporation of any manufacturing subsidiary upon any shares of stock or indebtedness of any manufacturing subsidiary whether such principal domestic manufacturing shares of stock, indebtedness, et cetera, together with that of the corporation" -- basically -- well, it's very long. Have you read it?

A. I just read it here.

Q. Okay. When General Motors entered into its agreement with the United States Treasury, were they aware of the limitation on liens provision of this document?

A. Yes, sir.

Q. Okay. Was the Treasury Department aware of the limitations on lien provision of this document?

A. Sir, I wasn't involved in the negotiation of the document in December of '08, but it's my understanding they were aware.

Q. Okay. Is an empty building a manufacturing plant or facility?

A. If it's an empty manufacturing plant, yes, sir.

Q. Okay. So what does a manufacturing plant or facility mean to you, sir?

A. It's a facility that's intended to manufacture vehicles, power trains, stampings, the various parts of our business.

Q. Would it include machinery?

A. Generally, yes.

Q. Okay. Did -- under the loan agreement, did you grant a lien on all of your machinery? The loan agreement with the United States Treasury, did GM grant a security agreement on all of its domestic machinery.

MR. MILLER: I assume, Your Honor, he's just asking for Mr. Henderson's understanding.

MR. PARKER: Yes.

THE COURT: With the clarification, the objection becomes moot.

A. Could you repeat the question, sir?

Q. Sure. Under your understanding of GM's loan agreement with the Treasury, did the Treasury have a security interest on the manufacturing equipment in domestic manufacturing plants?

A. I don't believe so.

Q. Okay. Did it -- did you give a security interest on the shares of stock of any subsidiaries of GM, domestic

subsidiaries?

A. No domestic manufacturing subsidiary to the best of my knowledge.

Q. What are the domestic manufacturing subsidiaries of General Motors?

A. Generally, our manufacturing operations are included in the corporation. I think if we have a domestic manufacturing subsidiary, it might be Saturn. But I don't think -- we generally don't have substantial domestic manufacturing subsidiaries. The parent -- the corporation owns the U.S. manufacturing plants.

Q. Is Saturn a separate plant -- I mean, a separate corporation?

A. I believe so, yes.

Q. And did you grant a lien on Saturn's shares?

A. I don't know.

MR. PARKER: May I ask a question of counsel? The exhibit -- no, no. The exhibit that you provided with the appendices, on the two appendices to the agreement that listed the properties that are included and the ones that were excluded, they were blank. Do you have a copy?

MR. MILLER: I don't know what he's talking about.

MR. SCHWARTZ: I don't know what you're talking about.

MR. PARKER: Okay. What I'm talking about is the --

(Pause)

MR. PARKER: You might notice it. It's a schedule -- that's out of order. This is the first page. It's a schedule of appendices to the loan agreement.

MR. SCHWARTZ: Which one?

MR. PARKER: The one between Treasury and GM. And when you get to the final two schedules, they're blank. They're the schedules for assets that are liened and assets that are excluded. Toward the end. Actually, if I may -- I'll show you since it's this area. Schedule 6.29 and 6.30. As you can see, they're blank with a statement that it's privileged information. Is it attached to what you gave the Court?

(Pause)

MR. PARKER: It was page -- on this, it's page GMPR3959 and GMPR3961 -- 3960. There's a big skip. Here's 3958. While they're looking, I'll move on.

THE COURT: Thank you.

BY MR. PARKER:

Q. Would you go to Section -- Schedule 6.28 of the document?

A. Which document, sir?

Q. The -- it's called -- it's schedules of, I guess, Exhibit 10.

A. 6.28.

Q. Yes.

A. Section 6.28, did you say?

Q. Yes.
A. All right. So it's earlier in the document.
Q. No. It's Schedule 6.28 not section.
A. Okay.
Q. I'm sorry. Schedule 6.28.
A. What's the name of the schedule, sir?
Q. Assets Subject to Senior Lien.
A. Maybe you can show it to me. I can't find it here.
Q. Well, this is the copy they gave me.
A. So, let me find it. Mr. Parker, which page so that I can get on the same page as you are.
Q. Does yours have the stamps on them?
A. No. Unfortunately, I don't have a GMPR on this page.
Q. 'Cause it's 3955. The schedules aren't otherwise aren't numbered. The only numbers on these schedules are the GMPR stamps.
A. Perhaps there's -- would you like me to work from yours?
Q. Yeah. If you take a look at the first one, the first asset, I believe it's -- there's a one 1,400,000,000 lien in favor of a bank, is that correct?
A. Yeah. This was a 1.4 billion dollar machinery and equipment term loan that was issued in 2006.
Q. On Saturn, correct?
A. That was Saturn as guarantor so it was basically, the parent -- the corporation as well as Saturn Corporation.

Q. Right. And did it also guaranty -- pledge sixty-five percent of Saturn's stock?

A. This is the --

Q. It's in that same page.

A. This is the 2006 transaction?

Q. Yes.

THE COURT: Forgive me. Mr. Parker, I'm trying very, very hard to be --

MR. PARKER: I know.

THE COURT: -- very, very patient. The costs to the creditors in this case with examination is enormous. I can no longer permit you to ask your opponents to find stuff for you.

MR. PARKER: Okay.

THE COURT: And I can no longer ask the witness to find things or to construe documents that are already in the record. If you want to make legal arguments based upon what the documents say, of course you may do that. But you're going to have to help me understand why this examination can't proceed more quickly and why you should be putting the witness through a memory test on what the company's documents say.

MR. PARKER: All right, Your Honor. It's my position that the -- it's -- I'm sorry. I've got the wrong page. If I may? It's my position the bondholders are actually secured creditors, Your Honor.

THE COURT: Fair enough. But if the documents are in

evidence, why can't you make you argument based on what the documents say?

MR. PARKER: All right. I'd like to introduce a document that is not in evidence, if I may. It's a document I received in discovery from General Motors. I'm going to ask the witness if he can identify it.

MR. MILLER: Your Honor, this is a document filed June 27, 20003.

MR. PARKER: Yes, it is.

MR. MILLER: I don't know where Mr. Henderson was on June 27th, 2003.

THE COURT: I guess he can tell us when Mr. Parker tries to lay the foundation for the submission.

MR. PARKER: All right. I'd like to label this Parker Exhibit 1 for identification. 4424D5.

THE COURT: All right. Parker Exhibit 1 for id.

(Parker's Exhibit 1, GM Perspecta Supplement 2, was hereby marked for identification as of this date.)

BY MR. PARKER:

Q. Could you take a look at that document, sir? Okay? Now, do you recognize it?

A. No.

Q. Did General Motors issue a set of Series C subordinated bonds?

A. Mr. Parker, at that time I was president of GM Asia

Pacific. I had nothing to do --

Q. Okay.

A. But I do believe we did issue bonds, the specifics of which I wasn't involved in at the time.

Q. All right. Who could identify it?

A. Well, this is a General Motors document. I mean, it's -- but I just --

Q. Well, but do you recognize it as a General Motors document?

A. Yes, sir. It looks like it's a Perspecta Supplement.

Q. It's a Perspecta Supplement with a attached Perspectus that it's a Perspecta Supplement 2.

A. Yes, sir.

Q. All right. So all I'm asking is can you identify it as a Perspecta Supplement from General Motors.

A. I believe it is, yes.

MR. PARKER: All right. Your Honor, I'd like to introduce --

THE COURT: Any objection?

MR. MILLER: No, Your Honor.

THE COURT: All right. It's admitted.

MR. PARKER: Okay.

(Parker's Exhibit 1, GM Perspecta Supplement 2, was hereby received into evidence as of this date.)

MR. PARKER: When I argue on it, may I refer to

sections of it, Your Honor?

THE COURT: Can't think of any reason why not.

MR. MILLER: What are we marking this as, please?

MR. PARKER: Parker's Exhibit 1 in a --

Q. Do you still have that other document?

A. I do, sir.

Q. On the second page of the document, is there -- does it indicate -- and the document, I believe, is the exhibits -- the atta -- the schedules to Exhibit 10, General Motors Exhibit 10.

A. I'm reading. This is the second page of the document you gave me.

Q. Yeah. Well, the second -- yes.

A. Yes.

Q. I believe it's Schedule 6 -- I mean, about 628.

A. 6.28, that's what it says.

Q. It's page 2 of Schedule 6.28, correct?

A. Yes.

Q. Does it indicate a loan? Not to the government.

MR. MILLER: Objection, Your Honor.

THE COURT: Sustained.

MR. PARKER: Your Honor, the predicate is under the term --

THE COURT: Forgive me, Mr. Parker, but I believe I've ruled. You can ask your next question.

MR. PARKER: Okay.

Q. Under the terms of that, is there an indebted creditor whose security is sixty-five percent of Saturn?
A. The sixty-five percent of the stock is Controlodora General Motors S.A. de Sivi which is General Motors de Mexico.
Q. Okay. I misread it then. Thank you.
A. You're welcome.
Q. So what's encumbered -- well, under the sales agreement that General Motors is asking the -- the master sale purchase agreement that the debtor is asking the Court to approve, your manufacturing facilities were being sold to the new GM, is that correct?
A. That's correct, sir.
Q. Is it true that in your negotiations with General Motors -- sorry -- in General Motor's negotiations with the Treasury Department regarding the master sale and purchase agreement that you strongly advocated the senior executive -- retaining the senior executive retirement plan?
A. I testified to that before, yes.
Q. Okay. Did you also strongly advocate negotiating a better deal for bondholders?
A. Yes.
Q. What were your efforts in that regard?
A. Two things. I had two areas I would call. One, when we launched the bond exchange, the Treasury indicated to us that they would not be supportive of offering the bondholders any

A. Yes, sir.
Q. Okay. Do we know who the new CEO is going to be?
A. I believe it will be me.
Q. The senior management team, is it going from the old GM to the new GM?
A. Yes.
Q. Okay. Did -- under Section 4.05 of the 1995 indenture agreement, the management is required to give a statement of officers that the corporation is not in default of the loans within the first four months of each year. In 2009, did management give a statement of officers that General Motors is not in default under the terms of the bonds?
A. First four months in 2009?
Q. Yes.
A. I don't know the answer to that question.
Q. Okay. Is it true that the bonds that were issued in 2003 were under the 1995 indenture agreement with Citibank?
MR. MILLER: Your Honor, same objection. The document --
THE COURT: Sustained.
Q. Is there a limitation on liens provision in the loan and security agreement?
MR. MILLER: Same objection, Your Honor.
THE COURT: Sustained. I'm not, Mr. Parker, going to turn this into a memory case on what documents contain. If the

documents are otherwise admissible then you can tell me what they say in oral argument. It's not fair to Mr. Henderson and it's especially not fair to the creditors of this estate.

Q. Who determined the ten percent number for the bondholders -- well, for the unsecured creditors?

MR. MILLER: Your Honor, the guidelines for this hearing was that we should not be duplicating questions that have been already prepondered.

THE COURT: Sustained.

MR. PARKER: Okay.

Q. In May of 2009, was General Motors the top seller of automobiles in the United States?

A. Yes.

Q. So far, in June of 2009, is General Motors the top seller of automobiles in the United States?

A. Yes.

Q. Did Evercore do an analysis of New GM equity?

A. Yes.

Q. What was their analysis?

A. They did an analysis of what the possible equity value for the company might be.

Q. Okay. Could you give us what the result was if you know it?

A. They had a range of potential equity values on a steady state basis, if you will, of approximately thirty-eight to

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

- -x

In the Matter of:

GENERAL MOTORS CORPORATION, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 1, 2009

7:59 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

HEARING re Debtors Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (i)Approve (a)the Sale Pursuant to the Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (b)the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (c)Other Relief; and (ii)Schedule Sale Approval Hearing

HEARING re Notice of Settlement of an Order Denying Motion of the Unofficial Committee of Family & Dissident GM Bondholders for an Order Directing the United States Trustee to Appoint an Official Committee of Family & Dissident Bondholders

Transcribed by: Lisa Bar-Leib

A P P E A R A N C E S :

WEIL, GOTSHAL & MANGES LLP
Attorneys for Debtor General Motors Corporation
767 Fifth Avenue
New York, NY 10153

BY: HARVEY R. MILLER, ESQ.
STEPHEN KAROTKIN, ESQ.
JOSEPH H. SMOLINSKY, ESQ.
JOHN A. NEUWIRTH, ESQ.

JENNER & BLOCK LLP
Special Counsel for Debtors and Debtors-in-Possession
919 Third Avenue
37th Floor
New York, NY 10022

BY: PATRICK J. TROSTLE, ESQ.

JENNER & BLOCK LLP
Special Counsel for Debtors and Debtors-in-Possession
330 North Wabash Avenue
Chicago, IL 60611

BY: DANIEL R. MURRAY, ESQ.

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Attorneys for Official Committee of Unsecured Creditors
1177 Avenue of the Americas
New York, NY 10036

BY: KENNETH ECKSTEIN, ESQ.
ADAM ROSOFF, ESQ.
THOMAS MOERS MAYER, ESQ.
ROBERT T. SCHMIDT, ESQ.

UNITED STATES DEPARTMENT OF JUSTICE
Office of the United States Trustee
33 Whitehall Street
21st Floor
New York, NY 10004

BY: TRACY HOPE DAVIS, ESQ.
BRIAN MASUMOTO, ESQ.

U.S. DEPARTMENT OF JUSTICE
United States Attorney's Office
Southern District of New York
86 Chambers Street
New York, NY 10007

BY: MATTHEW L. SCHWARTZ, AUSA
DAVID S. JONES, AUSA

ARENT FOX LLP

Attorneys for The Timken Company, Superior Industries International, Inc., Discovery Communications, LLC, Harman Becker Automotive Systems and its affiliated companies, Toyota Boshoku America, Inc., and JJF Management Services, Inc.

1675 Broadway

New York, NY 10019

BY: JAMES M. SULLIVAN, ESQ.

ATTORNEY GENERAL OF TEXAS

Counsel to State of Texas On Behalf of Texas Department of Transportation

P.O. Box 12548

Austin, TX 78711

BY: J. CASEY ROY, ASSISTANT ATTORNEY GENERAL

CADWALADER, WICKERSHAM & TAFT LLP
Attorneys for U.S. Treasury Auto Task Force
One World Financial Center
New York, NY 10281

BY: JOHN RAPISARDI, ESQ.

CADWALADER, WICKERSHAM & TAFT LLP
Attorneys for U.S. Treasury Auto Task Force
1201 F Street, N.W.
Washington, DC 20004

BY: PETER M. FRIEDMAN, ESQ.

CAPLIN & DRYSDALE, CHARTERED
Attorneys for Mark Buttita
375 Park Avenue
35th Floor
New York, NY 10152

BY: RITA C. TOBIN, ESQ.

CAPLIN & DRYSDALE, CHARTERED
Attorneys for Mark Buttita
One Thomas Circle N.W.
Suite 1100
Washington, DC 20005

BY: RONALD E. REINSEL, ESQ.

CLEARY GOTTLIEB STEEN & HAMILTON LLP
Attorneys for The International Union, United Automobile Aerospace and Agricultural Implement Workers of America, AFL-CIO
One Liberty Plaza
New York, NY 10006

BY: AVRAM E. LUFT, ESQ.
JAMES BROMLEY, ESQ.

CLIFFORD CHANCE US LLP

Attorneys for ABN AMRO BANK N.V., RBS Citizens N.A., Royal Bank of Scotland plc

31 West 52nd Street

New York, NY 10019

BY: ANDREW BROZMAN, ESQ.

COHEN, WEISS AND SIMON LLP

Attorneys for United Auto Workers

330 West 42nd Street

New York, NY 10036

BY: BABETTE CECCOTTI, ESQ.

THE COLEMAN LAW FIRM

Attorneys for Product Liability Claimants: Callan Campbell, Kevin Junso, et al.; Edwin Agosto, Kevin Chadwick, et al., and Joseph Berlingieri

77 West Wacker Drive

Suite 4800

Chicago, IL 60601

BY: STEVE JAKUBOWSKI, ESQ.

DLA PIPER US LLP

Attorneys for Hewlett-Packard Company and all of its Affiliates, Domestic and International, Including but not Limited to Electronic Data Systems Corporation, and HP Company and Hewlett-Packard Financial Services Company

550 South Hope Street

Suite 2300

Los Angeles, CA 90071

BY: KAROL K. DENNISTON, ESQ.

FORMAN HOLT ELIADES & RAVIN LLC

Attorneys for Rose Cole, Guardian of Timothy L. Montis, a Disabled Adult

80 Route 4 East

Paramus, NJ 07652

BY: KIMBERLY J. SALOMON, ESQ.

GIBSON, DUNN & CRUTCHER LLP
Attorneys for Wilmington Trust Co., as Indenture Trustee
200 Park Avenue
New York, NY 10166

BY: MATTHEW J. WILLIAMS, ESQ.
DAVID M. FELDMAN, ESQ.

GORLICK, KRAVITZ & LISTHAUS, P.C.
Attorneys for International Union of Operating Engineers
Local 18S, 101S and 832S, United Steelworkers, IUE- CWA
17 State Street
4th Floor
New York, NY 10004

BY: BARBARA S. MEHLSACK, ESQ.

HISCOCK & BARCLAYS
Attorneys for The Schaeffer Group
One Park Place
300 South State Street
Syracuse, NY 13202

BY: SUSAN R. KATZOFF, ESQ.

KELLEY DRYE & WARREN LLP
Attorneys for Law Debenture Trust Company of New York, as Successor Indenture Trustee
101 Park Avenue
New York, NY 10178

BY: JENNIFER A. CHRISTIAN, ESQ.

KENNEDY JENNIK AND MURRAY, PC
Attorneys for IUE-CWA
113 University Place
Floor 7
New York, NY 10003

BY: THOMAS M. KENNEDY, ESQ.
JOHN HOFFMAN, ESQ.

KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS LLP
Attorneys for Manufactures Traders & Trust
260 South Broad Street
Philadelphia, PA 19102

BY: BRIAN CROWLEY, ESQ.

LAW OFFICES OF OLIVER ADDISON PARKER
Attorney Pro Se
4900 North Ocean Blvd.
Suite 421
Lauderdale By the Sea, FL 33308

BY: OLIVER A. PARKER, ESQ.

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.
Attorneys for Henry Case Class Plaintiffs
1350 Broadway
Suite 501
New York, NY 10018

BY: EDWARD J. LOBELLO, ESQ.
HANAN KOLKO, ESQ.

N.W. BERNSTEIN & ASSOCIATES, LLC
Attorneys for Environmental Conservation and Chemical Corporation Site Trust Fund
800 Westchester Avenue
Suite N319
Rye Brook, NY 10573

BY: NORMAN W. BERNSTEIN, ESQ.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
2030 M Street, NW
8th Floor
Washington, DC 20036

BY: KAREN CORDRY, ESQ.

PUBLIC CITIZEN LITIGATION GROUP
Attorneys for Product Liability Claimants: Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety, National Association of Consumer Advocates, and Public Citizen
1600 20th Street NW
Washington, DC 20009

BY: ADINA H. ROSENBAUM, ESQ.
ALLISON M. ZIEVE, ESQ.

ORRICK, HERRINGTON & SUTCLIFFE LLP
Attorneys for GM Unofficial Dealer Committee
Columbia Center
1152 15th Street, NW
Washington, DC 20005

BY: RICHARD H. WYRON, ESQ.
ROGER FRANKEL, ESQ.

ORRICK, HERRINGTON & SUTCLIFFE LLP
Attorneys for Finmeccenica S.p.A. and Ansaldo Ricercke S.p.A.; Ad Hoc Dealer Committee
666 Fifth Avenue
New York, NY 10103

BY: ROBERT M. ISACKSON, ESQ.
ALYSSA D. ENGLUND, ESQ.

PATTON BOGGS LLP
Attorneys for Unofficial Committee of Family Bondholders
1185 Avenue of the Americas
30th Floor
New York, NY 10036

BY: MICHAEL P. RICHMAN, ESQ.

PATTON BOGGS LLP
Attorneys for Unofficial Committee of Family Bondholders
2550 M Street, NW
Washington, DC 20037

BY: MARK A. SALZBERG, ESQ.

PATTON BOGGS LLP
Attorneys for Unofficial Committee of Family Bondholders
2001 Ross Avenue
Suite 3000
Dallas, TX 75201

BY: JAMES CHADWICK, ESQ.
(TELEPHONICALLY)

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
Attorneys for Ad Hoc Bondholders Group
1285 Avenue of the Americas
New York, NY 10019

BY: ANDREW N. ROSENBERG, ESQ.
JONATHAN KOEVARY, ESQ. (TELEPHONICALLY)

PENSION BENEFIT GUARANTY CORPORATION
United States Government Agency
1200 K Street NW
Washington, DC 20005

BY: MICHAEL A. MARICCO, ESQ.
ANDREA WONG, Assistant Chief Counsel

ROBINSON BROG LEINWAND GREENE GENOVESE & GLUCK P.C.
Attorneys for Greater New York Automobile Dealers Association
1345 Avenue of the Americas
New York, NY 10105

BY: RUSSELL P. MCRORY, ESQ.

ROBINSON WATERS & O'DORISIO, PC
Attorneys for Environmental Testing Corporation
1099 18th Street
Suite 2600
Denver, CO 80202

BY: ANTHONY L. LEFFERT, ESQ.

SCHNADER HARRISON SEGAL & LEWIS LLP
Attorneys for Ad Hoc Committee Consumer Victims
1600 Market Street
Suite 3600
Philadelphia, PA 19103

BY: BARRY E. BRESSLER, ESQ.

SCHNADER HARRISON SEGAL & LEWIS LLP
Attorneys for Ad Hoc Committee Consumer Victims
824 North Market Street
Suite 1001
Wilmington, DE 19801

BY: RICHARD A. BARKASY, ESQ.

STATE OF MICHIGAN
Office of the State Attorney General
G. Mennen Williams Building
525 West Ottawa Street
6th Floor
Lansing, MI 48909

BY: CELESTE R. GILL, Assistant Attorney General

STATE OF NEW YORK
Office of the Attorney General
The Capitol
Albany, NY 12224

BY: MAUREEN F. LEARY, Assistant Attorney General

STATE OF NEW YORK
Office of the Attorney General
120 Broadway
New York, NY 10271

BY: KATHERINE KENNEDY, Special Deputy Attorney General

STEMBERG FEINSTEIN DOYLE & PAYNE, LLC
Attorneys for Class Representatives in Henry Case
1007 Mt. Royal Blvd.
Pittsburgh, PA 15223

BY: WILLIAM T. PAYNE, ESQ.

