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

In re

**MOTORS LIQUIDATION COMPANY, et al.,
f/k/a General Motors Corp., et al.,**

Debtors.

Chapter 11 Case No. 09-50026(REG)

(Jointly Administered)

**LIMITED OBJECTION OF THE STATE OF NEW YORK TO WILMINGTON TRUST
COMPANY'S MOTION (I)(A) TO LIQUIDATE NEW GM SECURITIES FOR THE
PURPOSE OF FUNDING FEES, COSTS, AND EXPENSES OF THE GUC AND
AVOIDANCE ACTION TRUSTS, AND (I)(B) TO TRANSFER NEW GM SECURITIES
TO THE AVOIDANCE ACTION TRUST FOR THE PURPOSE OF FUNDING FUTURE
TAX LIABILITIES; AND (II) TO APPROVE AN AMENDMENT TO
THE AVOIDANCE ACTION TRUST AGREEMENT**

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PRELIMINARY STATEMENT

1. The State of New York submits this limited objection to the Motion of Wilmington Trust Company, as both GUC Trust Administrator and Avoidance Action Administrator, for an Order pursuant to 11 U.S.C. §§ 105(a) and 1142(b) authorizing it: (I)(A) To Liquidate New GM Securities for the Purpose of Funding Fees, Costs and Expenses of the GUC Trust and the Avoidance Action Trust; (I)(B) To Transfer New GM Securities to the Avoidance Action Trust to Fund Future Tax Liabilities; and (II) To Amend the Avoidance Action Trust Agreement. For the reasons set forth below, the motion should be denied in part as not ripe, and in part because it fails to show that the relief requested will benefit existing and future Trust beneficiaries and will not result in discrimination. New York does not object to the additional funding for both Trusts, but not to the extent requested and not without sufficient safeguards in place to assure that Trust Assets are expended reasonably.

FACTUAL BACKGROUND

2. On or about October 29, 2009, New York filed timely proofs of claim related to the acts and omissions of General Motors Corporation's ("GM's") environmental contamination of real property in the State.¹ New York's claims have been the subject of not months, but years of on-and-off negotiations between counsel for the Debtors, Motors Liquidation Company ("MLC"), and the New York Attorney General's Office on behalf of the New York State Department of Environmental Conservation. These discussions commenced in August 2009 and resulted in some, but not all, of New York's claims being resolved (as set forth below).

3. On or about December 7, 2011, MLC proposed an Amended Chapter 11 Plan containing an agreement which created a Trust for the payment of general unsecured creditors

¹ On or about February 28, 2011, New York filed timely amendments to certain claims.

(“GUC Trust Agreement”), which consisted of New GM common stock and warrants. The Plan also created an Avoidance Action Trust to pursue certain claims on behalf of creditors. On February 3, 2011, the Creditor’ Committee filed a revised GUC Trust Agreement containing the budget for 2011-2012 Trust operations that was approved by the United States Treasury (“Initial Budget”).

4. The Plan and GUC Trust Agreement gave the Trust the authority, among other things, to object to and resolve claims, to make distributions to allowed claims, and to retain professionals. The Plan proposed to name Wilmington Trust Company (“WTC”) as the GUC Trust Administrator. WTC was MLC’s largest unsecured creditor and one of the leading members of the General Unsecured Creditors’ Committee.

5. During the confirmation process, the States of New York and California, and others, asserted certain Plan Objections related to the absence of controls in the GUC Trust Agreement, specifically with respect to the lack of oversight of the fees and expenses of Trust professionals (New York’s Limited Objection to Plan, ¶¶ 10-14) (Exhibit A). In response to these Plan Objections, WTC, as both Creditors’ Committee representative and prospective GUC Trust Administrator, asserted:

Finally, the fees and expenses of the GUC Trust, including *the fees and expenses of any professionals retained by the GUC Trust, will be tightly constrained by a detailed and inflexible budget* which will be initially approved by the U.S. Treasury, the Debtors and the Committee, and then reviewed by the U.S. Treasury and the GUC Trust Monitor on a quarterly basis. As a result of the robust review and approval processes encompassed within the agreement governing the GUC Trust (the “**GUC Trust Agreement**”), the Objectors’ concerns regarding the insufficiency of controls should be assuaged.

(WTC Limited Response to Objections, ¶ 4) (emphasis added) (Exhibit B).

6. On March 3, 2011, the Court conducted a confirmation hearing on the Plan. On or about March 29, 2011, the Court entered an order confirming the Debtors' Plan of Reorganization, approving the GUC Trust Agreement and Initial Budget, and appointing WTC as the Trust Administrator. The Plan was confirmed by the Court – and voted upon by creditors - in reliance on the GUC Trust Agreement and the Initial Budget proffered at that time.

7. Thereafter, the GUC Trust retained some of MLC's professionals, including Weil Gotshal & Manges as one of the Trust's attorneys, and AP Services as the Trust operations consultant. On information and belief, Weil is in charge of the claim resolution process.