STUTZMAN, BROMBERG, ESSERMAN & PLIFKA, P.C.
Attorneys for Ad Hoc Committee of Unsecured Creditors
2323 Bryan Street
Suite 2200
Dallas, TX 75201

BY: SANDER L. ESSERMAN, ESQ.)

VEDDER PRICE P.C.
Attorneys for Export Development Canada
1633 Broadway
47th Floor
New York, NY 10019

BY: MICHAEL L. SCHEIN, ESQ.

WILMER CURLER PICKERING HALE AND DORR LLP
Attorneys for Pension Benefit Guaranty Corporation
399 Park Avenue
New York, NY 10022

BY: PHILIP D. ANKER, ESQ.

WINDELS MARK LANE & MITTENDORF, LLP
Attorneys for Lloyd Good; Plastic Omanna et al.;
Progressive Stamping Company; Morgan Adhesives Co. d/b/a
MACTAC; Western Flyer Express
156 West 56th Street
New York, NY 10019

BY: LESLIE S. BARR, ESQ.

TELEPHONIC APPEARANCES:

ALLARD & FISH, P.C.

Attorneys for Creditor Severstal North America, Inc.

535 Griswold

Suite 2600

Detroit, MI 48226

BY: DEBORAH L. FISH, ESQ.

(TELEPHONICALLY)

ARNALL GOLDEN & GREGORY LLP

Attorneys for Verizon Communications

171 17TH Street NW

Suite 1200

Atlanta, GA 30363

BY: DARRYL S. LADDIN, ESQ.

FRANK N. WHITE, ESQ.

(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF CALIFORNIA
Attorneys for State of California
California Dept. of Justice
P.O. Box 744255
Sacramento, CA 94244

BY: MARGARITA PACFILLA, ESQ.
(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF ILLINOIS
Attorneys for State of Illinois
100 West Randolph Street
Chicago, IL 60601

BY: JAMES NEWBOLD, ESQ.
(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF MICHIGAN
State of Michigan Department of Treasury
G. Mennen Williams Building
7th Floor
525 West Ottawa Street
Lansing, MI 48909

BY: JULIUS O. CURTING, ESQ.
(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF NEW JERSEY
Attorneys for State of New Jersey Department of Environmental Protection Agency
Richard J. Hughes Justice Complex
8th Floor, West Wing
25 Market Street
Trenton, NJ 08625

BY: RACHEL LEHR, ESQ.
(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF TENNESSEE
Attorneys for Tennessee Department of Revenue
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202

BY: MARVIN CLEMENTS, ESQ.
(TELEPHONICALLY)

ATTORNEY GENERAL'S OFFICE, STATE OF TEXAS
Attorneys for Texas Department of Transportation Motor Vehicle Division
300 West 15th Street
Austin, TX 78701

BY: HAL F. MORRIS, ESQ.
RON DEL VENTO, ESQ.
(TELEPHONICALLY)

DAVIS POLK & WARDWELL
Attorneys for Interested Party Ford Motor Company
450 Lexington Avenue
New York, NY 10017

BY: BRIAN M. RESNICK, ESQ.
(TELEPHONICALLY)

DLA PIPER LLP U.S.
Attorneys for Creditor Hewlett Packard
550 South Hope Street
Suite 2300
Los Angeles, CA 90071

BY: KAROL K. DENNISTON, ESQ.
(TELEPHONICALLY)

DRINKER BIDDLE & REATH LLP

Attorneys for Cross-Complainant/Defendant, Manufacturers and Trust Company and Wells Fargo Bank Northwest

1500 K Street, N.W.

Washington, DC 20005

BY: KRISTIN K. GOING, ESQ.

STEPHANIE WICKOUSKI, ESQ.

(TELEPHONICALLY)

FOLEY & LARDNER LLP

Attorneys for Toyota Motor Corp.

One Detroit Center

500 Woodward Avenue

Suite 2700

Detroit, MI 48226

BY: KATHERINE R. CALANESE, ESQ.

JOHN A. SIMON, ESQ.

FOLEY & LARDNER LLP
Attorneys for Toyota Motor Corp.
407 West Broadway
Suite 2100
San Diego, CA 92101

BY: MATTHEW J. RIOPELLE, ESQ.
(TELEPHONICALLY)

FREEBORN & PETERS LLP
Attorneys for Trico Products & PGW LLC
311 South Wacker Drive
Suite 3000
Chicago, IL 620606

BY: THOMAS R. FAWKES, ESQ.
(TELEPHONICALLY)

FROST BROWN TODD LLC
Lexington Financial Center
250 West Main
Suite 2800
Lexington, KY 40507

BY: ROBERT V. SARTIN, ESQ.
(TELEPHONICALLY)

FULBRIGHT & JAWORSKI L.L.P
Attorneys for Bell Atlantic
2200 Ross Avenue
Suite 2800
Dallas, TX 75201

BY: ELIZABETH N. BOYDSTON, ESQ.
(TELEPHONICALLY)

GOULSTON & STORRS P.C.
Attorneys for Creditor 767 Fifth Partners, LLC
400 Atlantic Avenue
Boston, MA 02110

BY: DOUGLAS B. ROSNER, ESQ.
(TELEPHONICALLY)

HANGLEY ARONCHICK SEGAL & PUDLIN
Attorneys for NCR Corporation
One Logan Square
18th & Cherry Streets
27th Floor
Philadelphia, PA 19103

BY: MATTHEW A. HAMERMESH, ESQ.
(TELEPHONICALLY)

HONIGMAN MILLER SCHWARTZ & COHN
2290 First National Building
660 Woodward Avenue
Detroit, MI 48226

BY: SETH A. DRUCKER, ESQ.
JOSEPH R. SGROI, ESQ.
(TELEPHONICALLY)

KEMP KLEIN LAW FIRM
Attorneys for Custom Automotive Services, Inc.
201 West Big Beaver Road
Suite 600
Troy, MI 48084

BY: GLORIA M. CHON, ESQ.
(TELEPHONICALLY)

MASTROMARCO FIRM
Attorneys for Gerald Haynor, Interested Party
1024 North Michigan Avenue
Saginaw, MI 48602

BY: VICTOR MASTROMARCO, ESQ.
(TELEPHONICALLY)

MCDONALD HOPKINS CO., LPA
Attorneys for Swegalok Company
39533 Woodward Avenue
Bloomfield Hills, MI 48304

BY: JAYSON B. RUFF, ESQ.
(TELEPHONICALLY)

MCNAMEE, LOCHNER, TITUS & WILLIAMS, PC
Attorneys for The Saint Regis Mohawk Tribe
677 Broadway
Albany, NY 12201

BY: JACOB F. LAMME, ESQ.
(TELEPHONICALLY)

MILLER, CANFIELD, PADOCK AND STONE, P.L.C.
Attorneys for Creditor Ford Motor Company
150 West Jefferson
Suite 2500
Detroit, MI 48226

BY: MARC N. SWANSON, ESQ.
(TELEPHONICALLY)

MORRIS JAMES LLP
Attorneys for Monster Worldwide
500 Delaware Avenue
Suite 1500
Wilmington, DE 19801

BY: CARL N. KUNZ, III, ESQ.
(TELEPHONICALLY)

OFFICE OF SANTA CLARA COUNTY COUNSEL
Attorneys for County of Santa Clara Tax Collector
70 West Hedding Street
9th Floor, East Wing
San Jose, CA 95110

BY: NEYSA A. FIGOR, ESQ.
(TELEPHONICALLY)

OHIO ATTORNEY GENERAL'S OFFICE
Attorneys for State of Ohio
State Office Tower
30 East Broad Street
17th Floor
Columbus, OH 43215

BY: LUCAS C. WARD, ESQ.
(TELEPHONICALLY)

PEPPER HAMILTON LLP
Attorneys for Creditor SKF USA Inc.
400 Berwyn Park
899 Cassatt Road
Berwyn, PA 19312

BY: HENRY J. JAFFE, ESQ.
(TELEPHONICALLY)

PERDUE, BRANDON, FIELDER, COLLINS & MOTT LLP
Attorneys for Arlington ISD et al.
4025 South Woodland Park Boulevard
Suite 300
Arlington, TX 76013

BY: ELIZABETH BANDA, ESQ.
(TELEPHONICALLY)

ROTH & DEMPSEY P.C.
Attorneys for Burton Taft
436 Jefferson Avenue
Scranton, PA 18510

BY: MICHAEL G. GALLACHER, ESQ.
(TELEPHONICALLY)

SCHIFF HARDIN LLP
Attorneys for Columbia Gas of Ohio; Columbia Gas of Virginia
233 South Wacker Drive
Suite 6600
Chicago, IL 60606

BY: JASON TORF, ESQ.
(TELEPHONICALLY)

SINGER & LEVICK, P.C.
Attorneys for ACS Affiliated Computers Services, Inc.
16200 Addison Road
Suite 140
Addison, TX 75001

BY: LARRY A. LEVICK, ESQ.
(TELEPHONICALLY)

WOLFSON BOLTON PLLC
Attorneys for Guardian Industries
3150 Livernois
Suite 275
Troy, MI 48084

BY: SCOTT A. WOLFSON, ESQ.
(TELEPHONICALLY)

franchise laws, which do not concern public safety or health and welfare but are rather economic in orientation, were subject to the overarching jurisdiction of the bankruptcy court to the extent necessary to implement the objectives and policies of the bankruptcy code." And these state statutes, Your Honor, are clearly economic in orientation.

THE COURT: The distinction you are making was between regulatory provisions that are regulating their health and safety or the public health and welfare? Did I hear you right?

MR. MILLER: Yes, Your Honor.

THE COURT: And the contrast fee and those that are essentially economic in nature?

MR. MILLER: That's correct, Your Honor.

THE COURT: All right. Continue.

MR. MILLER: The arguments which I presented Your Honor, apply with equal force to the arguments which have been made by the consumer victims committee. The arguments to which have been made on behalf of the five product liability claimants represented with my -- Mr. Jakubowski. And then, Your Honor, it likewise applies to the other objections, I think Mr. Parker was making an objection along those lines also. But Mr. Parker's primary objective, Your Honor, as I understand it anyway, is that GM in some mystical way violated its obligations under certain indentures and granted liens

and --

THE COURT: Under the equitable and ratable clause that it contends exists?

MR. MILLER: Yes, Your Honor. The fact of the matter, Your Honor, no lien or security interest was granted to the United States Treasury in violation of any of those indentures. And --

THE COURT: They're equal in ratable salary?

MR. MILLER: Equal in ratables, sir.

Section 406 of the indenture that Mr. Parker referred to states, and I'm going to paraphrase, Your Honor, GM is not going to put any liens on any principle domestic manufacturing property of GM or any manufacturing subsidiary or upon any shares of stock or indebtedness --

THE COURT: Except excluded assets?

MR. MILLER: I'm sorry, Judge?

THE COURT: Except excluded assets?

MR. MILLER: These are the excluded assets, Your Honor.

THE COURT: Okay. So the issue is do we have a definition of excluded assets?

MR. MILLER: It's put in the record, Your Honor. And it is the principle domestic manufacturing properties and manufacturing subsidiaries -- the shares of manufacturing subsidiaries. Those are excluded Your Honor.

THE COURT: Okay.

MR. MILLER: And in January 7, 2009, GM issued an 8-K, and it said on the 8-K that the "The seller is secured by substantially all of GM's and the guarantors U.S. assets that were not previously encumbered including their equity interest in most of the domestic subsidiaries and their intellectual property that real estate, other than their manufacturing plants or facilities". And in Section 401 of the loan and security interests, it states, Your Honor, it is -- that's where the definition of excluded assets come from and it states, "Excludes a lien on any property that gives rise to an obligation to grant a lien to another party, such as the bondholders". And it states --

THE COURT: All right. So you're saying that if it would have triggered the equal and ratable clause it was listed amongst the excluded assets and, therefore, when the deal was structured it was an intentional effort to avoid triggering the equal and ratable clause?

MR. MILLER: Absolutely, Your Honor.

THE COURT: Go ahead, Mr. Miller.

MR. MILLER: And beyond that, Your Honor, Mr. Henderson testified that there was no violation of the indentures. There was nothing in the record. Mr. Parker has not produced any notification or record of the filing of any liens against the excluded properties. So this record is clean

that are no such liens.

Mr. Parker --

THE COURT: So you --

MR. MILLER: Sorry.

THE COURT: So you're saying the debtors didn't purport to subject the critical property to a security interest. In fact, evidenced the intention to avoid it. And apart from that, didn't throw a mortgage or a UCC lien on the affected property.

MR. MILLER: That's correct, Your Honor. I might even point out there's actually a provision that if by accident a lien had been granted it would be invalidated because it violated the indenture.

Mr. Parker also makes an argument, Your Honor, for recharacterization over equitable subordination of the treasury's claim, including I think what he's saying some concept of deepening insolvency, there is nothing in the record, Your Honor, that in any way would establish the grounds for equitable subordination or recharacterization and should not be --

THE COURT: Forgive me, Mr. Miller, before you get too far, can you give me the cites to the definition of excluded assets and of the section of the financing agreement. I think we're talking about the December LFA, December 2008, on that granted a lien but also was a carve out previously --

MR. MILLER: Yes, Your Honor.

THE COURT: -- well, could one of your guys do that?

MR. MILLER: Could I furnish that to Your Honor by this afternoon?

THE COURT: Yes, I just need to be able to read it for myself.

MR. MILLER: Yes, sir.

THE COURT: To second-guess you in that regard.

MR. MILLER: Your Honor, the --

THE COURT: With you and Mr. Parker.

MR. MILLER: Yes, sir. And, Your Honor, in connection with the infamous 62,700 dollars, an unfortunate incident. Your Honor asked the question as to what would be the status of claiming of that 62,700 dollars? I would refer Your Honor to the case of Doe v. Pataki, 481 F.3d --

THE COURT: George Patki?

MR. MILLER: Pataki, a former governor.

THE COURT: My classmate?

MR. MILLER: I didn't know that, Your Honor. You're a fortunate man indeed.

THE COURT: Go on. Doe versus Pataki.

MR. MILLER: 481 F.3d 69 and 75-76, a Second Circuit decision in 2007.

THE COURT: What was the jump cite?

MR. MILLER: I'm sorry, sir?

WEIL, GOTSHAL & MANGES LLP
767 FIFTH AVENUE • NEW YORK, NY 10153-0119
(212) 310-8000
FAX: (212) 310-8007

AUSTIN
BEIJING
BOSTON
BUDAPEST
DALLAS
DUBAI
FRANKFURT
HONG KONG
HOUSTON
LONDON
MIAMI
MUNICH
PARIS
PRAGUE
PROVIDENCE
SHANGHAI
SILICON VALLEY
WARSAW
WASHINGTON, D.C.

STEPHEN KAROTKIN
PARTNER
DIRECT LINE (212) 310-8350
stephen.karotkin@weil.com

July 2, 2009

Honorable Robert E. Gerber
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004-1408

Re: In re General Motors Corp., *et al.*, (the "Debtors")
chapter 11 Case No. 09-50026 (REG)

Dear Judge Gerber:

This letter is in response to your request made on July 1, 2009, during the hearing on the Debtors' Motion seeking, *inter alia*, an order authorizing and approving that Certain Master Sale and Purchase Agreement, by and among the Debtors and NGMCO, Inc., a purchaser sponsored by the United States Department of the Treasury, that we furnish you with the references in the prepetition Loan and Security Agreement, dated as of December 31, 2008, by and between General Motors Corporation and the U.S. Treasury (the "**LSA**") relating to the collateral granted thereunder and the exclusions from such grant of collateral.

Section 4.01 of the LSA provides for the granting of the liens and security interests to the Lender under the LSA. A copy of section 4.01 is attached hereto as Exhibit A. The top of the second page of Exhibit A refers to the term "Excluded Collateral" which is expressly excluded from the collateral granting clause. The relevant portion of section 4.01 is as follows:

> provided that, notwithstanding anything to the contrary contained herein or in any other Loan Document, the term "**Collateral**" and each other term used in the definition thereof shall not include, and the Borrower is not pledging or granting a security interest in, any Property to the extent that such Property constitutes "**Excluded Collateral**."

The definition of "Excluded Collateral" is set forth on pages 5-6 of the LSA which are attached hereto as Exhibit B. Clause (v) of that definition provides that "Excluded Collateral" includes:

> (v) any Property, including any debt or Equity Interest and any manufacturing plant or facility which is located within the continental United States, to the extent that the grant of a security interest therein to secure the Obligations will result in a lien, or an obligation to grant a lien, in such Property to secure any other obligation.

Accordingly, by operation of the clear and express provisions of the LSA, it is not possible to violate the equal and ratable clause in the bond indentures as asserted by Mr. Parker.

Respectfully,

Stephen Karotkin

cc: Counsel to objecting parties who
presented closing arguments

Exhibit A

EXECUTION VERSION

LOAN AND SECURITY AGREEMENT

By and Between

The Borrower Listed on Appendix A

as Borrower

and

THE UNITED STATES DEPARTMENT OF THE TREASURY

as Lender

Dated as of December 31, 2008

SECTION 4. COLLATERAL SECURITY.

4.01 Collateral; Security Interest.

(a) Subject to any amendments, restatements, supplements or other modifications in Section 4.01 of Appendix A, as security for the prompt and complete payment when due of the Obligations and the performance by the Borrower of all the covenants and obligations to be performed by it pursuant to this Loan Agreement and the other Loan Documents, the Borrower hereby mortgages, pledges and grants to the Lender a Lien on and security interest in all of its rights, title and interest in and to all personal property and real property wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, of every kind and description, tangible or intangible, including without limitation, the following, whether now or hereafter existing and wherever located:

(i) all Intellectual Property as well as royalties therefrom;

(ii) each Individual Property;

(iii) all cash and Cash Equivalents, and all other property from time to time deposited in any account or deposit account and the monies and property in the possession or under the control of Lender or any affiliate, representative, agent or correspondent of Lender related to the foregoing;

(iv) all other tangible and intangible personal property of the Borrower (whether or not subject to the Uniform Commercial Code), including, without limitation, all bank and other accounts and all cash and all investments therein, all rights to receive cash and investments, including without limitation, state, Federal or local tax refunds, intercompany debt, all proceeds, products, offspring, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the property of the Borrower described in the preceding clauses of this Section 4.01(a) (including, without limitation, any proceeds of insurance thereon and all causes of action, claims and warranties now or hereafter held by the Borrower in respect of any of the items listed above), and all books, correspondence, files and other Records in the possession or under the control of the Borrower or any other Person from time to time acting for the Borrower that at any time evidence or contain information relating to any of the property described in the preceding clauses of this Section 4.01(a) or are otherwise necessary or helpful in the collection or realization thereof;

(v) all rights, title and interest of the Borrower (but not any of the obligations, liabilities or indemnifications of the Borrower) in, to and under the Loan Documents;

(vi) all "accounts," "chattel paper," "commercial tort claims," "deposit accounts," "documents," "equipment," "general intangibles" (including without limitation, uncertificated Equity Interests), "goods," "instruments," "inventory," "investment property," "letter of credit rights," and "securities accounts," as each of those terms is defined in the Uniform Commercial Code;

(vii) and all products and proceeds relating to or constituting any or all of the foregoing (clauses (i) through (vii) collectively, the "Collateral");

in each case howsoever the Borrower's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise), provided that, notwithstanding anything to the contrary contained herein or in any other Loan Document, the term "Collateral" and each other term used in the definition thereof shall not include, and the Borrower is not pledging or granting a security interest in, any Property to the extent that such Property constitutes Excluded Collateral; provided further that if and when, and to the extent that, any Property ceases to be Excluded Collateral, the Borrower hereby grants to the Lender, and at all times from and after such date, the Lender shall have, a first priority or junior priority, as applicable, Lien in and on such Property (subject to Permitted Liens) and the Borrower shall cooperate in all respects to ensure the prompt perfection of the Lender's security interest therein.

The Liens granted to Lender hereinabove shall be first priority Liens on all of the Collateral (subject to Permitted Liens and to the extent legally and contractually permissible); provided that, with respect to the Collateral which is subject to a Senior Lien, as set forth on **Schedule 6.28**, the Lien shall be of junior priority (subject to Permitted Liens and to the extent legally and contractually permissible).

The Obligations of the Borrower under the Loan Documents constitute recourse obligations of the Borrower, and therefore, their satisfaction is not limited to payments from the Facility Collateral.

(b) With respect to each right to payment or performance included in the Collateral from time to time, the Lien granted therein includes a continuing security interest in (i) any supporting obligation that supports such payment or performance and (ii) any Lien that (A) secures such right to payment or performance or (B) secures any such supporting obligation.

4.02 UCC Matters; Further Assurances. The Borrower, shall, at all times on and after the date hereof, and at its expense, cause Uniform Commercial Code financing statements and continuation statements to be filed in all applicable jurisdictions as required to continue the perfection of the security interests created by this Loan Agreement. The Borrower shall, from time to time, at its expense and in such manner and form as the Lender may reasonably require, execute, deliver, file and record any other statement, continuation statement, specific assignment or other instrument or document and take any other action that may be necessary, or that the Lender, may reasonably request, to create, evidence, preserve, perfect or validate the security interests created hereunder or to enable the Lender to exercise and enforce its rights hereunder with respect to any of the Facility Collateral. To the extent contemplated in the Post-Closing Letter Agreement, the Borrower agrees that, if the grant of a security interest in any Property to Lender requires a consent to such grant from any other Person (other than the Borrower or any of its Affiliates), the Borrower shall use its best efforts to procure such consent. Further, the Borrower agrees that if any Excluded Collateral should, at any time following the Effective Date, become Collateral on which the Lender is permitted to take a Lien, the Borrower shall so notify the Lender and cooperate with and shall take all steps as may be reasonably required by the Lender to enable and continue the perfection of the Lender's security interests therein and shall comply with the provisions of Section 7.16 hereof in connection therewith, to the extent applicable. Without limiting the generality of the foregoing, the Borrower shall: upon the request of the Lender, execute and file such Uniform Commercial Code financing or continuation statements, or amendments thereto or assignments thereof, Mortgages, and such other instruments or notices, as may be necessary or appropriate or as the Lender may request. The Borrower hereby authorizes the Lender to file one or more Uniform Commercial Code financing or continuation statements, and amendments thereto and assignments thereof, relative to all or any of the Collateral now existing or hereafter arising without the signature of the Borrower where permitted by law. A carbon, photographic or other reproduction of this Loan Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement.

4.03 Changes in Locations, Name, etc. If the Borrower shall (i) change the location of its chief executive office/chief place of business from that specified in Section 6.10 hereof, (ii) change

Exhibit B

EXECUTION VERSION

LOAN AND SECURITY AGREEMENT

By and Between

The Borrower Listed on Appendix A

as Borrower

and

THE UNITED STATES DEPARTMENT OF THE TREASURY

as Lender

Dated as of December 31, 2008

the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Equity Interests" shall mean any and all equity interests, including any shares of stock, membership or partnership interests, participations or other equivalents whether certificated or uncertificated (however designated) of a corporation, limited liability company, partnership or any other entity, and any and all similar ownership interests in a Person and any and all warrants or options to purchase any of the foregoing.

"Equity Pledge Agreement" shall mean that certain pledge agreement, dated as of the date hereof, by each Pledgor in favor of the Lender.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" shall mean any corporation or trade or business or other entity, whether or not incorporated, that is a member of any group of organizations (i) described in Section 414(b), (c), (m) or (o) of the Code of which any Loan Party is a member or (ii) which is under common control with any Loan Party within the meaning of section 4001 of ERISA.

"ERISA Event" shall mean (i) any Reportable Event or a determination that a Plan is "at risk" (within the meaning of Section 302 of ERISA); (ii) the incurrence by the Borrower or any ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan or the withdrawal or partial withdrawal of the Borrower or any of its respective ERISA Affiliates from any Plan or Multiemployer Plan; (iii) the receipt by the Borrower or any ERISA Affiliates from the PBGC or a plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (iv) the receipt by the Borrower or any ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; or (v) the occurrence of a nonexempt "prohibited transaction" with respect to which the Borrower, the other Loan Parties or their ERISA Affiliates is a "disqualified person" (within the meaning of Section 4975 of the Code) or with respect to which the Borrower or any ERISA Affiliate could otherwise be liable.

"Event of Default" shall have the meaning provided in Section 9.01.

"Excluded Collateral" shall mean any Property to the extent that a grant of a security interest therein (a) is prohibited by any Applicable Law, or requires a consent pursuant to Applicable Law that has not been obtained from any Governmental Authority, or (b) is contractually prohibited, or constitutes a breach or default under or results in the termination of any contract (except to the extent that such contract or the related prohibitive provisions therein are ineffective under the New York Uniform Commercial Code or other Applicable Law) or requires a consent from any other Person (other than the Borrower or any of its Affiliates) that has not been obtained, (c) in the case of any investment property (as such term is defined in the Uniform Commercial Code), is prohibited under any applicable organizational, constitutive, shareholder or similar agreement (except to the extent that such agreement or the related prohibitive provisions therein are ineffective under the Uniform Commercial Code or other Applicable Law), or (d) is Property of any of the following types:

(i) motor vehicles situated in a jurisdiction in which the perfection of a security interest is excluded from the Uniform Commercial Code;

(ii) voting Equity Interests in any Controlled Foreign Subsidiary, to the extent (but only to the extent) required to prevent the Collateral from including more than 65% of all voting Equity Interests in such Controlled Foreign Subsidiary;

(iii) any Equity Interests owned by the Borrower or other Loan Party in any Excluded Subsidiary;

(iv) assets that give rise to tax-exempt interest income within the meaning of Section 265(a)(2) of the Internal Revenue Code of 1986, as amended from time to time;

(v) any Property, including any debt or Equity Interest and any manufacturing plant or facility which is located within the continental United States, to the extent that the grant of a security interest therein to secure the Obligations will result in a lien, or an obligation to grant a lien, in such Property to secure any other obligation;

(vi) any "intent to use" United States trademark application for which a statement of use has not been filed;

(vii) any Property that is subject to a purchase option granted to any dealer of the Borrower's or any Loan Parties' products with respect to the related dealership Properties;

(viii) any Property (including any tangible embodiments of Intellectual Property that may be affixed to or embodied in any Property), including any Equity Interest, to the extent that the Borrower or any other Loan Party has assigned, pledged, or otherwise granted a security interest in or with respect to such Property to secure any indebtedness or any other obligations, including any Senior Lien Loan, prior to the Effective Date, to the extent that a grant of a security interest therein is contractually prohibited, or constitutes a breach or default under or results in the termination of any contract, or requires a consent from any other Person (other than the Borrower or any of its Affiliates) that has not been obtained;

(ix) any Property of the Borrower or any Loan Party acquired with (a) funds obtained from the Government of the United States, including proceeds of any loan obtained under Section 136 of the EISA or (b) under any other government programs or using other government funds, including proceeds of government loans, contracts, grants, cooperative agreements, or Cooperative Research and Development Agreements, to the extent that a grant of a security interest therein is contractually prohibited, or constitutes a breach or default under or results in the termination of any contract or precludes eligibility for funding described in clauses (a) or (b) above or requires a consent from any other Person (other than the Borrower or any of its Affiliates) that has not been obtained;

(x) any Property, including cash and cash equivalents, (x) pledged or deposited in connection with insurance, including worker's compensation, unemployment insurance or other types of social security or pension benefits, (y) pledged or deposited to secure the performance of bids, tenders, statutory obligations, and surety, appeal, customs or performance bonds and similar obligations, or (z) pledged or deposited to secure reimbursement obligations in respect of letters of credit issued to support any obligations or liabilities described in clauses (x) or (y) above; and

(xi) to the extent not otherwise included, all proceeds, including cash proceeds (as each such term is defined in the Uniform Commercial Code), and products of Excluded Collateral, in whatever form, including cash or cash equivalents.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

ORDER (I) AUTHORIZING SALE OF ASSETS PURSUANT TO AMENDED AND RESTATED MASTER SALE AND PURCHASE AGREEMENT WITH NGMCO, INC., A U.S. TREASURY-SPONSORED PURCHASER; (II) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE; AND (III) GRANTING RELATED RELIEF

Upon the motion, dated June 1, 2009 (the "**Motion**"), of General Motors Corporation ("**GM**") and its affiliated debtors, as debtors in possession (collectively, the "**Debtors**"), pursuant to sections 105, 363, and 365 of title 11, United States Code (the "**Bankruptcy Code**") and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") for, among other things, entry of an order authorizing and approving (A) that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009, by and among GM and its Debtor subsidiaries (collectively, the "**Sellers**") and NGMCO, Inc., as successor in interest to Vehicle Acquisition Holdings LLC (the "**Purchaser**"), a purchaser sponsored by the United States Department of the Treasury (the "**U.S. Treasury**"), together with all related documents and agreements as well as all exhibits, schedules, and addenda thereto (as amended, the "**MPA**"), a copy of which is annexed hereto as Exhibit "A" (excluding the exhibits and schedules thereto); (B) the sale of the Purchased Assets[1] to the

[1] Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Motion or the MPA.

Purchaser free and clear of liens, claims, encumbrances, and interests (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability; (C) the assumption and assignment of the Assumable Executory Contracts; (D) the establishment of certain Cure Amounts; and (E) the UAW Retiree Settlement Agreement (as defined below); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York of Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with this Court's Order, dated June 2, 2009 (the "**Sale Procedures Order**"), and it appearing that no other or further notice need be provided; and a hearing having been held on June 30 through July 2, 2009, to consider the relief requested in the Motion (the "**Sale Hearing**"); and upon the record of the Sale Hearing, including all affidavits and declarations submitted in connection therewith, and all of the proceedings had before the Court; and the Court having reviewed the Motion and all objections thereto (the "**Objections**") and found and determined that the relief sought in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003 and is in the best interests of the Debtors, their estates and creditors, and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein and in the Court's Decision dated July 5, 2009 (the "**Decision**") constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014.

Formatted: Font: Bold

B. To the extent any of the following findings of fact or Findings of Fact in the Decision constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law or Conclusions of Law in the Decision constitute findings of fact, they are adopted as such.

C. This Court has jurisdiction over the Motion, the MPA, and the 363 Transaction pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief sought in the Motion are sections 105(a), 363, and 365 of the Bankruptcy Code as supplemented by Bankruptcy Rules 2002, 6004, and 6006.

E. As evidenced by the affidavits and certificates of service and Publication Notice previously filed with the Court, in light of the exigent circumstances of these chapter 11 cases and the wasting nature of the Purchased Assets and based on the representations of counsel at the Sale Procedures Hearing and the Sale Hearing, (i) proper, timely, adequate, and sufficient notice of the Motion, the Sale Procedures, the 363 Transaction, the procedures for assuming and assigning the Assumable Executory Contracts as described in the Sale Procedures Order and as modified herein (the "**Modified Assumption and Assignment Procedures**"), the UAW Retiree

Settlement Agreement, and the Sale Hearing have been provided in accordance with Bankruptcy Rules 2002(a), 6004(a), and 6006(c) and in compliance with the Sale Procedures Order; (ii) such notice was good and sufficient, reasonable, and appropriate under the particular circumstances of these chapter 11 cases, and reasonably calculated to reach and apprise all holders of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, about the Sale Procedures, the sale of the Purchased Assets, the 363 Transaction, and the assumption and assignment of the Assumable Executory Contracts, and to reach all UAW-Represented Retirees about the UAW Retiree Settlement Agreement and the terms of that certain Letter Agreement, dated May 29, 2009, between GM, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "**UAW**"), and Stember, Feinstein, Doyle & Payne, LLC (the "**UAW Claims Agreement**") relating thereto; and (iii) no other or further notice of the Motion, the 363 Transaction, the Sale Procedures, the Modified Assumption and Assignment Procedures, the UAW Retiree Settlement Agreement, the UAW Claims Agreement, and the Sale Hearing or any matters in connection therewith is or shall be required. With respect to parties who may have claims against the Debtors, but whose identities are not reasonably ascertainable by the Debtors (including, but not limited to, potential contingent warranty claims against the Debtors), the Publication Notice was sufficient and reasonably calculated under the circumstances to reach such parties.

F. On June 1, 2009, this Court entered the Sale Procedures Order approving the Sale Procedures for the Purchased Assets. The Sale Procedures provided a full, fair, and reasonable opportunity for any entity to make an offer to purchase the Purchased Assets. The Debtors received no bids under the Sale Procedures for the Purchased Assets. Therefore, the Purchaser's bid was designated as the Successful Bid pursuant to the Sale Procedures Order.

G. As demonstrated by (i) the Motion, (ii) the testimony and other evidence proffered or adduced at the Sale Hearing, and (iii) the representations of counsel made on the record at the Sale Hearing, in light of the exigent circumstances presented, (a) the Debtors have adequately marketed the Purchased Assets and conducted the sale process in compliance with the Sale Procedures Order; (b) a reasonable opportunity has been given to any interested party to make a higher or better offer for the Purchased Assets; (c) the consideration provided for in the MPA constitutes the highest or otherwise best offer for the Purchased Assets and provides fair and reasonable consideration for the Purchased Assets; (d) the 363 Transaction is a sale of deteriorating assets and the only alternative to liquidation available for the Debtors; (e) if the 363 Transaction is not approved, the Debtors will be forced to cease operations altogether; (f) the failure to approve the 363 Transaction promptly will lead to systemic failure and dire consequences, including the loss of hundreds of thousands of auto-related jobs; (g) prompt approval of the 363 Transaction is the only means to preserve and maximize the value of the Debtors' assets; (h) the 363 Transaction maximizes fair value for the Debtors' parties in interest; (i) the Debtors are receiving fair value for the assets being sold; (j) the 363 Transaction will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, including liquidation under chapters 7 or 11 of the Bankruptcy Code; (k) no other entity has offered to purchase the Purchased Assets for greater economic value to the Debtors or their estates; (l) the consideration to be paid by the Purchaser under the MPA exceeds the liquidation value of the Purchased Assets; and (m) the Debtors' determination that the MPA constitutes the highest or best offer for the Purchased Assets and that the 363 Transaction represents a better alternative for the Debtors' parties in interest than an immediate liquidation constitute valid and sound exercises of the Debtors' business judgment.

H. The actions represented to be taken by the Sellers and the Purchaser are appropriate under the circumstances of these chapter 11 cases and are in the best interests of the Debtors, their estates and creditors, and other parties in interest.

I. Approval of the MPA and consummation of the 363 Transaction at this time is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest.

J. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the sale of the Purchased Assets pursuant to the 363 Transaction prior to, and outside of, a plan of reorganization and for the immediate approval of the MPA and the 363 Transaction because, among other things, the Debtors' estates will suffer immediate and irreparable harm if the relief requested in the Motion is not granted on an expedited basis. In light of the exigent circumstances of these chapter 11 cases and the risk of deterioration in the going concern value of the Purchased Assets pending the 363 Transaction, time is of the essence in (i) consummating the 363 Transaction, (ii) preserving the viability of the Debtors' businesses as going concerns, and (iii) minimizing the widespread and adverse economic consequences for the Debtors, their estates, their creditors, employees, the automotive industry, and the national economy that would be threatened by protracted proceedings in these chapter 11 cases.

K. The consideration provided by the Purchaser pursuant to the MPA (i) is fair and reasonable, (ii) is the highest and best offer for the Purchased Assets, (iii) will provide a greater recovery to the Debtors' estates than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

L. The 363 Transaction must be approved and consummated as promptly as practicable in order to preserve the viability of the business to which the Purchased Assets relate as a going concern.

M. The MPA was not entered into and none of the Debtors, the Purchaser, or the Purchasers' present or contemplated owners have entered into the MPA or propose to consummate the 363 Transaction for the purpose of hindering, delaying, or defrauding the Debtors' present or future creditors. None of the Debtors, the Purchaser, nor the Purchaser's present or contemplated owners is entering into the MPA or proposing to consummate the 363 Transaction fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, or any other applicable jurisdiction with laws substantially similar to any of the foregoing.

N. In light of the extensive prepetition negotiations culminating in the MPA, the Purchaser's commitment to consummate the 363 Transaction is clear without the need to provide a good faith deposit.

O. Each Debtor (i) has full corporate power and authority to execute the MPA and all other documents contemplated thereby, and the sale of the Purchased Assets has been duly and validly authorized by all necessary corporate action of each of the Debtors, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the MPA, (iii) has taken all corporate action necessary to authorize and approve the MPA and the consummation by the Debtors of the transactions contemplated thereby, and (iv) subject to entry of this Order, needs no consents or approvals, other than those expressly provided for in the MPA which may be waived by the Purchaser, to consummate such transactions.

P. The consummation of the 363 Transaction outside of a plan of reorganization pursuant to the MPA neither impermissibly restructures the rights of the Debtors' creditors, allocates or distributes any of the sale proceeds, nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The 363 Transaction does not constitute a *sub rosa* plan of reorganization. The 363 Transaction in no way dictates distribution of the Debtors' property to creditors and does not impinge upon any chapter 11 plan that may be confirmed.

Q. The MPA and the 363 Transaction were negotiated, proposed, and entered into by the Sellers and the Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Sellers, the Purchaser, the U.S. Treasury, nor their respective agents, officials, personnel, representatives, and advisors, has engaged in any conduct that would cause or permit the MPA to be avoided under 11 U.S.C. § 363(n).

R. The Purchaser is a newly-formed Delaware corporation that, as of the date of the Sale Hearing, is wholly-owned by the U.S. Treasury. The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby.

S. Neither the Purchaser, the U.S. Treasury, nor their respective agents, officials, personnel, representatives, or advisors is an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

T. Upon the Closing of the 363 Transaction, the Debtors will transfer to the Purchaser substantially all of its assets. In exchange, the Purchaser will provide the Debtors with (i) cancellation of billions of dollars in secured debt; (ii) assumption by the Purchaser of a portion of the Debtors' business obligations and liabilities that the Purchaser will satisfy; and (iii) no less than 10% of the Common Stock of the Purchaser as of the Closing (100% of which the

Debtors' retained financial advisor values at between $38 billion and $48 billion) and warrants to purchase an additional 15% of the Common Stock of the Purchaser as of the Closing, the combination of which the Debtors' retained financial advisor values at between $7.4 billion and $9.8 billion (which amount, for the avoidance of doubt, does not include any amount for the Adjustment Shares).

U. The Purchaser, not the Debtors, has determined its ownership composition and capital structure. The Purchaser will assign ownership interests to certain parties based on the Purchaser's belief that the transfer is necessary to conduct its business going forward, that the transfer is to attain goodwill and consumer confidence for the Purchaser and to increase the Purchaser's sales after completion of the 363 Transaction. The assignment by the Purchaser of ownership interests is neither a distribution of estate assets, discrimination by the Debtors on account of prepetition claims, nor the assignment of proceeds from the sale of the Debtors' assets. The assignment of equity to the New VEBA (as defined in the UAW Retiree Settlement Agreement) and 7176384 Canada Inc. is the product of separately negotiated arm's-length agreements between the Purchaser and its equity holders and their respective representatives and advisors. Likewise, the value that the Debtors will receive on consummation of the 363 Transaction is the product of arm's-length negotiations between the Debtors, the Purchaser, the U.S. Treasury, and their respective representatives and advisors.

V. The U.S. Treasury and Export Development Canada ("**EDC**"), on behalf of the Governments of Canada and Ontario, have extended credit to, and acquired a security interest in, the assets of the Debtors as set forth in the DIP Facility and as authorized by the interim and final orders approving the DIP Facility (Docket Nos. 292 and 2529, respectively). Before entering into the DIP Facility and the Loan and Security Agreement, dated as of December 31, 2008 (the "**Existing UST Loan Agreement**"), the Secretary of the Treasury, in

consultation with the Chairman of the Board of Governors of the Federal Reserve System and as communicated to the appropriate committees of Congress, found that the extension of credit to the Debtors is "necessary to promote financial market stability," and is a valid use of funds pursuant to the statutory authority granted to the Secretary of the Treasury under the Emergency Economic Stabilization Act of 2008, 12 U.S.C. §§ 5201 et seq. ("**EESA**"). The U.S. Treasury's extension of credit to, and resulting security interest in, the Debtors, as set forth in the DIP Facility and the Existing UST Loan Agreement and as authorized in the interim and final orders approving the DIP Facility, is a valid use of funds pursuant to EESA.

W. The DIP Facility and the Existing UST Loan Agreement are loans and shall not be recharacterized. The Court has already approved the DIP Facility. The Existing UST Loan Agreement bears the undisputed hallmarks of a loan, not an equity investment. Among other things:

(i) The U.S. Treasury structured its prepetition transactions with GM as (a) a loan, made pursuant to and governed by the Existing UST Loan Agreement, in addition to (b) a separate, and separately documented, equity component in the form of warrants;

(ii) The Existing UST Loan Agreement has customary terms and covenants of a loan rather than an equity investment. For example, the Existing UST Loan Agreement contains provisions for repayment and pre-payment, and provides for remedies in the event of a default;

(iii) The Existing UST Loan Agreement is secured by first liens (subject to certain permitted encumbrances) on GM's and the guarantors' equity interests in most of their domestic subsidiaries and certain of their foreign subsidiaries (limited in most cases to 65% of the equity interests of the pledged foreign subsidiaries), intellectual property, domestic real estate (other than manufacturing plants or facilities) inventory that was not pledged to other lenders, and cash and cash equivalents in the United States;

(iv) The U.S. Treasury also received junior liens on certain additional collateral, and thus, its claim for recovery on such collateral under the Existing UST Loan Agreement is, in part, junior to the claims of other creditors;

(v) the Existing UST Loan Agreement requires the grant of security by its terms, as well as by separate collateral documents, including: (a) a guaranty and

security agreement, (b) an equity pledge agreement, (c) mortgages and deeds of trust, and (d) an intellectual property pledge agreement;

(vi) Loans under the Existing UST Loan Agreement are interest-bearing with a rate of 3.00% over the 3-month LIBOR with a LIBOR floor of 2.00%. The Default Rate on this loan is 5.00% above the non-default rate.

(vii) The U.S. Treasury always treated the loans under the Existing UST Loan Agreement as debt, and advances to GM under the Existing Loan Agreement were conditioned upon GM's demonstration to the United States Government of a viable plan to regain competitiveness and repay the loans.

(viii) The U.S. Treasury has acted as a prudent lender seeking to protect its investment and thus expressly conditioned its financial commitment upon GM's meaningful progress toward long-term viability.

Other secured creditors of the Debtors also clearly recognized the loans under the Existing UST Loan Agreement as debt by entering into intercreditor agreements with the U.S. Treasury in order to set forth the secured lenders' respective prepetition priority.

X. This Court has previously authorized the Purchaser to credit bid the amounts owed under both the DIP Facility and the Existing UST Loan Agreement and held the Purchaser's credit bid to be, for all purposes, a "Qualified Bid" under the Sale Procedures Order.

Y. The Debtors, the Purchaser, and the UAW, as the exclusive collective bargaining representative of the Debtors' UAW-represented employees and the authorized representative of the persons in the Class and the Covered Group (as described in the UAW Retiree Settlement Agreement) (the "**UAW-Represented Retirees**") under section 1114(c) of the Bankruptcy Code, engaged in good faith negotiations in conjunction with the 363 Transaction regarding the funding of "retiree benefits" within the meaning of section 1114(a) of the Bankruptcy Code and related matters. Conditioned upon the consummation of the 363 Transaction and the approval of the Bankruptcy Court granted in this Order, the Purchaser and the UAW will enter into that certain Retiree Settlement Agreement, dated as of the Closing Date (the "**UAW Retiree Settlement Agreement**"), which is Exhibit D to the MPA, which resolves

issues with respect to the provision of certain retiree benefits to UAW-Represented Retirees as described in the UAW Retiree Settlement Agreement. As set forth in the UAW Retiree Settlement Agreement, the Purchaser has agreed to make contributions of cash, stock, and warrants of the Purchaser to the New VEBA (as defined in the UAW Retiree Settlement Agreement), which will have the obligation to fund certain health and welfare benefits for the UAW-Represented Retirees. The New VEBA will also be funded by the transfer of assets from the Existing External VEBA and the assets in the UAW Related Account of the Existing Internal VEBA (each as defined in the UAW Retiree Settlement Agreement). GM and the UAW, as the authorized representative of the UAW-Represented Retirees, as well as the representatives for the class of plaintiffs in a certain class action against GM (the "**Class Representatives**"), through class counsel, Stemper, Feinstein, Doyle and Payne LLC ("**Class Counsel**"), negotiated in good faith the UAW Claims Agreement, which requires the UAW and the Class Representatives to take actions to effectuate the withdrawal of certain claims against the Debtors, among others, relating to retiree benefits in the event the 363 Transaction is consummated and the Bankruptcy Court approves, and the Purchaser becomes fully bound by, the UAW Retiree Settlement Agreement, subject to reinstatement of such claims to the extent of any adverse impact to the rights or benefits of UAW-Represented Retirees under the UAW Retiree Settlement Agreement resulting from any reversal or modification of the 363 Transaction, the UAW Retiree Settlement Agreement, or the approval of the Bankruptcy Court thereof, the foregoing as subject to the terms of, and as set forth in, the UAW Claims Agreement.