8. On or about April 21, 2011, the GUC Trust distributed approximately 75% of the stock and warrants it held under the Plan (150,000,000 million shares and 273.6 million warrants) to WTC, the GUC Trust Administrator. At the time of the April 21st distribution to WTC, the New GM common stock was trading at \$30-31 per share (Exhibit C).

9. The GUC Trust made other distributions to Trust Beneficiaries on July 28, 2011, October 28, 2011, and January 13, 2012. New GM common stock was trading at varying amounts on each of those subsequent quarterly distribution dates: July 28, 2011: \$28 per share; October 28, 2011: \$26 per share; January 13, 2012: \$24 per share.² Since the initial distribution to WTC, New GM common stock has not traded above approximately \$28 per share and has been as low as \$19 a share (Exhibit C).

10. On or about September 16, 2011, New York and MLC entered into a Stipulation to resolve some of the State's claims ("Resolved Claims"). On or about January 20 and 23, 2012, New York received distributions of New GM common stock and A and B warrants for the

² The historical price of New GM "A" and "B" warrants during this time period is not available.

Resolved Claims. At the time of the January 20, 2012 distribution to New York, the New GM common stock was trading at approximately \$24-25 per share.

11. New York is a Trust beneficiary within the meaning of the GUC Trust motion, but continues to have approximately \$179.8 million in unresolved unsecured claims (“Unresolved Claims”) arising from GM’s contamination of property in New York. The site names, proof of claim numbers, and claim amounts for New York’s Unresolved Claims are set forth below:

Site	POC #	Amended POC Am't.
American Axle	51047/71023	\$12,341,502
American Axle (Admin Claim - penalties)	70988	\$832,989
Brillo Landfill	50639/71034	\$392,902
Brillo Landfill (Admin Claim - penalties)	70989	\$53,441
IFG (GM - Fisher Guide)	50587	\$3,299
IFG (Old Ley Creek Channel)	50587	\$13,190,162
IFG (Lower Ley Creek)	50587	\$64,099,111
IFG/Onondaga Lake NRD	50588	\$11,000,000
Old Upper Mountain Road LF	50827/71026	\$54,275,030
Onondaga Lake NPL (Site-wide)	50822	\$96,957
Saginaw	50635/71031	\$1,905,480
Saginaw (Admin Claim - penalties)	70987	\$163,431
Salina Landfill	50824 (REALM)	\$18,510,361
Grass River (NYSDOH)	29772	\$5,096
Total		\$176,869,761

Neither the GUC Trust nor MLC before its dissolution, have filed objections to New York’s Unresolved Claims.

12. New York also filed timely administrative claims totaling \$1 million arising from MLC’s violation of State administrative consent orders and its failure to comply with environmental laws of the State post-petition. These Administrative Claims are set forth below:

Site	POC #	Amended POC Am't.
American Axle (penalties)	70988	\$832,989
Brillo Landfill (penalties)	70989	\$53,441
Saginaw (penalties)	70987	\$163,431
Total		\$1,049,861

13. In mid-February 2012, New York learned for the first time from counsel for the GUC Trust (Weil Gotshal), that New York's Administrative Claims are being treated as general unsecured claims subject to satisfaction by the GUC Trust. Counsel provided no explanation for this unilateral change in treatment, of which New York had no notice or opportunity to be heard. Neither the GUC Trust nor MLC before its dissolution, filed objections to New York's Administrative Claims. On information and belief, the administrative claims of all MLC professionals have been paid in full.

14. The GUC Trust's motion states that there are 29.5 million shares of New GM common stock and 53.6 million warrants that currently remain available for distribution (Motion ¶ 7). The Trust acknowledges that, for purposes of paying administrative and reporting costs (including professional fees and expenses), it has already liquidated \$5.75 million of New GM securities, and has "held back" from distribution to Trust beneficiaries approximately 1.2 million shares of common stock and 2.1 million "A" and "B" warrants (Motion ¶¶ 10-13). The Trust says that it needs more, however, and asks the Court to approve the sale and/or transfer of 554,993 additional shares of common stock and more than 1 million warrants (Motion ¶ 15).

ARGUMENT

15. The Relief Sought is Not Entirely Ripe. To the extent that the GUC Trust seeks funding for future contingencies, such as the possible fees and expenses related to the No-Action Relief (Motion ¶¶ 51-52) and the potential future Avoidance Action Trust's tax liability (Motion ¶¶ 57-60), the motion is not ripe for adjudication. The Trust claims that if the SEC issues No-Action Relief, additional fees and expenses will be incurred. The Trust acknowledges that the SEC has not acted on the No-Action Relief yet (Motion ¶ 46: "assuming the GUC Trust receives the No-Action Relief..."). The Trust also asserts that there may be certain tax liabilities imposed

on Avoidance Action Trust. The Trust concedes that this tax liability has not arisen yet (Motion ¶ 59: “Given the uncertainty as to whether the Avoidance Action Trust Tax Liability will arise....”). The GUC Trust’s speculation about these future events does not justify the Court authorizing the liquidation of additional stock and warrants at this time. If and when the No-Action Relief is issued, and the Avoidance Action Trust Tax Liability is established, this portion of the relief is not ripe for review. Until then, the need to transfer or liquidate stock and warrants is based on speculation.