Z. Effective as of the Closing of the 363 Transaction, the Debtors will assume and assign to the Purchaser the UAW Collective Bargaining Agreement and all liabilities thereunder. The Debtors, the Purchaser, the UAW and Class Representatives intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings

incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2).

AA. The transfer of the Purchased Assets to the Purchaser will be a legal, valid, and effective transfer of the Purchased Assets and, except for the Assumed Liabilities, will vest the Purchaser with all right, title, and interest of the Sellers to the Purchased Assets free and clear of liens, claims, encumbrances, and other interests (other than Permitted Encumbrances), including rights or claims (for purposes of this Order, the term "claim" shall have the meaning ascribed to such term in section 101(5) of the Bankruptcy Code) based on any successor or transferee liability, including, but not limited to (i) those that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Sellers' or the Purchaser's interest in the Purchased Assets, or any similar rights and (ii) (a) those arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income, or other exercise of any attributes of ownership and (b) all claims arising in any way in connection with any agreements, acts, or failures to act, of any of the Sellers or any of the Sellers' predecessors or affiliates, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including, but not limited to, claims otherwise arising under doctrines of successor or transferee liability.

BB. The Sellers may sell the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the

Bankruptcy Code has been satisfied. Those (i) holders of liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, and (ii) non-Debtor parties to the Assumable Executory Contracts who did not object, or who withdrew their Objections, to the 363 Transaction or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those (i) holders of liens, claims, and encumbrances, and (ii) non-Debtor parties to the Assumable Executory Contracts who did object, fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and, to the extent they have valid and enforceable liens or encumbrances, are adequately protected by having such liens or encumbrances, if any, attach to the proceeds of the 363 Transaction ultimately attributable to the property against or in which they assert a lien or encumbrance. To the extent liens or encumbrances secure liabilities that are Assumed Liabilities under this Order and the MPA, no such liens or encumbrances shall attach to the proceeds of the 363 Transaction.

CC. Under the MPA, GM is transferring all of its right, title, and interest in the Memphis, TN SPO Warehouse and the White Marsh, MD Allison Transmission Plant (the "**TPC Property**") to the Purchaser pursuant to section 363(f) of the Bankruptcy Code free and clear of all liens (including, without limitation, the TPC Liens (as hereinafter defined)), claims, interests, and encumbrances (other than Permitted Encumbrances). For purposes of this Order, "**TPC Liens**" shall mean and refer to any liens on the TPC Property granted or extended pursuant to the TPC Participation Agreement and any claims relating to that certain Second Amended and Restated Participation Agreement and Amendment of Other Operative Documents (the "**TPC Participation Agreement**"), dated as of June 30, 2004, among GM, as Lessee, Wilmington Trust Company, a Delaware corporation, not in its individual capacity except as expressly stated herein but solely as Owner Trustee (the "**TPC Trustee**") under GM Facilities Trust No. 1999-I (the "**TPC Trust**"), as Lessor, GM, as Certificate Holder, Hannover Funding Company LLC, as

CP Lender, Wells Fargo Bank Northwest, N.A., as Agent, Norddeutsche Landesbank Girozentrale (New York Branch), as Administrator, and Deutsche Bank, AG, New York Branch, HSBC Bank USA, ABN AMRO Bank N.V., Royal Bank of Canada, Bank of America, N.A., Citicorp USA, Inc., Merrill Lynch Bank USA, Morgan Stanley Bank, collectively, as Purchasers (collectively, with CP Lender, Agent and Administrator, the "**TPC Lenders**"), together with the Operative Documents (as defined in the TPC Participation Agreements (the "**TPC Operative Documents**").

DD. The Purchaser would not have entered into the MPA and would not consummate the 363 Transaction (i) if the sale of the Purchased Assets was not free and clear of all liens, claims, encumbrances, and other interests (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability or (ii) if the Purchaser would, or in the future could, be liable for any such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability (collectively, the "**Retained Liabilities**"), other than, in each case, the Assumed Liabilities. The Purchaser will not consummate the 363 Transaction unless this Court expressly orders that none of the Purchaser, its affiliates, their present or contemplated members or shareholders (other than the Debtors as the holder of equity in the Purchaser), or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability or Retained Liabilities, other than as expressly provided herein or in agreements made by the Debtors and/or the Purchaser on the record at the Sale Hearing or in the MPA.

EE. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Purchased Contracts to the Purchaser in connection

with the consummation of the 363 Transaction, and the assumption and assignment of the Purchased Contracts is in the best interests of the Debtors, their estates and creditors, and other parties in interest. The Purchased Contracts being assigned to, and the liabilities being assumed by, the Purchaser are an integral part of the Purchased Assets being purchased by the Purchaser, and, accordingly, such assumption and assignment of the Purchased Contracts and liabilities are reasonable, enhance the value of the Debtors' estates, and do not constitute unfair discrimination.

FF. For the avoidance of doubt, and notwithstanding anything else in this Order to the contrary:

- The Debtors are neither assuming nor assigning to the Purchaser the agreement to provide certain retiree medical benefits specified in (i) the Memorandum of Understanding Post-Retirement Medical Care, dated September 26, 2007, between the Company and the UAW, and (ii) the Settlement Agreement, dated February 21, 2008, between the Company and the UAW (together, the "**VEBA Settlement Agreement**");

- at the Closing, and in accordance with the MPA, the UAW Collective Bargaining Agreement, and all liabilities thereunder, shall be assumed by the Debtors and assigned to the Purchaser pursuant to section 365 of the Bankruptcy Code. Assumption and assignment of the UAW Collective Bargaining Agreement is integral to the 363 Transaction and the MPA, are in the best interests of the Debtors and their estates, creditors, employees, and retirees, and represent the exercise of the Debtors' sound business judgment, enhances the value of the Debtors' estates, and does not constitute unfair discrimination;

- the UAW, as the exclusive collective bargaining representative of employees of the Purchaser and the "authorized representative" of the UAW-Represented Retirees under section 1114(c) of the Bankruptcy Code, GM, and the Purchaser engaged in good faith negotiations in conjunction with the 363 Transaction regarding the funding of retiree health benefits within the meaning of section 1114(a) of the Bankruptcy Code. Conditioned upon the consummation of the 363 Transaction, the UAW and the Purchaser have entered into the UAW Retiree Settlement Agreement, which, among other things, provides for the financing by the Purchaser of modified retiree health care obligations for the Class and Covered Group (as defined in the UAW Retiree Settlement Agreement) through contributions by the Purchaser (as referenced in paragraph Y herein). The New VEBA will also be funded by the transfer of the UAW Related Account from the Existing Internal VEBA and the assets of the Existing External VEBA to the New VEBA (each as defined in the UAW Retiree Settlement Agreement). The Debtors, the

Purchaser, and the UAW specifically intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2);

- the Debtors' sponsorship of the Existing Internal VEBA (as defined in the UAW Retiree Settlement Agreement) shall be transferred to the Purchaser under the MPA.

GG. The Debtors have (i) cured and/or provided adequate assurance of cure (through the Purchaser) of any default existing prior to the date hereof under any of the Purchased Contracts that have been designated by the Purchaser for assumption and assignment under the MPA, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided compensation or adequate assurance of compensation through the Purchaser to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Purchased Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and the Purchaser has provided adequate assurance of future performance under the Purchased Contracts, within the meaning of section 365(b)(1)(C) of the Bankruptcy Code. The Modified Assumption and Assignment Procedures are fair, appropriate, and effective and, upon the payment by the Purchaser of all Cure Amounts (as hereinafter defined) and approval of the assumption and assignment for a particular Purchased Contract thereunder, the Debtors shall be forever released from any and all liability under the Purchased Contracts.

HH. The Debtors are the sole and lawful owners of the Purchased Assets, and no other person has any ownership right, title, or interest therein. The Debtors' non-Debtor Affiliates have acknowledged and agreed to the 363 Transaction and, as required by, and in accordance with, the MPA and the Transition Services Agreement, transferred any legal, equitable, or beneficial right, title, or interest they may have in or to the Purchased Assets to the Purchaser.

II. The Debtors currently maintain certain privacy policies that govern the use of "personally identifiable information" (as defined in section 101(41A) of the Bankruptcy Code) in conducting their business operations. The 363 Transaction may contemplate the transfer of certain personally identifiable information to the Purchaser in a manner that may not be consistent with certain aspects of their existing privacy policies. Accordingly, on June 2, 2009, the Court directed the U.S. Trustee to promptly appoint a consumer privacy ombudsman in accordance with section 332 of the Bankruptcy Code, and such ombudsman was appointed on June 10, 2009. The Privacy Ombudsman is a disinterested person as required by section 332(a) of the Bankruptcy Code. The Privacy Ombudsman filed his report with the Court on July 1, 2009 (Docket No. 2873) (the "**Ombudsman Report**") and presented his report at the Sale Hearing, and the Ombudsman Report has been reviewed and considered by the Court. The Court has given due consideration to the facts, including the exigent circumstances surrounding the conditions of the sale of personally identifiable information in connection with the 363 Transaction. No showing has been made that the sale of personally identifiable information in connection with the 363 Transaction in accordance with the provisions of this Order violates applicable nonbankruptcy law, and the Court concludes that such sale is appropriate in conjunction with the 363 Transaction.

JJ. Pursuant to Section 6.7(a) of the MPA, GM offered Wind-Down Agreements and Deferred Termination Agreements (collectively, the "**Deferred Termination Agreements**") in forms prescribed by the MPA to franchised motor vehicle dealers, including dealers authorized to sell and service vehicles marketed under the Pontiac brand (which is being discontinued), dealers authorized to sell and service vehicles marketed under the Hummer, Saturn and Saab brands (which may or may not be discontinued depending on whether the brands are sold to third parties) and dealers authorized to sell and service vehicles marketed

under brands which will be continued by the Purchaser. The Deferred Termination Agreements were offered as an alternative to rejection of the existing Dealer Sales and Service Agreements of these dealers pursuant to section 365 of the Bankruptcy Code and provide substantial additional benefits to dealers which enter into such agreements. Approximately 99% of the dealers offered Deferred Termination Agreements accepted and executed those agreements and did so for good and sufficient consideration.

KK. Pursuant to Section 6.7(b) of the MPA, GM offered Participation Agreements in the form prescribed by the MPA to dealers identified as candidates for a long term relationship with the Purchaser. The Participation Agreements provide substantial benefits to accepting dealers, as they grant the opportunity for such dealers to enter into a potentially valuable relationship with the Purchaser as a component of a reduced and more efficient dealer network. Approximately 99% of the dealers offered Participation Agreements accepted and executed those agreements.

LL. This Order constitutes approval of the UAW Retiree Settlement Agreement and the compromise and settlement embodied therein.

MM. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Consistent with Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Order to the full extent to which those rules provide, but that its Order should not become effective instantaneously. Thus the Court will shorten, but not wholly eliminate, the periods set forth in Fed.R.Bankr.P. 6004(h) and 6006, and expressly directs entry of judgment as set forth in accordance with the provisions of Paragraph 70 below.

Deleted: Notwithstanding

Deleted: herein

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

General Provisions

1. The Motion is granted as provided herein, and entry into and performance under, and in respect of, the MPA and the 363 Transaction is approved.

2. All Objections to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or resolved, and all reservation of rights included in such Objections, are overruled on the merits other than a continuing Objection (each a "**Limited Contract Objection**") that does not contest or challenge the merits of the 363 Transaction and that is limited to (a) contesting a particular Cure Amount(s) (a "**Cure Objection**"), (b) determining whether a particular Assumable Executory Contract is an executory contract that may be assumed and/or assigned under section 365 of the Bankruptcy Code, and/or (c) challenging, as to a particular Assumable Executory Contract, whether the Debtors have assumed, or are attempting to assume, such contract in its entirety or whether the Debtors are seeking to assume only part of such contract. A Limited Contract Objection shall include, until resolved, a dispute regarding any Cure Amount that is subject to resolution by the Bankruptcy Court , or pursuant to the dispute resolution procedures established by the Sale Procedures Order or pursuant to agreement of the parties, including agreements under which an objection to the Cure Amount was withdrawn in connection with a reservation of rights under such dispute resolution procedures. Limited Contract Objections shall not constitute objections to the 363 Transaction, and to the extent such Limited Contract Objections remain continuing objections to be resolved before the Court, the hearing to consider each such Limited Contract Objection shall be adjourned to August 3, 2009 at 9:00a.m. (the "**Limited Contract Objection Hearing**"). Within two (2) business days of the entry of this Order, the Debtors shall serve upon each of the counterparties to the remaining Limited Contract Objections a notice of the Limited Contract Objection Hearing. The Debtors or any party that withdraws, or has withdrawn, a Limited

Deleted: July __

Deleted: __:__ _.

Contract Objection without prejudice shall have the right, unless it has agreed otherwise, to schedule the hearing to consider a Limited Contract Objection on not less than fifteen (15) days notice to the Debtors, the counterparties to the subject Assumable Executory Contracts, the Purchaser, and the Creditors' Committee, or within such other time as otherwise may be agreed by the parties.

Approval of the MPA

3. The MPA, all transactions contemplated thereby, and all the terms and conditions thereof (subject to any modifications contained herein) are approved. If there is any conflict between the MPA, the Sale Procedures Order, and this Order, this Order shall govern.

4. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors are authorized to perform their obligations under, and comply with the terms of, the MPA and consummate the 363 Transaction pursuant to, and in accordance with, the terms and provisions of the MPA and this Order.

5. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement, the MPA, together with all additional instruments and documents that the Sellers or the Purchaser deem necessary or appropriate to implement the MPA and effectuate the 363 Transaction, and to take all further actions as may reasonably be required by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser or reducing to possession the Purchased Assets or as may be necessary or appropriate to the performance of the obligations as contemplated by the MPA.

6. This Order and the MPA shall be binding in all respects upon the Debtors, their affiliates, all known and unknown creditors of, and holders of equity security interests in, any Debtor, including any holders of liens, claims, encumbrances, or other interests, including

rights or claims based on any successor or transferee liability, all non-Debtor parties to the Assumable Executory Contracts, all successors and assigns of the Purchaser, each Seller and their Affiliates and subsidiaries, the Purchased Assets, all interested parties, their successors and assigns, and any trustees appointed in the Debtors' chapter 11 cases or upon a conversion of any of such cases to cases under chapter 7 of the Bankruptcy Code and shall not be subject to rejection. Nothing contained in any chapter 11 plan confirmed in any of the Debtors' chapter 11 cases or the order confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the MPA or this Order.

Transfer of Purchased Assets Free and Clear

7. Except for the Assumed Liabilities, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Purchaser in accordance with the MPA, and, upon the Closing, shall be free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, and all such liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, shall attach to the net proceeds of the 363 Transaction in the order of their priority, with the same validity, force, and effect that they now have as against the Purchased Assets, subject to any claims and defenses a Seller or any other party in interest may possess with respect thereto.

8. Except as expressly permitted or otherwise specifically provided by the MPA or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, dealers, employees, litigation claimants, and other creditors, holding liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including rights or claims

based on any successor or transferee liability, against or in a Seller or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Sellers, the Purchased Assets, the operation of the Purchased Assets prior to the Closing, or the 363 Transaction, are forever barred, estopped, and permanently enjoined (with respect to future claims or demands based on exposure to asbestos, to the fullest extent constitutionally permissible) from asserting against the Purchaser, its successors or assigns, its property, or the Purchased Assets, such persons' or entities' liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability.

9. This Order (a) shall be effective as a determination that, as of the Closing, (i) no claims other than Assumed Liabilities, will be assertable against the Purchaser, its affiliates, their present or contemplated members or shareholders, successors, or assigns, or any of their respective assets (including the Purchased Assets); (ii) the Purchased Assets shall have been transferred to the Purchaser free and clear of all claims (other than Permitted Encumbrances); and (iii) the conveyances described herein have been effected; and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks, or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is directed to accept for filing any and all of the documents

and instruments necessary and appropriate to consummate the transactions contemplated by the MPA.

10. The transfer of the Purchased Assets to the Purchaser pursuant to the MPA constitutes a legal, valid, and effective transfer of the Purchased Assets and shall vest the Purchaser with all right, title, and interest of the Sellers in and to the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities.

11. On the Closing of the 363 Transaction, each of the Sellers' creditors and any other holder of a lien, claim, encumbrance, or other interest, is authorized and directed to execute such documents and take all other actions as may be necessary to release its lien, claim, encumbrance (other than Permitted Encumbrances), or other interest in the Purchased Assets, if any, as such lien, claim, encumbrance, or other interest may have been recorded or may otherwise exist.

12. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing a lien, claim, encumbrance, or other interest in the Sellers or the Purchased Assets (other than Permitted Encumbrances) shall not have delivered to the Sellers prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens, claims, encumbrances, or other interests, which the person or entity has with respect to the Sellers or the Purchased Assets or otherwise, then (a) the Sellers are authorized and directed to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Sellers or the Purchased Assets, and (b) the Purchaser is authorized to file, register, or otherwise record a certified copy of this Order, which

shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever in the Sellers or the Purchased Assets.

13. All persons or entities in possession of any of the Purchased Assets are directed to surrender possession of such Purchased Assets to the Purchaser or its respective designees at the time of Closing of the 363 Transaction.

14. Following the Closing of the 363 Transaction, no holder of any lien, claim, encumbrance, or other interest (other than Permitted Encumbrances) shall interfere with the Purchaser's title to, or use and enjoyment of, the Purchased Assets based on, or related to, any such lien, claim, encumbrance, or other interest, or based on any actions the Debtors may take in their chapter 11 cases.

15. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Purchaser in accordance with the MPA and this Order; *provided, however*, that the foregoing restriction shall not prevent any person or entity from appealing this Order or opposing any appeal of this Order.

16. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these chapter 11 cases or the consummation of the 363 Transaction contemplated by the MPA.

17. From and after the Closing, the Purchaser shall comply with the certification, reporting, and recall requirements of the National Traffic and Motor Vehicle Safety Act, as amended and recodified, including by the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety

Code, and similar Laws, in each case, to the extent applicable in respect of motor vehicles, vehicles, motor vehicle equipment, and vehicle parts manufactured or distributed by the Sellers prior to the Closing.

18. Notwithstanding anything to the contrary in this Order or the MPA, (a) any Purchased Asset that is subject to any mechanic's, materialman's, laborer's, workmen's, repairman's, carrier's liens and other similar Encumbrances arising by operation of law or statute in the Ordinary Course of Business for amounts that are not delinquent or that are being contested in good faith by appropriate proceedings, or any lien for Taxes, the validity or amount of which is being contested in good faith by appropriate proceedings, and statutory liens for current Taxes not yet due, payable, or delinquent (or which may be paid without interest or penalties) shall continue to be subject to such lien after the Closing Date if and to the extent that such lien (i) is valid, perfected and enforceable as of the Commencement Date (or becomes valid, perfected and enforceable after the Commencement Date as permitted by section 546(b) or 362(b)(18) of the Bankruptcy Code), (ii) could not be avoided by any Debtor under sections 544 to 549, inclusive, of the Bankruptcy Code or otherwise, were the Closing not to occur; and (iii) the Purchased Asset subject to such lien could not be sold free and clear of such lien under applicable non-bankruptcy law, and (b) any Liability as of the Closing Date that is secured by a lien described in clause (a) above (such lien, a "**Continuing Lien**") that is not otherwise an Assumed Liability shall constitute an Assumed Liability with respect to which there shall be no recourse to the Purchaser or any property of the Purchaser other than recourse to the property subject to such Continuing Lien. The Purchased Assets are sold free and clear of any reclamation rights, *provided, however*, that nothing, in this Order or the MPA shall in any way impair the right of any claimant against the Debtors with respect to any alleged reclamation right to the extent such reclamation right is not subject to the prior rights of a holder of a security interest in

the goods or proceeds with respect to which such reclamation right is alleged, or impair the ability of a claimant to seek adequate protection against the Debtors with respect to any such alleged reclamation right. Further, nothing in this Order or the MPA shall prejudice any rights, defenses, objections or counterclaims that the Debtors, the Purchaser, the U.S. Treasury, EDC, the Creditors' Committee or any other party in interest may have with respect to the validity or priority of such asserted liens or rights, or with respect to any claim for adequate protection.

Approval of the UAW Retiree Settlement Agreement

19. The UAW Retiree Settlement Agreement, the transactions contemplated therein, and the terms and conditions thereof, are fair, reasonable, and in the best interests of the retirees, and are approved. The Debtors, the Purchaser, and the UAW are authorized and directed to perform their obligations under, or in connection with, the implementation of the UAW Retiree Settlement Agreement and to comply with the terms of the UAW Retiree Settlement Agreement, including the obligation of the Purchaser to reimburse the UAW for certain expenses relating to the 363 Transaction and the transition to the New VEBA arrangements. The amendments to the Trust Agreement (as defined in the UAW Retiree Settlement Agreement) set forth on Exhibit E to the UAW Retiree Settlement Agreement, are approved, and the Trust Agreement is reformed accordingly.