16. Section 1142(b) Is Not Appropriate Basis for the Relief Requested. The GUC Trust motion essentially seeks to amend the Plan, Confirmation Order, GUC Trust Agreement, and Initial Budget, all of which were approved as part of the confirmation process. The Trust seeks to revisit the funding provided in the Initial Budget, and requests additional funding that goes well beyond what creditors, the United States Treasury, and this Court believed was the Trust’s necessary funding during the confirmation process. Under the guise of the plan implementation provisions set forth in 11 U.S.C. § 1142(b), the GUC Trust attempts to obtain relief that is not specifically provided in the Plan or Confirmation Order. Section 1142(b) addresses the Court ordering “the transfer of property dealt with by a confirmed plan.” The additional liquidation of New GM securities for the payment of professionals outside of the approved Initial Budget is not “dealt with” in the Plan or the Confirmation Order. The Plan and Confirmation Order addressed the transfer of securities and cash to fund the Initial Budget only and to pay allowed claims. Furthermore, Section 105(a) does not provide authority for the relief requested. Section 105(a) itself does not create a separate substantive right to the relief the Trust seeks.

17. The Motion Has a Potential Discriminatory Impact on Trust Beneficiaries. If the relief requested in the GUC Trust motion is granted, the full and equitable recovery of both Trust Beneficiaries and creditors holding Unresolved Claims is unclear. The GUC Trust's motion does not address whether further liquidation of New GM stock will result in discrimination (1) between the first allowed claimant/distributee, WTC, and future Trust Beneficiaries now holding Unresolved Claims; or (2) among WTC and existing and future Trust beneficiaries. The GUC Trust's motion fails to make an affirmative showing that the relief requested will not result in disparate treatment.

18. Section 1123(a)(4) mandates that "[a] plan shall provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim agrees to a less favorable treatment of such particular claim or interest." Creditors here have never consented to disparate treatment under the Plan or GUC Trust Agreement. If claims are disputed, reasonable measures should be taken to ensure that same treatment is received by disputed claimants when their claims are finally allowed. *In re Motors Liquidation Co.*, 447 B.R. 198, 215 (S.D.N.Y. 2011). As the Court in *Adelphia Communications* recognized, the Code requires equal treatment of both claims and claimants. *In re Adelphia Communications Corp.*, 361 B.R. 337, 362-63 (S.D.N.Y. 2007) (citing *In re Joint Eastern and Southern District Asbestos Litigation*, 878 F.Supp. 473, 534 (E.D.N.Y. 1995)). The Trust has failed to show that existing and future Trust Beneficiaries will not be adversely impacted by the relief requested.

19. The Trust Fails to Show That the Relief is in Beneficiaries' Best Interests. The GUC Trust has the burden to show that the relief requested benefits Trust beneficiaries, including future beneficiaries. The Trust has not met this burden. The GUC Trust motion certainly will benefit Trust professionals by assuring continued payment of fees and expenses

(regardless of reasonableness), but whether adequate results have been or will be achieved by the professionals as a measure of effectiveness is simply not addressed. The absence of fee caps, and the non-disclosure of billing rates and retention amounts are further reason to require a showing of benefit to Trust Beneficiaries.

20. To justify the liquidation of additional GUC Trust assets, the Trust refers to the Trust Units, and asserts that additional Trust funding will “potentially” allow beneficiaries “to monetize their future Plan distributions immediately to the extent they wish to do so” (Motion ¶ 49). Whether this is any real benefit to Trust Beneficiaries is simply not clear. Notably, the GUC Trust never states that the relief granted in the motion will allow Beneficiaries to receive the Units sooner, or that lower administrative costs will result.

21. In attempting to justify the relief requested, the Trust asserts that paragraphs 15 and 31 of the Confirmation Order, and section 6.1 of the GUC Trust Agreement authorize the liquidation of New GM Securities (Motion ¶ 36). The Plan and GUC Trust require, however, that the fees and expenses paid by the Trust be “reasonable” (Plan § 6.2(m): GUC Trust “may retain and reasonably compensate counsel and other professionals...;” Trust Agreement § 6.1(a)(i): the Administrator may “pay reasonable costs and expenses of the GUC Trust that are incurred in connection with the administration...”). The Trust makes no showing that the fees and expenses, which depleted the Trust in just 9 months and were well beyond the Initial Budget, are in fact reasonable. Nor does the Trust show how it will assure the reasonableness of future fees and expenses.

22. The GUC Trust submits a proposed Revised Budget for approval (Motion Exhibit B). The complete lack of detail in the Revised Budget speaks for itself. The Revised Budget

gives neither the Court nor Trust Beneficiaries and creditors any inkling of how the Trust's money will be expended.

23. The Price Fluctuation and Contingency Reserves are Unwarranted. The GUC Trust requests approximately 10% in excess of its anticipated funding needs as a "price fluctuation reserve" and a "contingency reserve" (Motion p. 10, fn. 8). The price fluctuation reserve is for the stated purpose of protecting the GUC Trust (and its professionals) "against any potential decrease in the value of the New GM stock and warrants between the date of the motion and the date on which the Trust liquidates them. Neither the Trust beneficiaries nor those holding Unresolved Claims have had the benefit of "price fluctuation protection" to protect against disparate treatment between initial recipients of distributions and later recipients. It is not warranted for the Trust either.

24. The contingency reserve is for the stated purpose of providing "a further cushion" to the Trust if the Revised Trust Budget underestimates anticipated costs and expenses. The Revised Trust Budget submitted with the Trust's motion has such a sharp increase beyond the Initial Budget that it is difficult to understand how a cushion would be necessary. Even if it proved to be necessary, however, the Trust should be required to seek further relief from the Court at that time.

25. The Need for Closer Scrutiny of Professional Fees and Expenses. Undoubtedly, the payment of professionals is necessary for administration of the Trust. But transparency within the Trust is now called for in light of the significant increase in the Budget. The GUC Trust does not disclose the details of the incurrence of fees and expenses that were so far in excess of the Initial Budget. Moreover, the GUC Trust fails to adequately explain how it intends to control professional fees and expenses in the future. Without additional measures in place to

control costs, the Trust beneficiaries remain unprotected against further depletion of Trust assets to pay professionals.

26. As set forth above (¶ 5), in response to New York's Plan Objections that the GUC Trust lacks sufficient oversight and controls of professional fees to protect creditors, WTC asserted that "*the fees and expenses of any professionals retained by the GUC Trust, will be tightly constrained by a detailed and inflexible budget*" (WTC Response, ¶ 4) (emphasis added). This has not proven to be the case and additional controls are needed.

27. Section 1129(a)(4) has been construed to require that all payments of professional fees which are made from estate assets be subject to review and approval by the court as to their reasonableness. *See River Village Assocs.*, 161 B.R. 127, 141 (Bankr. E.D.Pa. 1993); *In re Resorts Int'l, Inc.*, 145 B.R. 412, 475 (Bankr. D.N.J. 1990); *In re Texaco Inc.*, 84 B.R. 893, 908 (Bankr. S.D.N.Y.), *appeal dismissed*, 92 B.R. 38 (S.D.N.Y. 1988). The payment of GUC Trust professionals clearly should be subject to this or a comparable requirement in light of the depletion of the Trust's Initial Budget (the so-called "burn rate") in such a short period of time and far short of the complete resolution of outstanding claims issues and the Avoidance Action.

28. The GUC Trust has operated without Bankruptcy Court or United States Trustee oversight. The reports of the Fee Examiner during the administration of these cases provide the best reason bringing greater oversight to the GUC Trust and its professionals, many of whom the Fee Examiner knows well.

29. The State has no objection to the Trust being given authority to liquidate a limited amount of New GM securities than requested, but the Trust should not be given unfettered authority to continue spending without reasonable limits and oversight. If the relief is granted to any extent, the fees and expenses of GUC Trust and Avoidance Action Trust professionals

should be subjected to the scrutiny of the United States Trustee (or an independent fee examiner) for reasonableness and compliance with the United States Trustee guidelines. Otherwise, the GUC Trust and its professionals will be rewarded for their undisciplined approach to the Initial Budget. Subsequent Budgets also may be subject to upward revision in the absence of greater control over the activities of the Trust and its professionals.

30. A Rule 6004(h) Waiver of Stay is Inappropriate. The GUC Trust asks the Court to issue a waiver of the 14-day stay of the effectiveness of an Order granting the relief (Motion ¶ 63). The Trust is not seeking relief under 11 U.S.C. § 363, and this is not the use or sale of property of the estate by the Debtors during administration of the case. The Trust's post-confirmation motion instead seeks to revise the provisions of the Plan and Confirmation Order by increasing the Initial Budget. Rule 6004(h) is therefore not applicable. Even assuming for the sake of argument that the Trust's motion can be construed to be related to the use and sale of property under Section 363, the Trust fails to justify the waiver of the stay. It states that the "price fluctuation" of the New GM securities and further delays may leave the Trusts "underfunded, thus necessitating additional reserves and potentially additionally [sic] sales." This rationale is belied by the Trust's request for 10% beyond its anticipated needs for the purpose of protecting against price fluctuations (Motion, p. 10, fn 8).

CONCLUSION

For the foregoing reasons, New York respectfully requests that the motion be denied in part with respect to the relief requested that is not ripe; and should be granted in part only upon the Trust's showing that the relief is in the best interest of existing and future Trust beneficiaries, and that it will not result in disparate treatment among them. Finally, the relief granted should be conditioned upon the United States Trustee's or a fee examiner's review of fees and expenses

incurred and to be incurred by professionals of both the GUC and Avoidance Action Trusts, and a finding of reasonableness made.

Dated: February 21, 2012

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CERTIFICATE OF SERVICE

Maureen F. Leary, hereby certifies that on the 21st day of February, 2012 that she served a true copy of the States Limited Objection to Wilmington Trust's Motion as the GUC Trust Administrator and Avoidance Action Administrator Order authorizing Liquidation of Securities, Transfer of Securities, and Amendment to the Avoidance Action Trust, upon each of the parties set forth below by electronic or first class mail, postage prepaid, or by the Electronic Case Management Filing System maintained by the United States Bankruptcy Court for the Southern District of New York:

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Hearing Date: March 3, 2011

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

In re

MOTORS LIQUIDATION COMPANY, et al.,

Debtors.