20. In accordance with the terms of the UAW Retiree Settlement Agreement, (I) as of the Closing, there shall be no requirement to amend the Pension Plan as set forth in section 15 of the Henry II Settlement (as such terms are defined in the UAW Retiree Settlement Agreement); (II) on the later of December 31, 2009, or the Closing of the 363 Transaction (the "**Implementation Date**"), (i) the committee and the trustees of the Existing External VEBA (as defined in the UAW Retiree Settlement Agreement) are directed to transfer to the New VEBA all assets and liabilities of the Existing External VEBA and to terminate the Existing External

VEBA within fifteen (15) days thereafter, as provided under Section 12.C of the UAW Retiree Settlement Agreement, (ii) the trustee of the Existing Internal VEBA is directed to transfer to the New VEBA the UAW Related Account's share of assets in the Existing Internal VEBA within ten (10) business days thereafter as provided in Section 12.B of the UAW Retiree Settlement Agreement, and, upon the completion of such transfer, the Existing Internal VEBA shall be deemed to be amended to terminate participation and coverage regarding Retiree Medical Benefits for the Class and the Covered Group, effective as of the Implementation Date (each as defined in the UAW Retiree Settlement Agreement); and (III) all obligations of the Purchaser and the Sellers to provide Retiree Medical Benefits to members of the Class and Covered Group shall be governed by the UAW Retiree Settlement Agreement, and, in accordance with section 5.D of the UAW Retiree Settlement Agreement, all provisions of the Purchaser's Plan relating to Retiree Medical Benefits for the Class and/or the Covered Group shall terminate as of the Implementation Date or otherwise be amended so as to be consistent with the UAW Retiree Settlement Agreement (as each term is defined in the UAW Retiree Settlement Agreement), and the Purchaser shall not thereafter have any such obligations as set forth in Section 5.D of the UAW Retiree Settlement Agreement.

Approval of GM's Assumption of the UAW Claims Agreement

21. Pursuant to section 365 of the Bankruptcy Code, GM's assumption of the UAW Claims Agreement is approved, and GM, the UAW, and the Class Representatives are authorized and directed to perform their obligations under, or in connection with, the implementation of the UAW Claims Agreement and comply with the terms of the UAW Claims Agreement.

Assumption and Assignment to the Purchaser of Assumable Executory Contracts

22. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code and subject to and conditioned upon (a) the Closing of the 363 Transaction, (b) the occurrence of the Assumption Effective Date, and (c) the resolution of any relevant Limited Contract Objections, other than a Cure Objection, by order of this Court overruling such objection or upon agreement of the parties, the Debtors' assumption and assignment to the Purchaser of each Assumable Executory Contract (including, without limitation, for purposes of this paragraph 22) the UAW Collective Bargaining Agreement) is approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are deemed satisfied.

23. The Debtors are authorized and directed in accordance with sections 105(a) and 365 of the Bankruptcy Code to (i) assume and assign to the Purchaser, effective as of the Assumption Effective Date, as provided by, and in accordance with, the Sale Procedures Order, the Modified Assumption and Assignment Procedures, and the MPA, those Assumable Executory Contracts that have been designated by the Purchaser for assumption pursuant to sections 6.6 and 6.31 of the MPA and that are not subject to a Limited Contract Objection other than a Cure Objection, free and clear of all liens, claims, encumbrances, or other interests of any kind or nature whatsoever (other than Permitted Encumbrances), including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities, and (ii) execute and deliver to the Purchaser such documents or other instruments as the Purchaser reasonably deems may be necessary to assign and transfer such Assumable Executory Contracts and Assumed Liabilities to the Purchaser. The Purchaser shall Promptly Pay (as defined below) the following (the "**Cure Amount**"): (a) all amounts due under such Assumable Executory Contract as of the Commencement Date as reflected on the website established by the Debtors (the "**Contract Website**"), which is referenced and is accessible as set forth in the Assumption and Assignment

Notice or as otherwise agreed to in writing by an authorized officer of the parties (for this purpose only, Susanna Webber shall be deemed an authorized officer of the Debtors) (the "**Prepetition Cure Amount**"), less amounts, if any, paid after the Commencement Date on account of the Prepetition Cure Amount (such net amount, the "**Net Prepetition Cure Amount**"), plus (b) any such amount past due and owing as of the Assumption Effective Date, as required under the Modified Assumption and Assignment Procedures, exclusive of the Net Prepetition Cure Amount. For the avoidance of doubt, all of the Debtors' rights to assert credits, chargebacks, setoffs, rebates, and other claims under the Purchased Contracts are purchased by and assigned to the Purchaser as of the Assumption Effective Date. As used herein, "**Promptly Pay**" means (i) with respect to any Cure Amount (or portion thereof, if any) which is undisputed, payment as soon as reasonably practicable, but not later than five (5) business days after the Assumption Effective Date, and (ii) with respect to any Cure Amount (or portion thereof, if any) which is disputed, payment as soon as reasonably practicable, but not later than five (5) business days after such dispute is resolved or such later date upon agreement of the parties and, in the event Bankruptcy Court approval is required, upon entry of a final order of the Bankruptcy Court. On and after the Assumption Effective Date, the Purchaser shall (i) perform any nonmonetary defaults that are required under section 365(b) of the Bankruptcy Code; *provided* that such defaults are undisputed or directed by this Court and are timely asserted under the Modified Assumption and Assignment Procedures, and (ii) pay all undisputed obligations and perform all obligations that arise or come due under each Assumable Executory Contract in the ordinary course. Notwithstanding any provision in this Order to the contrary, the Purchaser shall not be obligated to pay any Cure Amount or any other amount due with respect to any Assumable Executory Contract before such amount becomes due and payable under the applicable payment terms of such Contract.

24. The Debtors shall make available a writing, acknowledged by the Purchaser, of the assumption and assignment of an Assumable Executory Contract and the effective date of such assignment (which may be a printable acknowledgment of assignment on the Contract Website). The Assumable Executory Contracts shall be transferred and assigned to, pursuant to the Sale Procedures Order and the MPA, and thereafter remain in full force and effect for the benefit of, the Purchaser, notwithstanding any provision in any such Assumable Executory Contract (including those of the type described in sections 365(b)(2), (e)(1), and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Sellers shall be relieved from any further liability with respect to the Assumable Executory Contracts after such assumption and assignment to the Purchaser. Except as may be contested in a Limited Contract Objection, each Assumable Executory Contract is an executory contract or unexpired lease under section 365 of the Bankruptcy Code and the Debtors may assume each of their respective Assumable Executory Contracts in accordance with section 365 of the Bankruptcy Code. Except as may be contested in a Limited Contract Objection other than a Cure Objection, the Debtors may assign each Assumable Executory Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Assumable Executory Contract that prohibit or condition the assignment of such Assumable Executory Contract or terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Assumable Executory Contract, constitute unenforceable antiassignment provisions which are void and of no force and effect in connection with the transactions contemplated hereunder. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser of each Assumable Executory Contract have been satisfied, and, pursuant to section 365(k) of the Bankruptcy Code, the

Debtors are hereby relieved from any further liability with respect to the Assumable Executory Contracts, including, without limitation, in connection with the payment of any Cure Amounts related thereto which shall be paid by the Purchaser. At such time as provided in the Sale Procedures Order and the MPA, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title, and interest of each Purchased Contract. With respect to leases of personal property that are true leases and not subject to recharacterization, nothing in this Order or the MPA shall transfer to the Purchaser an ownership interest in any leased property not owned by a Debtor. Any portion of any of the Debtors' unexpired leases of nonresidential real property that purport to permit the respective landlords thereunder to cancel the remaining term of any such leases if the Sellers discontinue their use or operation of the Leased Real Property are void and of no force and effect and shall not be enforceable against the Purchaser, its assignees and sublessees, and the landlords under such leases shall not have the right to cancel or otherwise modify such leases or increase the rent, assert any Claim, or impose any penalty by reason of such discontinuation, the Sellers' cessation of operations, the assignment of such leases to the Purchaser, or the interruption of business activities at any of the leased premises.

25. Except in connection with any ongoing Limited Contract Objection, each non-Debtor party to an Assumable Executory Contract is forever barred, estopped, and permanently enjoined from (a) asserting against the Debtors or the Purchaser, their successors or assigns, or their respective property, any default arising prior to, or existing as of, the Commencement Date, or, against the Purchaser, any counterclaim, defense, or setoff (other than defenses interposed in connection with, or related to, credits, chargebacks, setoffs, rebates, and other claims asserted by the Sellers or the Purchaser in its capacity as assignee), or other claim asserted or assertable against the Sellers and (b) imposing or charging against the Debtors, the

Purchaser, or its Affiliates any rent accelerations, assignment fees, increases, or any other fees as a result of the Sellers' assumption and assignment to the Purchaser of the Assumable Executory Contracts. The validity of such assumption and assignment of the Assumable Executory Contracts shall not be affected by any dispute between the Sellers and any non-Debtor party to an Assumable Executory Contract.

26. Except as expressly provided in the MPA or this Order, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Liabilities other than certain Cure Amounts as provided in the MPA, and all holders of such claims are forever barred and estopped from asserting such claims against the Debtors, their successors or assigns, and their estates.

27. The failure of the Sellers or the Purchaser to enforce at any time one or more terms or conditions of any Assumable Executory Contract shall not be a waiver of such terms or conditions, or of the Sellers' and the Purchaser's rights to enforce every term and condition of the Assumable Executory Contracts.

28. The authority hereunder for the Debtors to assume and assign an Assumable Executory Contract to the Purchaser includes the authority to assume and assign an Assumable Executory Contract, as amended.

29. Upon the assumption by a Debtor and the assignment to the Purchaser of any Assumable Executory Contract and the payment of the Cure Amount in full, all defaults under the Assumable Executory Contract shall be deemed to have been cured, and any counterparty to such Assumable Executory Contract shall be prohibited from exercising any rights or remedies against any Debtor or non-Debtor party to such Assumable Executory Contract based on an asserted default that occurred on, prior to, or as a result of, the Closing, including the type of default specified in section 365(b)(1)(A) of the Bankruptcy Code.

30. The assignments of each of the Assumable Executory Contracts are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

31. Entry by GM into the Deferred Termination Agreements with accepting dealers is hereby approved. Executed Deferred Termination Agreements represent valid and binding contracts, enforceable in accordance with their terms.

32. Entry by GM into the Participation Agreements with accepting dealers is hereby approved and the offer by GM of entry into the Participation Agreements and entry into the Participation Agreements was appropriate and not the product of coercion. The Court makes no finding as to whether any specific provision of any Participation Agreement governing the obligations of Purchaser and its dealers is enforceable under applicable provisions of state law. Any disputes that may arise under the Participation Agreements shall be adjudicated on a case by case basis in an appropriate forum other than this Court.

33. Nothing contained in the preceding two paragraphs shall impact the authority of any state or of the federal government to regulate Purchaser subsequent to the Closing.

34. Notwithstanding any other provision in the MPA or this Order, no assignment of any rights and interests of the Debtors in any federal license issued by the Federal Communications Commission ("**FCC**") shall take place prior to the issuance of FCC regulatory approval for such assignment pursuant to the Communications Act of 1934, and the rules and regulations promulgated thereunder.

TPC Property

35. The TPC Participation Agreement and the other TPC Operative Documents are financing transactions secured to the extent of the TPC Value (as hereinafter defined) and shall be Retained Liabilities.

36. As a result of the Debtors' interests in the TPC Property being transferred to the Purchaser free and clear of all liens, claims, interests, and encumbrances (other than Permitted Encumbrances), including, without limitation, the TPC Lenders' Liens and Claims, pursuant to section 363(e) of the Bankruptcy Code, the TPC Lenders shall have an allowed secured claim in a total amount equal to the fair market value of the TPC Property on the Commencement Date under section 506 of the Bankruptcy Code (the "**TPC Value**"), as determined at a valuation hearing conducted by this Court or by mutual agreement of the Debtors, the Purchaser, and the TPC Lenders (such claim, the "**TPC Secured Claim**"). Either the Debtors, the Purchaser, the TPC Lenders, or the Creditors' Committee may file a motion with this Court to determine the TPC Value on twenty (20) days notice.

37. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection for the TPC Secured Claim and for the sole benefit of the TPC Lenders, at the Closing or as soon as commercially practicable thereafter, but in any event not later than five (5) business days after the Closing, the Purchaser shall place $90,700,000 (the "**TPC Escrow Amount**") in cash into an interest-bearing escrow account (the "**TPC Escrow Account**") at a financial institution selected by the Purchaser and acceptable to the other parties (the "**Escrow Bank**"). Interest earned on the TPC Escrow Amount from the date of deposit through the date of the disposition of the proceeds of such account (the "**TPC Escrow Interest**") will follow principal, such that interest earned on the amount of cash deposited into the TPC Escrow Account equal to the TPC Value shall be paid to the TPC Lenders and interest earned on the balance of the TPC Escrow Amount shall be paid to the Purchaser.

38. Promptly after the determination of the TPC Value, an amount of cash equal to the TPC Secured Claim plus the TPC Lenders' pro rata share of the TPC Escrow Interest shall be released from the TPC Escrow Account and paid to the TPC Lenders (the "**TPC**

Payment") without further order of this Court. If the TPC Value is less than $90,700,000, the TPC Lenders shall have, in addition to the TPC Secured Claim, an aggregate allowed unsecured claim against GM's estate equal to the lesser of (i) $45,000,000 and (ii) the difference between $90,700,000 and the TPC Value (the "**TPC Unsecured Claim**").

39. If the TPC Value exceeds $90,700,000, the TPC Lenders shall be entitled to assert a secured claim against GM's estate to the extent the TPC Lenders would have an allowed claim for such excess under section 506 of the Bankruptcy Code (the "**TPC Excess Secured Claim**"); *provided, however*, that any TPC Excess Secured Claim shall be paid from the consideration of the 363 Transaction as a secured claim thereon and shall not be payable from the proceeds of the Wind-Down Facility; *and provided further, however*, that the Debtors, the Creditors' Committee, and all parties in interest shall have the right to contest the allowance and amount of the TPC Excess Secured Claim under section 506 of the Bankruptcy Code (other than to contest the TPC Value as previously determined by the Court). All parties' rights and arguments respecting the determination of the TPC Secured Claim are reserved; *provided, however*, that in consideration of the settlement contained in these paragraphs, the TPC Lenders waive any legal argument that the TPC Lenders are entitled to a secured claim equal to the face amount of their claim under section 363(f)(3) or any other provision of the Bankruptcy Code solely as a matter of law, including, without limitation, on the grounds that the Debtors are required to pay the full face amount of the TPC Lenders' secured claims in order to transfer, or as a result of the transfer of, the TPC Property to the Purchaser. After the TPC Payment is made, any funds remaining in the TPC Escrow Account plus the Purchasers' pro rata share of the TPC Escrow Interest shall be released and paid to the Purchaser without further order of this Court. Upon the receipt of the TPC Payment by the TPC Lenders, other than any right to payment from GM on account of the TPC Unsecured Claim and the TPC Excess Secured Claim, the TPC

Lenders' Claims relating to the TPC Property shall be deemed fully satisfied and discharged, including, without limitation, any claims the TPC Lenders might have asserted against the Purchaser relating to the TPC Property, the TPC Participation Agreement, or the TPC Operative Documents. For the avoidance of doubt, any and all claims of the TPC Lenders arising from or in connection with the TPC Property, the TPC Participation Agreement, or the TPC Operative Documents shall be payable solely from the TPC Escrow Account or GM and shall be nonrecourse to the Purchaser.

40. The TPC Lenders shall not be entitled to payment of any fees, costs, or expenses (including legal fees) except to the extent that the TPC Value results in a TPC Excess Secured Claim and is thereby oversecured under the Bankruptcy Code and such claim is allowed by the Court as a secured claim under section 506 of the Bankruptcy Code.

41. In connection with the foregoing, and pursuant to Section 11.2 of the TPC Trust Agreement, GM, as the sole Certificate Holder and Beneficiary under the TPC Trust, together with the consent of GM as the Lessee, effective as of the date of the Closing, (a) exercises its election to terminate the TPC Trust and (b) in connection therewith, assumes all of the obligations of the TPC Trust and TPC Trustee under or contemplated by the TPC Operative Documents to which the TPC Trust or TPC Trustee is a party and all other obligations of the TPC Trust or TPC Trustee incurred under the TPC Trust Agreement (other than obligations set forth in clauses (i) through (iii) of the second sentence of Section 7.1 of the TPC Trust Agreement).

42. As a condition precedent to the 363 Transaction, in connection with the termination of the TPC Trust, effective as of the date of the Closing, all of the assets of the TPC Trust (the "**TPC Trust Assets**") shall be distributed to GM, as sole Certificate Holder and beneficiary under the TPC Trust, including, without limitation, the following:

(i) Industrial Development Revenue Real Property Note (General Motors Project) Series 1999-I, dated November 18, 1999, in the principal amount of $21,700,000, made by the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, to PVV Southpoint 14, LLC, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds (the "**TPC Tennessee Ground Lease**");

(ii) Real Property Lease Agreement dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Lessor, and PVV Southpoint 14, LLC, as Lessee, recorded as JW1262 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Real Property Lease dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1267 in the records of the Shelby County Register of Deeds;

(iii) Deed of Trust dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Grantor, in favor of Mid-South Title Corporation, as Trustee, for the benefit of PVV Southpoint 14, LLC, Beneficiary, recorded as JW1263 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds;

(iv) Assignment of Rents and Lease dated as of November 18, 1999, between the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, as Assignor, and PVV Southpoint 14, LLC, as Assignee, recorded as JW1264 in the records of the Shelby County Register of Deeds, as assigned by Assignment and Assumption of Loan and Loan Documents dated as of November 18, 1999, between PVV Southpoint 14, LLC, as Assignor, to the TPC Trustee of the TPC Trust, as Assignee, recorded as JW1268 in the records of the Shelby County Register of Deeds;

(v) The Tennessee Master Lease (as defined in the TPC Participation Agreement);

(vi) A certain tract of land being known and designated as Lot 1, as shown on a Subdivision Plat entitled "Final Plat – Lot 1, Whitemarsh Associates, LLC Property," which Plat is recorded among the Land Records of Baltimore County in Plat Book SM No. 71 at folio 144, Maryland, together with a certain tract of land being known and designated as "1.1865 Acre of Highway Widening," as shown on a Subdivision Plat entitled "Final Plat – Lot 1, Whitemarsh Associates, LLC Property," which Plat is recorded among the Land Records of Baltimore County in Plat Book SM No. 71 at folio 144, Baltimore, Maryland, saving and excepting from the above described property all that land conveyed to the State of Maryland to the use of the State Highway Administration of the Department of Transportation dated November 24, 2003, and

recorded among the Land Records of Baltimore County in Liber 19569, folio 074, Maryland, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way, including, without limitation, those easements benefiting Parcel 1 set forth in the Declaration and Agreement Respecting Easements, Restrictions and Operations, between the TPC Trust, GM, and Whitemarsh Associates, LLC, recorded among the Land Records of Baltimore County in Liber 14019, folio 430, as amended (collectively, the "**Maryland Property**");

(vii) alternatively to the transfer of a direct interest in the Maryland Property pursuant to item (vi) above, if such documents are still extant, the following interests shall be transferred: (a) Ground Lease Agreement dated as of September 8, 1999, between the TPC Trustee of the TPC Trust. as lessor, and Maryland Economic Development Corporation, as lessee, recorded among the Land Records of Baltimore County in Liber 14019, folio 565, (b) Sublease Agreement dated as of September 8, 1999, between the Maryland Economic Development Corporation, as sublessor, and the TPC Trustee of the TPC Trust, as sublessee, recorded among the Land Records of Baltimore County in Liber 14019, folio 589, together with (c) all agreements, loan agreements, notes, rights, obligations, and interests held by the TPC Trustee of the TPC Trust and/or issued by the TPC Trustee of the TPC Trust in connection therewith; and

(viii) The Maryland Master Lease (as defined in the TPC Participation Agreement).

43. As a result of the distribution of the TPC Trust Assets, effective as of the date of the Closing, title to the leasehold interest of the TPC Trustee of the TPC Trust under the TPC Tennessee Ground Lease and the lessor's interest under the Tennessee Master Lease shall be held by GM, as are the lessor's and lessee's interests under the Tennessee Master Lease, and as permitted by the TPC Trust Agreement, the Tennessee Master Lease shall hereby be terminated, and GM shall succeed to all rights of the lessor thereunder to the property leased thereby, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way.

44. As a result of the distribution of the TPC Trust Assets, effective as of the date of the Closing, title to the Maryland Property, the lessor's and lessee's interests under the Maryland Master Lease shall be held by GM, and as permitted by the TPC Trust Agreement, the Maryland Master Lease shall hereby be terminated, and GM shall succeed to all rights of the

lessor thereunder to the property leased thereby, together with all rights, easements, covenants, licenses, and appurtenances associated with the ownership thereof in any way.

45. All of the TPC Trust Assets and the TPC Property are Purchased Assets under the MPA and shall be transferred by GM pursuant thereto to the Purchaser free and clear of all liens, claims, encumbrances, and interests (other than Permitted Encumbrances), including, without limitation, any liens, claims, encumbrances, and interests of the TPC Lenders. To the extent any of the TPC Trust Assets are executory contracts and unexpired leases, they shall be Assumable Executory Contracts, which shall be assumed by GM and assigned to Purchaser pursuant to section 365 of the Bankruptcy Code and the Sale Procedures Order.

Additional Provisions

46. Except for the Assumed Liabilities expressly set forth in the MPA, none of the Purchaser, its present or contemplated members or shareholders, its successors or assigns, or any of their respective affiliates or any of their respective agents, officials, personnel, representatives, or advisors shall have any liability for any claim that arose prior to the Closing Date, relates to the production of vehicles prior to the Closing Date, or otherwise is assertable against the Debtors or is related to the Purchased Assets prior to the Closing Date. The Purchaser shall not be deemed, as a result of any action taken in connection with the MPA or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the Purchased Assets, to: (i) be a legal successor, or otherwise be deemed a successor to the Debtors (other than with respect to any obligations arising under the Purchased Assets from and after the Closing); (ii) have, de facto or otherwise, merged with or into the Debtors; or (iii) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors. Without limiting the foregoing, the Purchaser shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims,

including, but not limited to, under any theory of successor or transferee liability, de facto merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted, or unasserted, fixed or contingent, liquidated or unliquidated.

47. Effective upon the Closing and except as may be otherwise provided by stipulation filed with or announced to the Court with respect to a specific matter or an order of the Court, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding against the Purchaser, its present or contemplated members or shareholders, its successors and assigns, or the Purchased Assets, with respect to any (i) claim against the Debtors other than Assumed Liabilities, or (ii) successor or transferee liability of the Purchaser for any of the Debtors, including, without limitation, the following actions: (a) commencing or continuing any action or other proceeding pending or threatened against the Debtors as against the Purchaser, or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Debtors as against the Purchaser, its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (c) creating, perfecting, or enforcing any lien, claim, interest, or encumbrance against the Debtors as against the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (d) asserting any setoff, right of subrogation, or recoupment of any kind for any obligation of any of the Debtors as against any obligation due the Purchaser or its successors, assigns, affiliates, or their respective assets, including the Purchased Assets; (e) commencing or continuing any action, in any manner or place, that does not comply, or is inconsistent with, the provisions of this Order or other orders of this Court, or

the agreements or actions contemplated or taken in respect thereof; or (f) revoking, terminating, or failing or refusing to renew any license, permit, or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with such assets. Notwithstanding the foregoing, a relevant taxing authority's ability to exercise its rights of setoff and recoupment are preserved.