Chapter 11

**Case No. 09-50026 (REG)
(Jointly Administered)**

**STATE OF NEW YORK'S LIMITED OBJECTION TO
DEBTORS' MOTION FOR ENTRY OF AN ORDER
CONFIRMING LIQUIDATION PLAN AND GUC TRUST**

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February 11, 2011

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**STATE OF NEW YORK'S LIMITED OBJECTION TO DEBTORS' MOTION
FOR ENTRY OF AN ORDER CONFIRMING LIQUIDATION PLAN AND GUC TRUST**

1. The State of New York on behalf of the New York State Department of Environmental Conservation (collectively "New York"), as a Class 3 claimant holding unsecured claims not yet deemed allowed, which are related to environmental costs and liability in the above captioned Chapter 11 cases, submits this limited objection to confirmation of the Chapter 11 plan of liquidation ("Plan"), proposed by the Debtors, Motors Liquidation Company, *et al.* (f/k/a General Motors Corporation). New York's limited objection addresses issues related to (1) insufficient oversight and control of the General Unsecured Creditors Trust ("GUC Trust"); (2) the pre-and post-confirmation roles the proposed GUC Trust Administrator, Wilmington Trust Corporation ("WTC"), and the independence of other Trust professionals; (3) the favorable treatment WTC is to receive under the Plan and GUC Trust, including payment in full of all pre-and post-petition fees; (4) the potential for inequitable treatment among

unsecured creditors, namely those allowed upon the effective date and those allowed post-confirmation and full and immediate distribution to allowed unsecured claimants upon confirmation without holdback; and (6) certain other overly broad and improper provisions in the Plan.

2. New York is both a Class 3 unsecured creditor (impaired) and a Class 4 governmental entity (unimpaired). New York supports the Plan insofar as it seeks approval of Class 4 treatment. New York has limited objections to the Plan as a Class 3 claimant and unsecured creditor, however, as set forth below. New York respectfully requests that the Court condition confirmation based upon correction of the following deficiencies to the Plan and GUC Trust.

Background

3. On July 5, 2009, this Court approved the sale of substantially all of the Debtors assets to an entity now known as [New] General Motors Corporation. Expressly excluded from the sale were certain environmentally contaminated properties owned by the Debtors, including properties in New York for which the Debtors is alleged to be liable under State and Federal environmental laws.

4. On October 20, 2010 the United States Department of Justice filed a Notice of Lodging of the Proposed Settlement Decree of the Environmental Response Trust Consent Decree and Settlement Agreement (hereinafter the “ERT”) with this Court. The ERT is an agreement among GM/MLC, the United States, and several States, including New York, which transfers to a Trust certain environmentally contaminated MLC-owned properties that were purportedly excluded from the 363 sale to New General Motors, and provides funding to remediate the contamination at these sites.

5. On or about December 7, 2010, the Debtors filed an Amended Disclosure Statement and Amended Plan. The Plan attached the ERT (Plan, Exhibit C) and identified the State and Federal signatories as Class 4 unimpaired claimants (Property Environmental Claims), whose members are deemed to have accepted the Plan (*see* December 8, 2010 Order Approving Disclosure Statement, § 33; Plan, Article III, p. 26). New York is also a Class 3 claimant and has rights separate and distinct from its position as Class 4 ERT claimant. The Amended Disclosure Statement and Plan also included a GUC Trust Agreement for the benefit of Class 3 unsecured creditors (Plan, Exhibit D). The Plan names Wilmington Trust Company (“WTC”) as the GUC Trust Administrator, AP Services LLC as the Trust’s operational manager, and FTI Consulting Inc. (“FTI”) as the Trust Monitor [Plan § 6.2(e)]. The Plan further provides that the GUC Trust Administrator and Monitor may retain and “reasonably compensate counsel and other professionals without bankruptcy court approval [Plan § 6.2(g)].

6. The Amended Disclosure Statement and Plan also sets forth provisions for execution of an Avoidance Action Trust Agreement (Plan § 6.5), and names WTC as the Trust Administrator and FTI as the Trust Monitor [Plan, § 6.5 (e)]. The Avoidance Action Trust is similarly for the benefit of unsecured creditors and the United States Treasury.

7. The Disclosure Statement and Plan estimate the total liability for Class 3 unsecured claims at approximately \$36 billion (DS, Exhibit B, Budget).¹ Class 3 unsecured claims are impaired (Plan § III, p. 26).

8. On December 8, 2010, this Court issued an order approving the amended Disclosure Statement for the Debtors’ Amended Joint Chapter 11 Plan and set a March 3, 2011

¹ The proposed Plan does not append an updated budget.

confirmation hearing.

9. On or about November 29, 2009, the State timely filed 21 proofs of claim totaling in excess of \$150 million and arising from the Debtors' environmental compliance obligations and liability for costs associated with numerous environmentally contaminated sites located in New York.