48. Except for the Assumed Liabilities, or as expressly permitted or otherwise specifically provided for in the MPA or this Order, the Purchaser shall have no liability or responsibility for any liability or other obligation of the Sellers arising under or related to the Purchased Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided in this Order and the MPA, the Purchaser shall not be liable for any claims against the Sellers or any of their predecessors or Affiliates, and the Purchaser shall have no successor, transferee, or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor, or transferee liability, labor law, de facto merger, or substantial continuity, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated, with respect to the Sellers or any obligations of the Sellers arising prior to the Closing.

49. The Purchaser has given fair and substantial consideration under the MPA for the benefit of the holders of liens, claims, encumbrances, or other interests. The consideration provided by the Purchaser for the Purchased Assets under the MPA is greater than the liquidation value of the Purchased Assets and shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

50. The consideration provided by the Purchaser for the Purchased Assets under the MPA is fair and reasonable, and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

51. If there is an Agreed G Transaction (determined no later than the due date, with extensions, of GM's tax return for the taxable year in which the 363 Transaction occurs), (i) the MPA shall, and hereby does, constitute a "plan" of GM and the Purchaser solely for purposes of sections 368 and 354 of the Tax Code, and (ii) the 363 Transaction, as set forth in the MPA, and the subsequent liquidation of the Sellers, are intended to constitute a tax reorganization of GM pursuant to section 368(a)(1)(G) of the Tax Code.

52. This Order (a) shall be effective as a determination that, except for the Assumed Liabilities, at Closing, all liens, claims, encumbrances, and other interests of any kind or nature whatsoever existing as to the Sellers with respect to the Purchased Assets prior to the Closing (other than Permitted Encumbrances) have been unconditionally released and terminated, and that the conveyances described in this Order have been effected, and (b) shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets.

53. Each and every federal, state, and local governmental agency or department is authorized to accept any and all documents and instruments necessary or appropriate to consummate the transactions contemplated by the MPA.

54. Any amounts that become payable by the Sellers to the Purchaser pursuant to the MPA (and related agreements executed in connection therewith, including, but not limited to, any obligation arising under Section 8.2(b) of the MPA) shall (a) constitute administrative expenses of the Debtors' estates under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code and (b) be paid by the Debtors in the time and manner provided for in the MPA without further Court order.

55. The transactions contemplated by the MPA are undertaken by the Purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and were negotiated by the parties at arm's length, and, accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the 363 Transaction shall not affect the validity of the 363 Transaction (including the assumption and assignment of any of the Assumable Executory Contracts and the UAW Collective Bargaining Agreement), unless such authorization is duly stayed pending such appeal. The Purchaser is a purchaser in good faith of the Purchased Assets and the Purchaser and its agents, officials, personnel, representatives, and advisors are entitled to all the protections afforded by section 363(m) of the Bankruptcy Code.

56. The Purchaser is assuming the obligations of the Sellers pursuant to and subject to conditions and limitations contained in their express written warranties, which were delivered in connection with the sale of vehicles and vehicle components prior to the Closing of the 363 Transaction and specifically identified as a "warranty." The Purchaser is not assuming responsibility for Liabilities contended to arise by virtue of other alleged warranties, including implied warranties and statements in materials such as, without limitation, individual customer communications, owner's manuals, advertisements, and other promotional materials, catalogs, and point of purchase materials. Notwithstanding the foregoing, the Purchaser has assumed the

Sellers' obligations under state "lemon law" statutes, which require a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty, as defined in the applicable statute, after a reasonable number of attempts as further defined in the statute, and other related regulatory obligations under such statutes.

57. Subject to further Court order and consistent with the terms of the MPA and the Transition Services Agreement, the Debtors and the Purchaser are authorized to, and shall, take appropriate measures to maintain and preserve, until the consummation of any chapter 11 plan for the Debtors, (a) the books, records, and any other documentation, including tapes or other audio or digital recordings and data in, or retrievable from, computers or servers relating to or reflecting the records held by the Debtors or their affiliates relating to the Debtors' business, and (b) the cash management system maintained by the Debtors prior to the Closing, as such system may be necessary to effect the orderly administration of the Debtors' estates.

58. The Debtors are authorized to take any and all actions that are contemplated by or in furtherance of the MPA, including transferring assets between subsidiaries and transferring direct and indirect subsidiaries between entities in the corporate structure, with the consent of the Purchaser.

59. Upon the Closing, the Purchaser shall assume all liabilities of the Debtors arising out of, relating to, in respect of, or in connection with workers' compensation claims against any Debtor, except for workers' compensation claims against the Debtors with respect to Employees residing in or employed in, as the case may be as defined by applicable law, the states of Alabama, Georgia, New Jersey, and Oklahoma.

60. During the week after Closing, the Purchaser shall send an e-mail to the Debtors' customers for whom the Debtors have usable e-mail addresses in their database, which will provide information about the Purchaser and procedures for consumers to opt out of being

contacted by the Purchaser for marketing purposes. For a period of ninety (90) days following the Closing Date, the Purchaser shall include on the home page of GM's consumer web site (www.gm.com) a conspicuous disclosure of information about the Purchaser, its procedures for consumers to opt out of being contacted by the Purchaser for marketing purposes, and a notice of the Purchaser's new privacy statement. The Debtors and the Purchaser shall comply with the terms of established business relationship provisions in any applicable state and federal telemarketing laws. The Dealers who are parties to Deferred Termination Agreements shall not be required to transfer personally identifying information in violation of applicable law or existing privacy policies.

61. Nothing in this Order or the MPA releases, nullifies, or enjoins the enforcement of any Liability to a governmental unit under Environmental Laws or regulations (or any associated Liabilities for penalties, damages, cost recovery, or injunctive relief) that any entity would be subject to as the owner, lessor, or operator of property after the date of entry of this Order. Notwithstanding the foregoing sentence, nothing in this Order shall be interpreted to deem the Purchaser as the successor to the Debtors under any state law successor liability doctrine with respect to any Liabilities under Environmental Laws or regulations for penalties for days of violation prior to entry of this Order. Nothing in this paragraph should be construed to create for any governmental unit any substantive right that does not already exist under law.

62. Nothing contained in this Order or in the MPA shall in any way (i) diminish the obligation of the Purchaser to comply with Environmental Laws, or (ii) diminish the obligations of the Debtors to comply with Environmental Laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. The definition of Environmental Laws in the MPA shall be amended to delete the words "in existence on the date of the Original Agreement." For purposes of clarity, the exclusion of asbestos liabilities in

section 2.3(b)(x) of the MPA shall not be deemed to affect coverage of asbestos as a Hazardous Material with respect to the Purchaser's remedial obligations under Environmental Laws.

63. No law of any state or other jurisdiction relating to bulk sales or similar laws shall apply in any way to the transactions contemplated by the 363 Transaction, the MPA, the Motion, and this Order.

64. The Debtors shall comply with their tax obligations under 28 U.S.C. § 960, except to the extent that such obligations are Assumed Liabilities.

65. Notwithstanding anything contained in their respective organizational documents or applicable state law to the contrary, each of the Debtors is authorized and directed, upon and in connection with the Closing, to change their respective names, and any amendment to the organizational documents (including the certificate of incorporation) of any of the Debtors to effect such a change is authorized and approved, without Board or shareholder approval. Upon any such change with respect to GM, the Debtors shall file with the Court a notice of change of case caption within two (2) business days of the Closing, and the change of case caption for these chapter 11 cases shall be deemed effective as of the Closing.

66. The terms and provisions of the MPA and this Order shall inure to the benefit of the Debtors, their estates, and their creditors, the Purchaser, and their respective agents, officials, personnel, representatives, and advisors.

67. The failure to specifically include any particular provisions of the MPA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the MPA be authorized and approved in its entirety, except as modified herein.

68. The MPA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification,

amendment, or supplement does not have a material adverse effect on the Debtors' estates. Any such proposed modification, amendment, or supplement that does have a material adverse effect on the Debtors' estates shall be subject to further order of the Court, on appropriate notice.

69. The provisions of this Order are nonseverable and mutually dependent on each other.

70. As provided in Fed.R.Bankr.P. 6004(h) and 6006(d), this Order shall not be stayed for ten days after its entry, and instead shall be effective as of 12:00 noon, EDT, on Thursday, July 9, 2009. The Debtors and the Purchaser are authorized to close the 363 Transaction on or after 12:00 noon on Thursday, July 9. Any party objecting to this Order must exercise due diligence in filing any appeal and pursuing a stay or risk its appeal being foreclosed as moot in the event Purchaser and the Debtors elect to close prior to this Order becoming a Final Order.

Deleted: Pursuant to Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed for ten days after its entry and shall be effective immediately upon entry, and the Debtors and the Purchaser are authorized to close the 363 Transaction immediately upon entry of this Order.

71. This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the MPA, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, including the Deferred Termination Agreements, in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchased Assets to the Purchaser, (b) compel delivery of the purchase price or performance of other obligations owed by or to the Debtors, (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, (e) protect the Purchaser against any of the Retained Liabilities or the assertion of any lien, claim, encumbrance, or other interest, of any kind or nature whatsoever, against the Purchased Assets, and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements. The Court does not retain jurisdiction to hear disputes arising in connection with the application of the Participation

Agreements, stockholder agreements or other documents concerning the corporate governance of the Purchaser, and documents governed by foreign law, which disputes shall be adjudicated as

necessary under applicable law in any other court or administrative agency of competent jurisdiction.

Dated: New York, York
July **5**, 2009

s/Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE

C
Only the Westlaw citation is currently available.

United States District Court,
W.D. New York.
HSBC BANK USA, NATIONAL ASSOCIATION, Appellant,
v.
ADELPHIA COMMUNICATIONS CORPORATION, et al., Appellees.
Key Bank National Association, Appellant,
v.
Adelphia Communications Corporation, et al., Appellees.
The Official Committee of Unsecured Creditors of Adelphia Communications Corporation, Appellant,
v.
Fleet National Bank et al., Appellees.
Nos. 07-CV-553A, 07-CV-555A, 07-CV-554A.

Feb. 12, 2009.

West KeySummary
Fraudulent Conveyances 186 225

186 Fraudulent Conveyances
186III Remedies of Creditors and Purchasers
186III(A) Persons Entitled to Assert Invalidity
186k225 k. Estoppel and Waiver. Most Cited Cases
The loan purchaser ratified the transactions that they contended should have been avoided as fraudulent transfers. The purchaser was a communications company that purchased two loans and later filed for bankruptcy protection. The loans were in connection with a limited partnership that owned a professional hockey team and the arena they played in. The communications company released its liens on the hockey team assets in favor of the purchaser of the team. The company also agreed that proceeds of the sale could be used to pay off the third loan. The company later asserted that it did not have full knowledge of the transaction and that the waiver and agreement were fraudulent.

Avani Shah, Joanna Rotgers, Roger Netzer, Willkie Farr & Gallagher LLP, New York, NY, William E. Lawson, Aaron, Dautch, Sternberg & Lawson, Buffalo, NY, William S. Thomas, Jr., Nixon Peabody LLP, Rochester, NY, Aaron Mark Bell, David J. Shapiro, Kasowitz, Benson, Torres & Friedman LLP, New York, NY, for Adelphia Communications Corporation, et al.

Angela Z. Miller, William J. Brown, Phillips Lytle LLP, Buffalo, NY, for HSBC Bank USA, National Association.

Mark J. Schlant, Zdarsky, Sawicki & Agostinelli LLP, Buffalo, NY, Walter E. Swearingen, Howard B. Levi, Levi Lubarsky & Feigenbaum LLP, New York, NY, for Fleet National Bank et al.

Alec P. Ostrow, Jocelyn Keynes, Stevens & Lee, P.C., New York, NY, for Key Bank National Association.

DECISION AND ORDER

RICHARD J. ARCARA, Chief Judge.

INTRODUCTION

***1** This is a consolidated appeal from an order of the Bankruptcy Court. Fleet National Bank ("Fleet"), HSBC Bank USA, National Association ("HSBC") and Key Bank National Association ("Key Bank") (collectively, the "Banks"), were lenders to Niagara Frontier Hockey, LP ("NFHLP"). NFHLP owned the Buffalo Sabres, a National Hockey League ("NHL") team, and had interests in the HSBC Arena, the Sabres' home rink.

The Banks funded the construction of the Arena and the operations of NFHLP during the 1990s with three separate loans.

In 2000, Adelphia Communications Corporation ("Adelphia") purchased two of the three Bank loans for a total of $34.1 million. Adelphia filed for bankruptcy protection in June 2002 in the Bankruptcy Court for the Southern District of New York.

In January 2003, NFHLP filed for bankruptcy protection in the Bankruptcy Court for the Western District of New York. The sale of NFHLP's assets was authorized in April 2003, after a hearing in the Bankruptcy Court. Adelphia, NFHLP's single largest secured and non secured creditor, released its liens on the NFHLP assets (which it acquired pursuant to the two purchased loans) "free and clear" in favor of the purchaser. Adelphia also agreed that proceeds of the sale could be used to pay off the third loan.

In July 2003, Adelphia and the Official Committee of Unsecured Creditors of Adelphia Communications Corporation (now Adelphia Recovery Trust) ("the Committee") sued the Banks in the Southern District of New York as an adversary proceeding in the Adelphia bankruptcy. Adelphia and the Committee alleged that the Adelphia funds used to purchase the two loans and pay the principal and interest on the third loan were fraudulent conveyances.

The Banks filed proofs of claim in the NFHLP bankruptcy in the Western District, stating that, to the extent the Committee obtained a judgment on its fraudulent conveyance claims in the Southern District, the Banks had a claim against the NFHLP estates. The NFHLP debtors brought a declaratory judgment action seeking to disallow the Banks' proofs of claim. The Banks filed cross-claims against Adelphia and the Committee asserting various affirmative defenses barring Adelphia's and the Committee's continued prosecution of the fraudulent conveyance claims asserted against the Banks in the Southern District adversary proceeding. All parties cross-moved for summary judgment.

The Bankruptcy Court granted Fleet's motion for summary judgment, but denied all the other motions for summary judgment, without prejudice to such motions being raised again in the Southern District adversary proceeding. These appeals followed.

STATEMENT OF THE FACTS[FN1]

FN1. The facts in this case are some of the most complex that this Court has encountered. In an attempt to make the case more understandable, the Court has tried its best to simplify the facts, while at the same time accurately conveying all the relevant facts necessary for determining the issues presented here.

A. ***The Parties and Other Significant Persons***

1. ***John Rigas and Adelphia Communications Corporation***

John Rigas was one of the founders of Adelphia, which at its peak was the fifth largest cable company in the United States. Rigas and his sons (through a corporation, Patmos, Inc.) became the owners of the Buffalo Sabres and the sole partners of NFHLP in July 2000. In 2004, John Rigas was convicted of bank, wire and securities fraud based on allegations that he concealed $2.3 billion in liabilities from Adelphia investors and used Adelphia funds as his personal funds. He was sentenced to 15 years in federal prison.

2. ***Adelphia Recovery Trust***

***2** The Adelphia Recovery Trust is the successor to

the Official Committee of Unsecured Creditors of Adelphia (hereinafter the "Committee"). For the purposes of the issues presented here, the Committee stands in the shoes of Adelphia and has the same rights, claims and defenses as Adelphia.

3. ***Niagara Frontier Hockey, L.P.***

NFHLP is a Delaware partnership which was formed on March 14, 1988. NFHLP's main assets were the Buffalo Sabres and its interests in the HSBC Arena. NFHLP ran the team and the HSBC Arena through its subsidiaries, including Crossroads Arena LLC ("CALLC") and Buffalo Sabres Concession LLC ("Sabres Concession"). In July 2000, John Rigas and his sons (using Adelphia money), bought out the limited partners of NFHLP.

NFHLP and its subsidiaries filed for bankruptcy protection in the Bankruptcy Court for the Western District of New York in January 2003 (the "NFHLP Bankruptcy"), and the case was assigned to Bankruptcy Judge Michael J. Kaplan.

4. ***Patmos, Inc.***

Patmos, Inc. ("Patmos") is a Delaware corporation which was incorporated on March 4, 1998. John Rigas was President of Patmos and his sons Michael, Timothy and James Rigas were Executive Vice-Presidents. Patmos became the General Partner of NFHLP in July 2000. The shareholders of Patmos consisted only of John Rigas and members of the Rigas family.

5. ***Sabres, Inc.***

Sabres, Inc. (a wholly-owned subsidiary of Adelphia), is a Delaware corporation which was incorporated on May 26, 1995. The sole members of the Board of Directors of Sabres, Inc., in 2000, were John, Michael, Timothy and James Rigas. Between the years 1995 and 2000, Sabres, Inc. was the holder of significant economic interests in NFHLP and was NFHLP's largest creditor. Sabres, Inc. filed for bankruptcy protection in June 2002.

6. ***The Banks***

The Banks are national banking associations. They were NFHLP's major lenders from approximately 1995 to 2000, particularly in connection with the construction of the HSBC Arena in downtown Buffalo.

7. ***The Buffalo Sabres Loans***

On May 10, 1995, the Banks entered into two loans with a combined face value of $67.5 million in connection with NFHLP's construction of the HSBC Arena: a "Building Loan Contract" with CALLC (the "Construction Loan") and an "Interim and Term Concession Loan Agreement" with Sabres Concession (the "Concession Loan"). On February 28, 1997, NFHLP and Fleet entered into an "Amended and Restated Credit Agreement" which established a revolving line of credit in favor of NFHLP in the principal amount of $12 million for working capital and general partnership purposes (the "Revolver Loan"). The Construction, Concession and Revolver Loans are referred to herein collectively as the "Buffalo Sabres Loans."

Pursuant to the Buffalo Sabres Loans, the Banks had liens on substantially all of the assets of NFHLP.

8. ***Sale of the Construction and Revolver Loans to Sabres, Inc., and the Sale of NFHLP to the Rigas Family***

***3** In 2000, the Banks decided to sell all their interests in all the Buffalo Sabres Loans to Sabres, Inc. On March 17, 2000, the Banks sold their in-

terests in the Construction and Revolver Loans to Sabres, Inc., pursuant to a "Junior Participation Agreement," whereby the Banks sold to Sabres, Inc. "95% undivided junior participation interests" in the advances, loans and obligations owed by CALLC and NFHLP to the Banks, respectively. The Junior Participation Agreement contained a transitional mechanism whereby the 95% interest converted into a 100% interest upon the NHL's consent to the transfer. It is uncontested that the Junior Participation Agreement eventually ripened into 100% ownership by Sabres, Inc.

On March 22, 2000, pursuant to the terms of the Junior Participation Agreements, Sabres, Inc. transferred approximately $34 .1 million to the Banks ($18,583,542 to Fleet; $11,595,398 to HSBC; and $3,902,444 to Key Bank) in exchange for the Construction and Revolver Loans.

The sale of the Concession loan to Sabres, Inc. never came to fruition because the consent from a necessary third party could not be obtained.

Simultaneous to the sale of the Construction and Revolver Loans to Sabres, Inc., John Rigas and Patmos acquired NFHLP.

9. ***Adelphia Bankruptcy***

On June 25, 2002, Adelphia filed for bankruptcy protection in the Bankruptcy Court for the Southern District of New York following disclosures of fraud and off-balance-sheet liabilities (the "Adelphia Bankruptcy").

10. ***NFHLP Bankruptcy and Sale of NFHLP Assets to Hockey Western***

On January 13, 2003, NFHLP filed for bankruptcy protection in the Bankruptcy Court for the Western District of New York (the "NFHLP Bankruptcy"). Shortly after the filing, Hockey Western LLC ("Hockey Western") agreed to purchase NFHLP's assets. A hearing to approve the sale, wherein substantially all of the assets of NFHLP were sold to Hockey Western "free and clear" of liens claims and encumbrances, was held in the Bankruptcy Court on April 10, 2003. At the sale hearing, NFHLP made a presentation and proffered witnesses who were prepared to testify that the offer from Hockey Western was the best (indeed, the only) offer for the team and that if the sale did not happen quickly, the team would not be able to stay in Buffalo.

Adelphia sought and was given permission in the Adelphia Bankruptcy to appear as a creditor in the NFHLP Bankruptcy. The February 5, 2003 Order (the "Adelphia Approval Order") allowing Adelphia to appear provided that Adelphia was "authorized in the exercise of [its] business judgment to consent to the sale of certain assets of [NFHLP] in connection with any sale process [under the Bankruptcy Code]" and that any "conveyance of [Adelphia's] interest in [NFHLP] in connection with any sale process ... shall be free and clear of any liens, interests or encumbrances of any of [Adelphia's] creditors or lenders, with such Liens, if any, to attach to the net proceeds, subject to the rights and defenses of [Adelphia] with respect thereto...."

***4** At the April 10, 2003 sale hearing, Adelphia entered into a Stipulation and Order (the "Adelphia Stipulation and Order"), agreeing to release the liens, security interests and guarantees that it held as collateral for the Construction and Revolver Loans. Adelphia also agreed that proceeds of the sale could be used to pay off the Concession Loan. In calculating the amount due on the Concession Loan, full credit was given to the $11.3 million in principal and interest payments Adelphia had already paid on the Loan. Adelphia consented to the "cash out" amount of $21.4 million for the Concession Loan.

Counsel for Adelphia appeared at the sale hearing

by telephone. He told the Bankruptcy Court that Adelphia had agreed to release its rights to the collateral supporting the Construction and Revolver Loans so that, among other things, the sale could go through, the team could stay in Buffalo, and the claims of unsecured creditors would not be swamped by Adelphia's $200 million proof of claim. He also stated that as consideration for releasing its rights, Adelphia would receive (1) the release of two letters of credit totaling $27.6 million, and (2) assumption of a broadcast agreement for broadcast rights to the Buffalo Sabres for five years beginning September 2002. In addition, Adelphia would receive the benefit of being relieved of its obligation to continue making cash advances-which between March 2000 and January 2003 amounted to between $26-35 million-to the struggling Buffalo Sabres franchise to protect the Construction Loan and Adelphia's collateral.

At one point during the sale hearing, the Bankruptcy Judge stated:

> [W]hen I was reading the draft order and saw that all the parties who had liens and so forth would have consented and so forth, and I was wondering how we were going to get those and who they needed to be from, I was wondering how that was going to be handled and I guess what we have, having read the stipulations, is that everybody who anybody thinks actually has legal or equitable or beneficial interest in some kind of ownership or lien on the assets of these debtors have all signed the same stipulation; essentially identical stipulations, so that we needn't worry about that unless there's some entity that slipped through the cracks, but I doubt that would have happened with the quality of representation that we have here. So those who haven't seen them should rest assured that in fact the pertinent public officials and officers have, in fact, executed what is necessary to permit this sale.

Committee's Record on Appeal at 10094-96.

Adelphia's counsel did not respond to the Judge's statement and never mentioned at the sale hearing any possible fraudulent conveyance claims against the Banks.

At the time of the sale, the Banks were all creditors of NFHLP: Fleet as primary lender on the Concession Loan, Key as co-lender on the Concession Loan, and HSBC by virtue of a naming rights agreement to the HSBC Arena. While Fleet appeared at the sale hearing, HSBC and Key did not.

***5** At the conclusion of the sale hearing, the Bankruptcy Court issued an Order approving the sale (the “Sale Approval Order”).

11. *Southern District Adversary Proceeding*

On July 6, 2003, less than three months after entry of the Sale Approval Order in the NFHLP Bankruptcy, Adelphia and the Committee filed a multi-count, multi-party adversary complaint against the Banks and several other lending and investment banking institutions in the Adelphia Bankruptcy (the “Southern District AP”). The Southern District AP alleges, among other things, that the bank defendants aided and abetted John Rigas's breach of his fiduciary duties to Adelphia.

Counts 17-24 of the Southern District AP complaint assert intentional and constructive fraudulent conveyance claims against the Banks in connection with the March 2000 transfer of $34.1 million by Sabres, Inc. to the Banks in exchange for the Banks' interests in the Construction and Revolver Loans. Counts 17-24 also allege, as an intentional or constructive fraudulent conveyance, the transfer of $14 million made by Adelphia to the Banks to pay principal and interest payments on all three of the Buffalo Sabres Loans.

12. *The Banks' Proofs of Claim in the NFHLP Bankruptcy*

After receiving the Southern District AP complaint, the Banks filed proofs of claim in the NFHLP Bankruptcy. Those claims stated in essence that, to the extent the Committee and Adelphia are successful in their fraudulent conveyance claims and are awarded judgment in their favor, the Banks will have a claim against the NFHLP debtors in the same amount.

13. ***Banks' Cross-Claims Against Adelphia and the Committee***

On November 5, 2003, the NFHLP debtors brought a declaratory judgment action against, among others, the Banks. NFHLP sought a declaration that the Banks' proofs of claim should be either reclassified or subordinated to other claims. The Banks asserted amended cross-claims against Adelphia and the Committee, alleging that Adelphia and the Committee should be estopped from prosecuting their fraudulent conveyance claims in the Southern District AP. The Banks argued that estoppel is appropriate because in the NFHLP Bankruptcy, Adelphia represented that it was the sole owner of the Construction and Revolver Loans and consented to the payoff of the Concession Loan, and never put either the Bankruptcy Court or the Banks on notice of any possible fraudulent conveyance claims.

Prior to the beginning of discovery and following an unsuccessful motion to dismiss by the Committee, the Southern District Bankruptcy Court (after consultation with the Western District Bankruptcy Court), issued a "Jurisdictional Order" relinquishing jurisdiction so that Western District Bankruptcy Court could determine "whether [Adelphia's] participation in the process of the sale of the [NFHLP] Debtors' assets ... estopped or released [Adelphia's and the Committee's] claims against the [Banks] in [the Southern District AP]." TA at 4725. The Western District Bankruptcy Court issued a nearly identical order accepting jurisdiction. TA at 407-09.

14. ***Bankruptcy Court Opinion and Order***

***6** On March 2, 2007, the Bankruptcy Court issued an Opinion and Order granting Fleet's motion for summary judgment. The Court found that by not objecting to the payoff amount on the Concession Loan, Adelphia "ratified" the prior payments on that Loan, as well as the transfer of the other Buffalo Sabres Loans, as they related to Fleet. The Court held that "[b]y consenting to the pay off of Fleet, Adelphia is now barred from asserting [its fraudulent conveyance claims] as against Fleet."

The Court denied HSBC's and Key's motion for summary judgment, without prejudice to raise all state-law arguments in the Southern District AP. The Court held that because HSBC and Key did not appear at the sale hearing, there was no "ratification" by Adelphia of the sale price of the Construction and Revolver Loans to Adelphia, as to those parties.

On March 22, 2007, the Bankruptcy Court issued an Opinion and Order correcting an error in the March 2, 2007 Opinion and Order. On July 20, 2007, the Bankruptcy Court issued a Decision granting in part and denying in part cross-motions for reconsideration.

DISCUSSION

A. ***Standard of Review***

Under Rule 8013 of the Federal Rules of Bankruptcy Procedure, a bankruptcy court's conclusions of law are reviewed *de novo*, while factual conclusions are reviewed for clear error. *In re JLM, Inc.*, 210 B.R. 19, 23 (2d Cir.B.A.P.1997)."A finding is clearly erroneous when although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been committed."*Id.* (quoting *Anderson v. City of Bessemer*, 470 U.S. 564, 573, 105 S.Ct. 1504, 84 L.Ed.2d

518 (1985)). Mixed questions of fact and law are subject to *de novo* review. *In re Vebeliunas,* 332 F.3d 85, 90 (2d Cir.2003). An order of the Bankruptcy Court may be affirmed on grounds different that those found by the Bankruptcy Court. *E.g., In re Rama Group,* 2002 WL 1012974 (W.D.N.Y. May 6, 2002).

B. *Ratification*

1. *As to Fleet*

As stated above, the Bankruptcy Court found that Fleet was entitled to summary judgment under a theory of "ratification." This Court agrees.

"Ratification is the act of knowingly giving sanction or affirmance to an act which would otherwise be unauthorized and not binding."57 N.Y. Jur.2d Estoppel, Ratification and Waiver § 87 (2007). Ratification is closely related to estoppel and "implies assent, express or implied, and a change of position on the part of one who acts in reliance on such assent."*Id.* Ratification may be express or implied, and may result from silence or inaction. *Id.* § 88. Accepting the benefits of a transaction may constitute ratification, "and acquiescence may give rise to an implied ratification, as where a person's conduct subsequent to the transaction complained of supports the conclusion that he or she has accepted and adopted the transaction."*Id.*

The doctrine of ratification applies to transactions sought to be avoided as fraudulent transfers. "A fraudulent transfer is not void, but voidable; thus, it can be ratified by a creditor who is then estopped from seeking its avoidance." *In re Best Prods. Co.,* 168 B.R. 35, 57 (Bankr.S.D.N.Y.1994), *appeal dismissed,* 177 B.R. 791 (S.D.N.Y.), *aff'd on other grounds,* 68 F.3d 26 (2d Cir.1995); *see also* 1 G. GLENN, FRAUDULENT CONVEYANCES AND PREFERENCES, §§ 111, 113 (Rev. Ed.1940)." 'Ratification' results when a party to a voidable contract accepts benefits flowing from the contract, or remains silent, or acquiesces in contract for any considerable length of time after he has had opportunity to annul or void the contract." *Prudential Ins. Co. v. BMC Indus., Inc.,* 630 F.Supp. 1298, 1300 (S.D.N.Y.1986) (action for rescission based upon fraud). Stated another way, "[r]atification is an act by which an otherwise voidable and, as a result, invalid contract is confirmed, and thereby made valid." *Clark v. Buffalo Wire Works Co.,* 3 F.Supp.2d 366, 371 (W.D.N.Y.1998).

***7** The Bankruptcy Court correctly found that in connection with the Bankruptcy Court's approval of the sale of NFHLP's assets, Adelphia ratified the very transactions (*i.e.,* the March 2000 sale of the Construction and Revolver Loans to Adelphia and Adelphia's payments on the Concession Loan) that Adelphia and the Committee now contend should be avoided as fraudulent transfers in the Southern District AP. Adelphia's consent to the waiver of its lien rights in connection with the sale, and its failure to inform the Bankruptcy Court or Fleet that Adelphia might bring avoidance claims regarding the Buffalo Sabres Loans-coupled with Fleet's reliance upon Adelphia's conduct and silence-estop Adelphia and the Committee from now asserting their fraudulent transfer claims against Fleet.

Adelphia and the Committee argue that ratification does not apply because neither Adelphia nor the Committee had "full knowledge" of the March 2000 transaction at the time of the sale. The Court finds this argument unpersuasive for two reasons.

First, the cases upon which Adelphia and the Committee rely are inapplicable because they deal with ratifications by principals of the acts of their purported agents. Although in those circumstances, there could arguably arise some issue as to whether the principal, at the time it allegedly ratified the agent's act, had sufficient knowledge of the transaction at issue, in this case, where the ratifying party (Adelphia) is the same party that entered into the transaction, there cannot be any such question; Ad-

elphia is charged with having knowledge of its own acts.

Second, at the time of the sale hearing, Adelphia did in fact have "full knowledge" of the facts surrounding the allegedly fraudulent transfer. At the time of the sale in April 2003, Adelphia knew that in March 2000, Sabres, Inc. paid Fleet a total of $18,583,541.96 in exchange for all of Fleet's rights, title and interest in and to the Construction and Revolver Loans. Adelphia also knew that from 1999 to 2002, it allegedly made debt service payments to Fleet on account of the Concession Loan totaling $11.3 million.

In connection with the April 2003 sale, Adelphia waived its right to receive any portion of the purchase consideration. Adelphia agreed to release the liens, security interests and guarantees that had been the collateral for the Construction and Revolver Loans, which Adelphia had purchased from Fleet (and the other Banks). Adelphia gave its releases and waivers in exchange for valuable consideration, including: (1) the release of two letters of credit totaling $27.6 million; (2) assumption of a broadcast agreement for broadcast rights to the Buffalo Sabres for five years beginning September 2002; and (3) relief from Adelphia's obligations to continue making cash advances to the team to protect the Construction Loan and Adelphia's collateral.

Also in connection with, and as part of, the sale of NFHLP's assets in April 2003, Adelphia and Fleet agreed that Fleet's Concession Loan, with a then existing balance of approximately $21.4 million, would be paid off from the proceeds of sale, in exchange for Fleet's release of all collateral and guarantees supporting the Concession Loan.

***8** Adelphia and the Committee argue that, in order for Adelphia to have ratified the March 2000 transaction, Adelphia had to know-in addition to all of the material facts about the transaction itself-certain additional "facts," such as that the value that Adelphia received in exchange for the Construction and Revolver Loans was supposedly less than the amount paid for the Loans; that Sabres, Inc. was allegedly insolvent or rendered insolvent by the transaction; and that John Rigas intentionally caused Sabres, Inc. to make the transfers to Fleet with the intent to hinder, delay or defraud Adelphia's creditors. This argument is flawed, however, because it conflates two different things: knowledge of facts regarding the March 2000 transaction-which is required, and which Adelphia did have-and knowledge that avoidance actions would be filed against the Banks-which is not required.

Adelphia and the Committee also argue that there is no evidence that Adelphia intended to ratify the March 2000 transactions. Again, this argument is unpersuasive.

Although ratification must be done with intent-that is knowingly-such intent may be express or implied. 57 N.Y. Jur.2d Estoppel, Ratification and Waiver §§ 87, 88. "[A]cquiescence may give rise to an implied ratification, as where a person's conduct subsequent to the transaction complained of supports the conclusion that he or she has accepted and adapted the transaction."*Id.* Here, Adelphia acquiesced in the sale by waiving its lien rights as to the collateral purchased from Fleet three years earlier, in exchange for valuable consideration that it received. Adelphia did so without saying anything about the validity of the underlying transaction in which it had obtained its lien rights, or that such transaction was voidable as a fraudulent transfer. Such acquiescence and silence gave rise to an implied ratification.

Adelphia and the Committee further argue that even if Adelphia ratified the March 2000 transaction, such ratification did not extend to the purchase price paid for the Construction and Revolver Loans. In other words, they argue that although Adelphia ratified its purchase of the Loans, it did not ratify

the purchase price. The Court finds this argument unavailing.

Adelphia and the Committee do not cite, nor has the Court found, any authority for such a "partial" ratification of a single transaction, particularly where, as here, Adelphia received valuable consideration in exchange for the waiver of its lien rights, and Fleet relied to its determent on Adelphia's acts, statements and silence.

A recent Second Circuit decision holds that the proper remedy in a fraudulent transfer action is rescission of the underlying transaction, not just a piece of it, such as the purchase price. In *Grace v. Bank Leumi Trust Co.*, 443 F.3d 180, 189 (2d Cir.2006), *cert. denied*, 549 U.S. 1114, 127 S.Ct. 962, 166 L.Ed.2d 707 (2007), the Second Circuit held that "[t]he proper remedy in a fraudulent conveyance claim is to rescind, or set aside, the allegedly fraudulent transfer, and cause the transferee to return the transferred property to the transferor."Accordingly, there is no basis for Adelphia's and the Committee's attempts to apply ratification to only the sale of the loans, while preserving a fraudulent transfer claim as to the purchase price.

***9** In support of their argument that Adelphia ratified only its ownership rights in the Loans and not the purchase price, Adelphia and the Committee rely primarily on the Second Circuit's decision in *FCC v. NextWave Personal Communications, Inc.*, 200 F.3d 43 (2d Cir.2000), *cert. denied*, 531 U.S. 924, 121 S.Ct. 298, 148 L.Ed.2d 240 (2000). However, that case is inapposite.

In *NextWave*, a Chapter 11 debtor, in its capacity as high bidder at government auction of C-Block radio spectrum licenses for personal communication services, brought an adversary proceeding seeking to set aside its resulting obligation to the Federal Communications Commission ("FCC") as a constructively fraudulent transfer under state law. In finding for the debtor, the Bankruptcy Court held that the sale of the licenses constituted fraudulent transfers and as a result, the debtors could avoid making further payments to the FCC. The district court affirmed, and FCC appealed. The Second Circuit held that: (1) the courts below exceeded their jurisdiction by in effect intervening in the allocation of radio spectrum licenses, which was within FCC's exclusive regulatory jurisdiction; and (2) the transaction in which licenses were issued was not constructively fraudulent in any event.

It is in this factual context that the Second Circuit stated that a fraudulent conveyance "can be avoided." *Id.* at 49.Then in a footnote, the court stated: "Avoidance differs considerably from rescission. Rescission unwinds the transaction and restores the status quo ante, whereas avoidance allows the debtor to retain the benefit of its bargain while rewriting the debtor's obligations under that same bargain."*Id.* at 49 n. 6. Adelphia and the Committee rely on this language to support their argument that Adelphia can retain the benefit of its bargain while at the same time challenging the purchase price it paid. Their reliance is misplaced. First, the language they rely on is *dicta*.The Second Circuit determined that there was no fraudulent transfer, so it did not reach the issue of remedy. Second, *NextWave* involved the issue of whether an obligation to pay more money could be avoided; not whether monies already paid could be recouped, which is the issue here. Finally, Adelphia's and the Committee's interpretation of *NextWave* would make that case inconsistent with the Second Circuit's more recent decision in *Grace*, stating that the remedy for a fraudulent transfer is "limited" to rescission. *Grace*, 443 F.3d at 189.

In sum, the Court finds that the Bankruptcy Court correctly held that by remaining silent at the April 2003 sale hearing, Adelphia ratified the 2000 purchase of the Construction and Revolver Loans from Fleet, as well as the payments that it made to Fleet on the Concession Loan. Thus, Fleet is entitled to judgment as a matter of law.

2. *As to HSBC and Key*

The Bankruptcy Court found that unlike Fleet, HSBC and Key were not entitled to summary judgment on the grounds of ratification because they did not appear at the sale hearing. The Court finds that this was incorrect and that HSBC and Key, like Fleet, are entitled to summary judgment based on Adelphia's ratification of the 2000 transactions.

***10** With regard to the Construction and Revolver Loans, there was no reason for HSBC and Key to be present at the sale hearing. The uncontested evidence is that the Junior Participation Agreement governing the sale of those Loans ripened into 100% ownership by Sabres, Inc. The Committee's counsel has admitted as much during the course of proceedings in this case. *See* HSBC Record on Appeal, Vol. 10, Doc. 63, p. 95. Thus, as far as HSBC and Key were aware, at the time of the sale hearing, they had no ownership interests whatsoever in the Loans and had no reason to appear.

For the same reasons cited above with respect to Fleet, the Court finds that by remaining silent at the April 2003 sale hearing, Adelphia ratified the 2000 purchase of the Construction and Revolver Loans from HSBC and Key. Thus, like Fleet, HSBC and Key are entitled to judgment as a matter of law.

C. *Res Judicata or Claim Preclusion*

The doctrine of *res judicata*, or claim preclusion, holds that following entry of a valid final judgment, "the parties to the suit and their privies are thereafter bound not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." *C.I.R. v. Sunnen*, 333 U.S. 591, 597, 68 S.Ct. 715, 92 L.Ed. 898 (1948) (internal quotations and citation omitted); *In re Teltronics Servs.*, 762 F.2d 185, 190 (2d Cir.1985). The doctrine of *res judicata* bears on "the effect of a judgment in foreclosing litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit." *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 77 n. 1, 104 S.Ct. 892, 79 L.Ed.2d 56 (1984).

Res judicata"is a rule of fundamental repose important for both the litigants and for society." *In re Teltronics Servs.*, 762 F.2d at 190.It "relieve[s] parties of the cost and vexation of multiple lawsuits, conserve[s] judicial resources, and, by preventing inconsistent decisions, encourage[s] reliance on adjudication." *Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980)."Public policy supports *res judicata* generally, but in the bankruptcy context in particular." *Crop-Maker Soil Servs. v. Fairmount State Bank*, 881 F.2d 436, 440 (7th Cir.1989); *see also In re Lawrence*, 293 F.3d 615, 621 (2d Cir.2002) (emphasizing role of *res judicata* in preventing the opening of "floodgates to future litigation attacking the final orders of sale in [a] bankruptcy court proceeding, a forum where finality of court orders is particularly important."); *Hendrick v. H.E. Avent*, 891 F.2d 583, 587 n. 9 (5th Cir.) ("This Court has previously recognized the important interest in the finality of judgments in a bankruptcy case .") (citations omitted), *cert. denied*, 498 U.S. 819, 111 S.Ct. 64, 112 L.Ed.2d 39 (1990).

Res judicata applies to preclude later litigation if the earlier decision was (1) a final judgment on the merits, (2) by a court of competent jurisdiction, (3) in a case involving the same parties or their privies, and (4) involving the same cause of action. *In re Teltronics Servs.*, 762 F.2d at 190 (citations omitted).

***11** Applying the principles of *res judicata* to the instant case, the Court finds that the orders issued by the Western District Bankruptcy Court relating to the sale of NFHLP's assets to Hockey Western preclude Adelphia and the Committee from pursuing their claims of fraudulent conveyance in the

Southern District AP. Accordingly, the Banks are entitled to judgment as a matter of law.

1. *Bankruptcy Court's Orders Constituted a Final Judgment on the Merits by a Court of Competent Jurisdiction*

Both the Sale Approval Order and the Adelphia Stipulation and Order constituted a final judgment on the merits by a court of competent jurisdiction. *E.g.*, *In re Met-L-Wood Corp.*, 861 F.2d 1012, 1018 (7th Cir.1988) (affirming dismissal of fraud suit as impermissible collateral attack on bankruptcy court order and "hold[ing] that confirmed sales-which are final judicial orders-can be set aside only under [R]ule 60(b) [of the Federal Rules of Civil Procedure]"), *cert. denied*, 490 U.S. 1006, 109 S.Ct. 1642, 104 L.Ed.2d 157 (1989); *Hendrick*, 891 F.2d at 586 ("[a]n order issued by the bankruptcy court authorizing the sale of part of the bankrupt estate is a final judgment even though the order neither closes the bankruptcy case nor disposes of any claim."). Thus, the first and second elements of *res judicata* are satisfied.

2. *The Same Parties are Involved in Both Actions*

Adelphia and the Banks were all creditors in the NFHLP bankruptcy proceedings: Adelphia, as NFHLP's single largest secured and non-secured creditor, Fleet as primary lender on the Concession Loan, Key as co-lender on the Concession Loan, and HSBC by virtue of a naming rights agreement to the HSBC Arena. As creditors of NFHLP, they were all parties to the NFHLP bankruptcy. *See In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1550-51 (11th Cir.1990) (in the bankruptcy context, all creditors of a debtor are parties in interest for *res judicata* purposes with respect to orders issued in the administration of a bankruptcy proceeding). All these parties are also parties to the Southern District AP. Thus, the third element of *res judicata* is satisfied.

Adelphia and the Committee argue that *res judicata* does not apply with regard to HSBC and Key because they did not participate in the sale hearing. The Court finds this argument unpersuasive for two reasons.

First, neither Adelphia nor the Committee has cited, nor has the Court found, any authority for the proposition that a party must be present at a court proceeding in order to be eligible for protection under the doctrine of *res judicata.*

Second, as stated above, with regard to the Construction and Revolver Loans, there was no reason for HSBC and Key to be present at the sale hearing, because it is undisputed that the Junior Participation Agreement governing the sale of those Loans ripened into 100% ownership by Sabres, Inc.

3. *Same Cause of Action*

To determine whether the causes of action are the same, the Court must examine whether the same transaction, evidence, and factual issues are involved in both cases. *Corbett v. MacDonald Moving Services, Inc.*, 124 F.3d 82, 89 (2d Cir.1997) (citing *Sure-Snap Corp. v. State Street Bank and Trust Co.*, 948 F.2d 869, 874 (2d Cir.1991); *NLRB v. United Technologies Corp.*, 706 F.2d 1254, 1260 (2d Cir.1983)). In the bankruptcy context, the Court must also determine "whether an independent judgment in a separate proceeding would impair or destroy rights or interests established by the judgment entered in the first action."*Id.* (internal quotations and citation omitted).

***12** Because a bankruptcy case is fundamentally different from the typical civil action, comparison of a bankruptcy proceeding with another proceeding is not susceptible to the standard *res judicata* analysis. Rather, the Court must scrutinize the totality of the circumstances in each action and then determine whether there is identity of causes of action. *See Oneida Motor Freight, Inc. v. United Jer-*

sey Bank, 848 F.2d 414, 419 n. 5 (3d Cir.1988).