The GUC Trust Lacks Sufficient Controls and Oversight

10. Sufficient safeguards are not in place to oversee the GUC Trust's administration, particularly the management of Trust assets and the retention and the payment of the Trust Administrator, Monitor, and professionals. Indeed, the GUC Trust appears to be structured to insulate the Administrator, Monitor, and Trust professionals from oversight by the Court, the United States Trustee, and creditors even though the Trust will be managed and operated by AP Services, which has acted as the Debtor in Possession during these cases.

11. The GUC Trust Administrator has the broad authority to "hold, manage, sell, invest, and distribute the GUC Trust Assets." Beyond the fact that the Administrator does not necessarily need the authority to trade ("sell" or "invest") in Trust Assets because it should only be holding, managing and distributing the assets to unsecured creditors, neither the Plan nor the GUC Trust instrument contain express protections for overseeing such actions and accounting for the assets transferred to WTC's control. The Plan contains no requirement for an independent third-party audit of Trust assets or documentation of equitable treatment among members of Class 3. Neither the Plan nor the GUC Trust Agreement directly address the institutional or other controls that would operate as a check on the Trust Administrator's powers. Such controls are prudent in order to protect the GUC Trust assets and prevent

discrimination.²

12. The GUC Trust Monitor is not a true monitor at all because it lacks the authority under the GUC Trust's terms to provide meaningful and independent oversight for the GUC Trust assets. The fact that the Plan provides for the Trust Administrator to choose the Monitor is evidence of the absence of the independence necessary to assure the protection of Trust assets.

13. The Court has appointed a fee examiner in this case who has comprehensively reviewed and objected to the fees and expenses of estate professionals that were inconsistent with the United States Trustee's Fee Guidelines and the orders of this Court. The United States Trustee at times has joined in these objections. The fee examiner has objected - or attempted to object - to the fees sought by the entities proposed to operate and monitor the GUC Trust, namely AP Services and FTI. Despite the history of the examiners' objections to fees and expenses by estate professionals during this case and consequent rulings by this Court, disputes related to fees and expenses have continued. There is little reason to believe that the fees and expenses of the GUC Trust professionals will not warrant continued oversight and involvement by a fee examiner or at least by the Court.

14. Accordingly, the confirmation order should require an annual audit of the Trust assets; Administrator or Monitor reporting on equitable treatment to the Court; appointment of a fee examiner to oversee fees and expenses to be paid by the GUC Trust; Bankruptcy Court approval of such fees; compliance with the United States Trustee's Fee Guidelines and prior rulings of the Court; and imposition of appropriate sanctions upon professionals in the event that the fee examiner prevails in any disputes related to GUC Trust fees and expenses.

² The same controls would be prudent for the Avoidance Action Trust.

WTC's Pre- and Post- Confirmation Roles

15. WTC has played a prominent role during the pendency of these cases as a member of the Unsecured Creditors Committee (“UCC”) and as the Indenture Trustee for certain GM bondholders holding one of the largest allowed unsecured claims (\$23 billion). Kramer Levin represents the UCC in this case, but also represents or has represented WTC individually in a separate unrelated matter (*see* June 17, 2009 Declaration of Thomas Moers Mayer, ¶ (3)(ii), in Support of Official Committee of Unsecured Creditors’ Motion Authorizing Retention of Kramer Levin).

16. WTC’s roles as proposed in the Plan include acting as the Trust Administrator for both the GUC Trust [*see* Plan § 6.2(e)] and the Avoidance Action Trust [*see* Plan § 6.5(e)]. The beneficiaries of these Trusts are not only WTC’s bondholder constituency, but all other unsecured creditors. WTC currently is acting as Indenture Trustee for the bondholders, and will continue to serve in that role after the effective date. Under the Plan, WTC’s post-effective date duties as Indenture Trustees include dealing with the surrender of existing publicly traded securities, receiving payments for Indenture duties, maintaining rights or liens for fees under the Indentures, and retaining the right to assert claims as the Indenture Trustee against Delphi Corporation or its affiliates (Plan §§ 5.10 and 6.7).³ Thus, WTC’s role as Indentured Trustee for the bondholder constituency does not end upon confirmation. The interests of other unsecured creditors that WTC must serve may diverge from the interests of WTC’s bondholders.

17. For example, as the GUC Trust Administrator, WTC will be responsible for

³ *See also* Plan § 1.101, defining “Note Claims,” as referred to in Section 5.10 and 6.7, to include any claim “arising under or in connection with any Indenture and the respective notes, bonds or debentures issued thereunder....”

disallowing or reducing the post-confirmation recovery of unsecured creditors whose claims have not been allowed as of the effective date. This will operate to preserve or increase the recovery of the pre-effective date allowed claims, including the recovery of its own bondholder constituency. As such, the interests of the allowed and not-yet-allowed claimants may conflict. Even though interests are not considered “adverse” merely because it is possible to conceive a set of circumstances under which the interests may clash, *In re Adelfia Communications Corp.*, 336 B.R. 610, 672 (Bankr. S.D.N.Y. 2006), an inquiry into disinterestedness and potential conflicts should still be undertaken.