Scrutinizing the totality of the circumstances in the instant case, the Court finds that there is sufficient identity between the claims raised in the NFHLP Bankruptcy and the Southern District AP to warrant the application of the doctrine of *res judicata*.The same transaction, evidence, and factual issues are involved in both cases. In addition, a judgment in favor of Adelphia and the Committee in the Southern District AP would impair or destroy the rights and interests of the Banks established by the judgment entered in the NFHLP Bankruptcy.

One of the central claims or issues in the NFHLP Bankruptcy was the identification of any and all parties having ownership or lien interests in NFHLP's assets. The Western District Bankruptcy Court, the Southern District's Adelphia Approval Order, and the purchaser, Hockey Western, required that the sale or transfer of any of Adelphia's interests in NFHLP's assets be free and clear of any liens.

With regard to the Construction and Revolver Loans, Adelphia, by the Adelphia Stipulation and Order, represented to the Bankruptcy Court, the parties to the NFHLP Bankruptcy, including the Banks, and Hockey Western that it was the sole owner of those Loans and their accompanying liens. Adelphia agreed to release its rights and liens under those Loans in exchange for certain consideration. Adelphia never asserted or even mentioned any possible avoidance claims against the Banks, although it could have. Essential to the Bankruptcy Court's Sale Approval Order as it related to the Construction and Revolver Loans was that Adelphia was the sole owner of those Loans. Otherwise, the NFHLP assets acting as collateral for those Loans could not have been transferred to Hockey Western free and clear of any liens, at least without further litigation.

Had Adelphia raised the possibility of avoidance claims before the sale was approved, it unquestionably would have changed the outcome of the litigation. The remedy in an avoidance action is rescission of the fraudulent transfer. *See Grace*, 443 F.3d at 189; *Hassett v. Goetzmann*, 10 F.Supp.2d 181, 192 (N.D.N.Y.1998). In other words, when a fraudulent transfer is avoided, the parties are restored to their previous positions. In this instance, it would have meant that the sale of the Construction and Revolver Loans by the Banks to Sabres, Inc. would have been voided and the Banks would still have owned the Loans and accompanying liens on NFHLP's assets (which included the HSBC Arena). These same NFHLP assets, however, were about to be sold to Hockey Western free and clear. The Banks obviously would have come forward to stop the sale, or at least modify its terms, in order to protect their interests in either the NFHLP assets or the proceeds of the sale. The Bankruptcy Court then would have had to either stop the sale or somehow resolve the avoidance claims before the assets could be sold free and clear to Hockey Western. Because Adelphia never raised the possibility of avoidance claims against the Banks, the Banks never came forward, and the NFHLP assets were sold to Hockey Western free and clear.

***13** A judgment now in favor of Adelphia on their avoidance claims in the Southern District AP would impair or destroy the rights and interests of the Banks established by the judgment entered in the NFHLP Bankruptcy case. By necessary implication, the Bankruptcy Court's Sale Approval Order found that the Banks had no lien interests in the NFHLP assets and allowed the collateral supporting those liens to be sold free and clear. If the original transfer of the Construction and Revolver Loans were now to be voided as a result of a judgment in the Southern District AP, the Banks would once again become the owners of the Loans, but would have no collateral against which to place liens. The Banks would be hung out to dry.

With regard to the Concession Loan, Adelphia

agreed that the proceeds of the sale could be used to pay off that Loan. In calculating the amount due on the Concession Loan, full credit was given to the $11.3 million in principal and interest payments Adelphia had already paid on the loan. Adelphia consented to the "cash out" amount of $21.4 million. Adelphia never raised the possibility of any fraudulent conveyance claim against Fleet with regard to the $11.3 million already paid on the Loan, although it could have. Instead, it allowed the sale to go forward, and the collateral for the Loan was sold to Hockey Western.

In sum, the claims in the Southern District AP arise from the same transaction, evidence, and facts involved in the proceedings culminating in the Sale Approval Order in the NFHLP Bankruptcy. An independent judgment in the Southern District AP would impair or destroy the judgment in the NFHLP Bankruptcy case. Thus, the fourth element of *res judicata* has been satisfied.

Adelphia had the opportunity during the NFHLP Bankruptcy proceedings to raise the possibility of avoidance claims against the Banks, but failed to do so. Instead, Adelphia appears to have made a tactical decision or choice to keep silent about such claims so that the sale would go forward. In exchange for its silence, Adelphia received valuable consideration and perhaps most importantly, was relieved from having to pump any further cash into the floundering Buffalo Sabres franchise in order to protect its own interest in the Construction Loan and the collateral for the Loan (*i.e.*, the HSBC Arena). Adelphia now wants a second bite at the apple. This situation exemplifies why the doctrine of *res judicata* is so important in bankruptcy cases. Such cases are often complex and involve numerous parties and claims. Thus, it is essential that any party having a claim "put its cards on the table" so that such claim can be addressed in the first instance and the rights and interests of all the parties to the bankruptcy can be determined at one time in one final judgment.

4. *Adelphia's and the Committee's Arguments against the Application of Res Judicata*

a. *Lack of Knowledge*

Adelphia and the Committee argue that the doctrine of *res judicata* cannot be applied here because in April 2003, they did not have yet have "full knowledge" of the facts supporting avoidance claims against the Banks and therefore could not have been expected to raise such claims prior to the entry of the Sale Approval Order in the NFHLP Bankruptcy. This argument is unpersuasive.

***14** Even if Adelphia did not have "full knowledge" in April 2003, of all facts necessary to support avoidance claims against the Banks, it certainly knew of facts showing at least the possibility of such claims. Adelphia obviously knew that it had purchased the Construction and Revolver Loans from the Banks; in fact, Adelphia itself disclosed those purchases in its Form 8-K filing with the Securities and Exchange Commission on May 24, 2002, nearly a year before the sale of NFHLP's assets. Adelphia also had in its own books and records the wire transfer documents evidencing the payments from Adelphia to the Banks for the Construction and Revolver Loans. The Committee's accountants, moreover, received copies of those documents in February 2003.

Likewise, Adelphia knew that its funds were purportedly being used to pay principal and interest on the Construction Loan and the Concession Loan, and that NFHLP was being used as a conduit for those payments to the Banks. Adelphia's wire transfer documents for those payments each identify NFHLP (or, in some instances, CALLC) as the company making the payments, although the funds were allegedly coming from Adelphia. In addition, Adelphia was aware that its funds were purportedly being used to finance the operations of NFHLP, as shown by Adelphia's own disclosure of that fact in the May 24, 2002 8-K. Further, Adelphia's CEO at

the time of the bankruptcy filing, Erland Kailbourne, testified that he was aware as early as April 2002 that NFHLP's funds were being co-mingled with Adelphia's through Adelphia's Cash Management System ("CMS").

Perhaps the most telling evidence of Adelphia's pre-April 2003 knowledge comes from its own adversary proceeding complaint against NFHLP and others, which it filed on or about July 24, 2002 (the "Rigas AP"). In that proceeding, Adelphia alleged that NFHLP was part of a conspiracy to defraud Adelphia through the use of the CMS for purposes unrelated to Adelphia. The Rigas AP alleged that all of NFHLP's receivables were deposited into the CMS, and all of its payables were paid out of the CMS. It further alleged that Adelphia bought the Construction and Revolver Loans from the Banks and financed NFHLP's operations through withdrawals of cash from the CMS. Adelphia alleged that these actions constituted a "concerted course of conduct with the purpose and effect of defrauding" Adelphia. Accordingly, as early as July 2002, Adelphia was purporting to be aware that its payments on behalf of NFHLP to the Banks were potentially the subject of fraud claims as against NFHLP. It follows that, at the same time, Adelphia had constructive knowledge that it possessed possible fraudulent transfer claims against the Banks, as the ultimate recipients of the funds of which NFHLP allegedly defrauded Adelphia.

Based on this evidence, there is no question that Adelphia had knowledge of facts supporting at least the possibility of avoidance claims against the Banks prior to April 2003. Adelphia was therefore required to raise such a claim in the NFHLP Bankruptcy proceeding or be barred from doing so later under the doctrine of *res judicata*.In fact, the Adelphia Approval Order required that when consenting to the sale or transfer of any of Adelphia's interests in NFHLP free and clear of any liens, Adelphia was to do so "subject to the rights and defenses" of Adelphia. Thus, the Adelphia Approval Order placed the burden on Adelphia to raise all possible rights and defenses when appearing in the NFHLP Bankruptcy.

***15** Even if it assumed that in April 2003, Adelphia had no knowledge whatsoever of facts supporting possible avoidance claims against the Banks and only discovered such facts at a later date, the avoidance claims in the Southern District AP are still barred by the doctrine of *res judicata*.For the reasons stated above, the Sale Approval Order in the NFHLP Bankruptcy is a final judgment entitled to *res judicata* effect. In essence, what Adelphia and the Committee are attempting to do in the Southern District AP is to collaterally attack the Sale Approval Order based on supposedly newly discovered evidence. This is not permitted. Bankruptcy court orders approving sales of property are final judgments, which, if not timely appealed or timely challenged under Rule 60(b) are entitled to *res judicata* effect. *See In re American Preferred Prescription, Inc.*, 255 F.3d 87, 92 (2d Cir.2001); *Gekas v. Pipin (In re Met-L-Wood Corp.)*, 861 F.2d 1012, 1018 (7th Cir.1988), *cert. denied*, 490 U.S. 1006, 109 S.Ct. 1642, 104 L.Ed.2d 157 (1989) (affirming dismissal of fraud suit as impermissible collateral attack on bankruptcy court's order and "hold[ing] that confirmed sales-which are final judicial orders-can be set aside only under rule 60(b)").*"Res judicata* applies even where new claims are based on newly discovered evidence, unless the evidence was either fraudulently concealed or it could not have been discovered with due diligence." *L-TEC Elecs. Corp. v. Cougar Elec. Org., Inc.*, 198 F.3d 85, 88 (2d Cir.1999) (internal quotation marks omitted).

Adelphia and the Committee never appealed the Sale Approval Order and never sought relief from judgment under Rule 60(b). Nor have they alleged that their newly discovered evidence was fraudulently concealed or could not have been discovered with due diligence. Thus, whatever the merits of their claims in the Southern District AP, Adelphia

and the Committee are barred under the doctrine of *res judicata* from pursuing them. *See Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 101 S.Ct. 2424, 69 L.Ed.2d 103 (1981) ("Nor are the *res judicata* consequences of a final ... judgment on the merits altered by the fact that the judgment may have been wrong.").

b. *Lack of Jurisdiction*

Adelphia and the Committee next argue that the doctrine of *res judicata* does not apply because the Western District Bankruptcy Court, as a matter of law, could not have entertained an adversary proceeding involving the Adelphia estates when the Adelphia Bankruptcy was being overseen by the Southern District Bankruptcy Court. Again, the Court finds this argument unpersuasive.

Assuming that Adelphia and the Committee are correct regarding the Western District's lack of jurisdiction to entertain such an adversary proceeding FN2, such fact still would not have relieved Adelphia from its obligation to raise the potential avoidance claims against the Banks in the NFHLP Bankruptcy. In fact, as stated above, the Adelphia Approval Order placed the burden on Adelphia to raise all possible rights and defenses when appearing in the NFHLP Bankruptcy. The identity of the particular court in which such rights and defenses would ultimately be adjudicated was immaterial.

> FN2. The Court notes that the Adelphia Approval Order may have arguably granted such jurisdiction. Or, the respective bankruptcy courts and the parties might have reached some sort of agreement over jurisdiction, as was done here.

c. *§ 546(a)(1) Statute of Limitations*

***16** Adelphia and the Committee further argue that they were not required to raise their avoidance claims in the NFHLP Bankruptcy because their time to bring such claims had not yet run under 11 U.S .C. § 546(a)(1), a statute of limitations provision applicable to fraudulent transfer claims by a debtor. The Court finds this argument without merit.

Even if it is assumed that at the time of the sale hearing Adelphia did not know for certain that it had a factual basis for bringing avoidance actions against the Banks, as stated above, the evidence shows that it was investigating the possibility of such claims. The Adelphia Approval Order required Adelphia to preserve all its rights and defenses when releasing its liens. Thus, at a minimum, Adelphia should have stated at the sale hearing that the waiver of its lien rights was subject to all its rights and defenses, that it was still investigating possible avoidance claims, and that the time to assert such claims had not yet run under § 546(a)(1). Had Adelphia done that, it would have been free to continue its investigation and assert its avoidance claims in the Souther District AP within the limitations period in § 546(a)(1). Instead, Adelphia chose to remain silent and as a result, is now barred by *res judicata* from bringing such claims.

d. *No Evidence of Credit on Concession Loan*

Finally, with regard to the Concession Loan, Adelphia and the Committee argue that there is no evidence that Adelphia obtained "credit" in the NFHLP asset sale for the $11.3 million it previously paid to Fleet as installment payments on the Concession Loan, and therefore they should not be precluded from seeking a return of those payments. The Court finds that this argument is belied by the record and common sense.

In exchange for its consent to surrender its security interests on the Concession Loan, Fleet demanded that it be "paid in full" on the Concession Loan from the proceeds of the sale, and all parties, including Adelphia, consented. The amount due-

$21.4 million-was calculated giving full credit for prior payments of $11 .3 million to Fleet on that Loan. The Committee concedes that Adelphia consented to the "cash out" amount, but maintains that there is no evidence that it took into account or gave itself a credit for the $11.3 million. However, the issue is not whether Adelphia subjectively credited itself the $11.3 million. The fact remains that the Bankruptcy Court, the purchaser and Fleet all credited that amount to the benefit of Adelphia.

D. *Judicial Estoppel*

Adelphia's and the Committee's avoidance claims in the Southern District AP are also barred by the doctrine of judicial estoppel.

Judicial estoppel "prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *New Hampshire v. Maine,* 532 U.S. 742, 749, 121 S.Ct. 1808, 149 L.Ed.2d 968 (2001) (internal quotation marks omitted). The doctrine of judicial estoppel provides that, "[w]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him."*Id.* (internal quotations and citation omitted). Judicial estoppel ensures, *inter alia*, that "abandonment of a claim to obtain a litigation advantage precludes the later reassertion of that claim." *Peralta v. Vasquez,* 467 F.3d 98, 105 (2d Cir.2006).

***17** The Supreme Court, exercising its original jurisdiction over a boundary dispute between New Hampshire and Maine, identified "several factors" that "typically inform the decision whether to apply the doctrine in a particular case":

> First, a party's later position must be clearly inconsistent with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled .... A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

New Hampshire, 532 U.S. at 750-51 (internal quotation marks and citations omitted). In "enumerating these factors," the Court cautioned that it was not establishing "inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel."*Id.* The Court concluded that judicial estoppel applied to prevent New Hampshire from re-litigating its eastern boundary with Maine, where New Hampshire would be taking a position inconsistent with a consent decree it entered into in 1977. *Id.* at 756.

Applying these principles to the instant case, the Court finds that judicial estoppel bars Adelphia's and the Committee's avoidance claims in the Southern District AP.

First, the position that Adelphia and the Committee are taking in the Southern AP action is clearly inconsistent with the position that they took in the NFHLP Bankruptcy. In the NFHLP Bankruptcy, Adelphia consistently represented to the Bankruptcy Court that it was the sole owner of the Construction and Revolver Loans and therefore was the only party whose consent was necessary for the sale of NFHLP's assets free and clear of all liens, claims and encumbrances. In contrast, in the Southern District AP, Adelphia and the Committee are claiming that the purchases of the Construction and Revolver Loans were fraudulent conveyances and therefore subject to rescission, which would mean that the Banks would be the owners of the Loans, contrary to what Adelphia and the Committee represented in

the NFHLP Bankruptcy.

Second, the Court in the NFHLP Bankruptcy unquestionably relied upon the Adelphia's representation that it was the sole owner of the Loans. As stated above, had the NFHLP Court been aware of potential avoidance claims against the Banks, the Bankruptcy Court would either have not issued the Sale Approval Order or would have modified it to account for the Banks' possible interests in the NFHLP assets. If the Bankruptcy Court in the Southern District AP were now to find that the purchases of the Loans were fraudulent conveyances, it would create the perception that the NFHLP Bankruptcy Court was misled.

Third, a finding in the Southern District AP that the purchases of the Loans were fraudulent conveyances and therefore subject to rescission would impose an unfair detriment on the Banks. As stated above, the Banks would once again become the owners of the Loans, but would have no collateral against which to place liens.

***18** Courts have consistently applied the doctrine of judicial estoppel, under circumstances similar to those here, to bar a party's claims or objections that are inconsistent with its prior legal position. *See, e.g.*, *Breeden v. Kirkpatrick & Lockhart, LLP*, 268 B.R. 704, 711 n. 5 (S.D.N.Y.2001) (doctrine of judicial estoppel barred trustee from disputing a key factual contention on summary judgment motion because trustee had agreed with that contention in a prior motion to consolidate the debtors' estates), *aff'd*, 336 F.3d 94 (2d Cir.2003).

In *In re Galerie des Monnaies of Geneva, Ltd.*, 55 B.R. 253, 259 (Bankr.S.D.N.Y.1985), *aff'd*, 62 B.R. 224 (S.D.N.Y.1986), the bankruptcy court granted a defendant bank's motion to dismiss on judicial estoppel grounds a debtor's preference claims. Those claims, the court held, were barred because they were premised on a legal position that was inconsistent with the debtor's prior representations in its amended disclosure statement, in which the debtor had stated that management did not believe any preferences or fraudulent conveyances had occurred. The debtor actually knew within two months after its disclosure statement of at least some of the allegedly fraudulent transfers, yet never amended its statement or brought an adversary proceeding before its plan of reorganization was confirmed. Thus, the court concluded, the debtor could not reverse itself and bring a preference claim for its own benefit. *Id.* at 260.

In sum, Adelphia's position in the Southern District AP is clearly inconsistent with the position it took in the NFHLP Bankruptcy. The Bankruptcy Court in the NFHLP Bankruptcy relied on Adelphia's prior position in rendering its Sale Approval Order and allowing the sale of NFHLP's assets free and clear of any liens. The Banks would be unfairly prejudiced if the Southern District AP were not estopped. Thus, the Banks are entitled to judgment as a matter of law on their claim of judicial estoppel.

E. *Quasi Estoppel*

In addition to ratification, *res judicata* and judicial estoppel, Adelphia's and the Committee's avoidance claims in the Southern District AP are also barred by the doctrine of quasi-estoppel. Quasi estoppel operates to bar a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken by that party. *Erie Telecomms., Inc. v. City of Erie*, 659 F.Supp. 580, 585 (W.D.Pa.1987); *Chautauqua County Fed'n of Sportsmens Club, Inc. v. Caflisch*, 15 A.D.2d 260, 264, 222 N.Y.S.2d 835 (4th Dep't 1962). The doctrine, which is based on fundamental principles of equity, "applies where it would be unconscionable to allow a person to maintain a position inconsistent with one in which he acquiesced, or of which he accepted a benefit." *Erie Telecomms*, 659 F.Supp. at 585 (internal quotations and citations omitted).

The seminal case on quasi estoppel is *Simmons v. Burlington, C.R. & N.R. Co.*, 159 U.S. 278, 16 S.Ct. 1, 40 L.Ed. 150 (1895). In *Simmons*, a debtor railroad's lines, income and equipment were encumbered by senior and junior mortgage holders. The debtor was in default, and the court ordered the foreclosure and sale of the lines and franchises and appurtenant property with the proceeds payable to those who assented to the sale. Seven years after the sale, a junior-secured equipment creditor petitioned the court to redeem its collateral from the purchaser. The Supreme Court held that where a junior mortgagee is a party-defendant to a foreclosure bill and such junior mortgagee chooses not to assert its rights (notwithstanding the fact that the terms of the order may not have expressly foreclosed the junior mortgagee's rights) and stands by while a sale is made and confirmed free and clear of all liens, the junior mortgagee is estopped from later asserting its rights, because

> ***19** [e]ven when it does not work a true estoppel upon rights of property or of contract, it may operate in analogy to estoppel-may produce a ***quasi estoppel*** upon the rights of remedy.' And in section 965: ***'When a party,*** with full knowledge, or at least ***with sufficient notice or means of knowledge, of his rights, and of all the material facts, freely*** does what amounts to a recognition of the transaction as existing, or ***acts in a manner inconsistent with its repudiation,*** or lies by for a considerable time, and knowingly permits the other party to deal with the subject-matter under the belief that the transaction has been recognized, or freely abstains for a considerable length of time from impeaching it, so that the other party is thereby reasonably induced to suppose that it is recognized, ***there is acquiescence; and the transaction, although originally impeachable, becomes unimpeachable in equity.***Even where there has been no act nor language properly amounting to an acquiescence, a mere delay, a suffering time to elapse unreasonably, may of itself be a reason why courts of equity refuse to exercise their jurisdiction in cases of actual and constructive fraud, as well as in other instances. It has always been a principle of equity to discourage stale demands. Laches are often a defense wholly independent of the statute of limitations.

Simmons, 159 U.S. at 291-92 (emphasis added) (quoting, 2 Pom. Eq. Jur. § 816).

Simmons is on point with this case. As stated above, at the time of the sale hearing in the NFHLP Bankruptcy, Adelphia had knowledge of facts putting it on notice of the possibility of avoidance claims against the Banks. However, instead of trying to repudiate the allegedly fraudulent conveyances, it chose to remain silent. Thus, Adelphia acquiesced, and the conveyances, although perhaps "originally impeachable, became unimpeachable in equity."[FN3]

> FN3. In light of its rulings with regard to ratification, *res judicata*, judicial estoppel and quasi estoppel, the Court finds it unnecessary to determine whether Adelphia's and the Committee's avoidance claims are also barred under the doctrines of equitable estoppel, collateral estoppel, accord and satisfaction, and the "single satisfaction" rule.

CONCLUSION

For the reasons stated, the Court: (1) affirms the Bankruptcy Court as to Fleet; finding that Fleet is entitled to judgment as a matter of law; and (2) reverses the Bankruptcy Court as to HSBC and Key, finding that they are also entitled to judgment as a matter of law. The Clerk of Court shall take all steps necessary to close the case.

SO ORDERED.

W.D.N.Y.,2009.
HSBC Bank USA, Nat. Ass'n v. Adelphia Communications Corp.
Slip Copy, 2009 WL 385474 (W.D.N.Y.)

END OF DOCUMENT