18. The Plan lacks any showing of WTC’s disinterestedness. Although the provisions of 11 U.S.C. § 327 may not strictly apply here because the appointment of WTC does not *per se* constitute the retention of an estate professional during a case, the requirement for disinterestedness is even more important when the equitable treatment of creditors is at stake. The GUC Trust is for the benefit of all unsecured creditors and the Trust Administrator’s role is a critical one with the potential to adversely affect the recovery of creditors whose claims are not allowed on the effective date. WTC’s continued performance of duties as Indenture Trustee differentiates this case from those in which a professional no longer represents a creditor whose interest may diverge from other creditors. *See e.g., In re Diva Jewelry Design, Inc.*, 367 B.R. 463 (Bankr. S.D.N.Y. 2007). Thus, prior to confirming the Plan, the Court should require the proposed GUC Trust principals to show disinterestedness and should include in the confirmation order a mechanism to address conflicts of interest and continuing judicial oversight.

19. WTC’s fiduciary obligations under the Plan are not limited to those owed to unsecured creditors. As the Avoidance Action Administrator, WTC will owe fiduciary

obligations to both unsecured creditors and the United States Treasury as potential beneficiaries of the Avoidance Action Trust. The Plan also proposes a post-confirmation role for WTC to carry out certain duties of the Debtors after confirmation [Plan § 6.2(f)]. Again, the potential for divergent positions among the beneficiaries of the Trusts makes WTC's various fiduciary roles and obligations foreseeably problematic. Moreover, the lack of separation among its various pre- and post-confirmation roles, when viewed with the requirement that WTC serve so many interests, represents an absence of disinterestedness and a potential conflict of interest.

20. WTC will have the power as Trust Administrator to prosecute and resolve objections to unresolved claims [*see* Plan, Section 6.2(f)]. The pro forma requirement for the GUC Trust Administrator to file reports with the Court "on the status of claims reconciliation and distributions" [*see* Plan § 6.2(f)] is insufficient to address conflicts of interest or to assure equitable treatment among creditors.

21. The language of Section 6.2(f) states that WTC must "act in the best interest of all beneficiaries of the GUC Trust and in furtherance of the purpose of the GUC Trust, and in accordance with the GUC Trust Agreement, and not in its own best interest as a creditor" (emphasis added). Thus, the Plan language recognizes WTC's potential conflict of interest, but fails to provide any remedy for unsecured creditors in the event that the Administrator acts improperly in its own interest or inequitably toward remaining unsecured creditors. It also places unsecured creditors in the unenviable position of having to prove that WTC's has acted in its own best interest. The GUC Trust and its Administrator and Monitor will not operate transparently. Indeed, under the GUC Trust Agreement, all documents exchanged between the Trust Administrator and the Monitor are deemed privileged [Plan, Exhibit D: GUC Trust Agreement, § 11.1(b)], regardless of whether any privilege would otherwise apply. Discerning

improper behavior or inequitable treatment could prove to be difficult, if not impossible.

22. New York does not assert that improper behavior by the Trust Administrator will or is even likely to occur. Rather, New York objects to the Plan insofar as it fails to provide the fundamental showing that WTC can act with disinterest in its many post effective date roles.

WTC's Favorable Treatment Under the Plan and GUC Trust

23. WTC is being treated more favorably under the Plan and GUC Trust than otherwise permitted under the Code's equitable scheme. WTC will be paid in full for its *pre-petition* fees and expenses incurred as Indentured Trustee (*see* Plan § 2.5: "Special provisions Regarding Fees and Expenses of Indenture Trustee;" Plan § 5.2(a)(v), "Payments and Transfers On Effective Date"). WTC's pre-petition fees and expenses are unsecured claims that are not entitled to be paid in full administratively. The Plan provides no legal basis or justification for administrative treatment of WTC's pre-petition fees and expenses.

24. Furthermore, in its role as GUC Trust Administrator, WTC will be paying itself administratively without judicial oversight or opportunity for objection by parties in interest [*see* Plan, Section 5.2(f)]. There is likewise no legal basis for this arrangement. The confirmation order should eliminate the ability for WTC to recover pre-petition fees and expenses administratively.

Pre- and Post-Confirmation Roles of Other GUC Trust Fiduciaries

25. AP Services. The Plan also provides for the GUC Trust's retention of the existing management of the Debtors, AP Services, to manage the Trust's "day to day operations" [*see* Plan § 6.2(e)]. Because of its roles as the Debtor in Possession, AP Services lacks sufficient independence to serve in a role intended to be for the benefit of unsecured creditors. Moreover, the significant fees and expenses incurred by the estate to fund AP Service's extensive staffing

will no doubt continue if it acts as the operational entity for the GUC Trust. The GUC Trust can little afford the cost of AP Services, even in light of a potential funding cap for such costs. The experience AP Services may bring to the case is not outweighed by the potential cost of its services.

26. Weil Gotshal. On information and belief, the Debtors' attorneys, Weil Gotshal, continue to express an interest in acting as counsel to the GUC Trust and to WTC as the GUC Trust Administrator. Like AP Services, Weil is not suited to act in this post-confirmation fiduciary role as essentially counsel to unsecured creditors, albeit on behalf of the Trust fund set up for the benefit of such creditors. It cannot act on two sides of the proverbial table, one for the benefit of the Debtor and the other for the benefit of creditors.⁴ Moreover, the GUC Trust cannot afford the significant fees and expenses Weil has already charged in this case even with the fee cap. The retention of Weil is not in the best interest of Class 3 unsecured creditors as beneficiaries of the GUC Trust.

27. FTI. The Plan has identified the GUC Trust Monitor as FTI Consulting, Inc. ("FTI"), whose role is defined as overseeing the "activities" of the GUC Trust and the distribution of the Trust assets to unsecured creditors (Plan § 6.2(g); Exhibit B, GUC Trust § 11.1). FTI as a retained Creditors Committee professional in this case lacks sufficient independence to act as the GUC Trust Monitor.

28. The confirmation order should provide for the selection of an independent Monitor, and an operational entity and counsel unrelated to the Debtors. The order also should require the Monitor to report to the Court and the United States Trustee at least biannually on

⁴ New York recognizes that Section 327(e) allows a trustee, with the Court's approval, to retain an attorney who has represented the debtor, but the post-effective date GUC Trust is not the same as situations governed by 327, whereby professionals are retained by a trustee during a case and the protections of judicial oversight are in place.

administration of the Trust, the distribution of Trust assets, the value of the recovery of pre-and post-effective date allowed Class 3 claimants, and fulfillment of the requirement of equitable treatment of all unsecured creditors. The Monitor's role should be expanded to include auditing of the GUC Trust.

The GUC Trust and Equitable Treatment of Class 3 Claimants

29. The GUC Trust governs the recovery by Class 3 unsecured creditors, including those holding claims not deemed allowed on the effective date. As of the date of this filing, none of New York's claims have been deemed allowed despite efforts for more than a year to resolve such claims with the Debtors. There are insufficient protections in the Plan and the GUC Trust to assure that New York's claims, and those of other unsecured claims, will be treated equitably. There is no mechanism in the Plan or GUC Trust to assure that the Class 3 creditors whose claims are not allowed upon the effective date will receive the same *value* as claimants allowed on the effective date. This is particularly problematic in light of the immediate and full payout to allowed unsecured claimants, including WTC's bondholder constituency, upon the effective date.⁵

30. Despite the Plan's statement that distribution will be the same as if allowed on the effective date (*see* Plan § 7.4), there is no mechanism in place to guarantee this result. For example, the payment and liquidation of GM common stock on the effective date by allowed Class 3 claimants has the potential to drive down the value of the stock based on the simple principle of supply and demand. As the many distributed shares of GM stock are traded in the

⁵ Moreover, if the GUC Trust assets prove to be insufficient to address all claims, only MLC is empowered to request that the Court effectuate a provision in the 363 Sale Order requiring New GM to issue "Adjustment Shares" up to an additional 2% of its common stock. The GUC Trust Administrator apparently does not have such power and will not be able to remedy the problem of insufficient funds to treat all creditors equitably.

market, there is a potential for the value of those shares to be worth less after the effective date. The GUC Trust cannot control that result. The confirmation order can provide, however, that unsecured creditors, whose claims are allowed after the effective date, will receive the same “value,” rather than the same “distribution,” as the creditors allowed on the effective date.

31. The confirmation order also should provide a 25% holdback for claimants receiving an initial distribution on the effective date, with the remainder paid only upon final allowance or disallowance of all Class 3 claims. The holdback will protect those unsecured creditors whose claims are deemed allowed after the effective date and assure that the Code’s mandatory requirement of equitable treatment among unsecured creditors is met. This 25% holdback will also operate as an incentive to the GUC Trust Administrator to timely resolve the remaining outstanding unsecured claims not allowed upon the effective date.

Term of Injunctions and Stays

32. The Plan provides for a continuation of the injunctions and stays in effect during the case (Plan § 10.4). In a June 1, 2009 “Order Pursuant to 11 U.S.C. § 105 Enforcing Protections of 11 U.S.C. §§ 362, 365(e)1) and 525, this Court stayed all governmental entities from “commencing or continuing any judicial, administrative, or other action or proceeding against the Debtors, including the issuance or employment of process, that was or could have been initiated before the Debtors chapter 11 cases commenced....” This Order effectively eliminated the exception from the automatic stay provided to governmental entities enforcing police and regulatory authority as set forth in 11 U.S.C. § 362(b)(4). This exception from the automatic stay for governmental entities is well-recognized in this Circuit. *See City of New York v. Exxon*, 932 F.2d 1020, 1032 (2d Cir. 1991); *State of New York v. Mirant New York, Inc.*, 300 B.R. 174, (S.D.N.Y. 2003). The “Special Provisions for Governmental Units” (Plan

§ 10.8), when read with the Plan's Release and Exculpation provisions (Plan §§ 12.5 and 12.6), fails to clarify the ability for governmental entities to act within their police and regulatory authority after the effective date. Indeed, the Plan's continuation of the injunctions and stays may be read to significantly limit the ability for the government to act for the protection of human health and the environment.

33. The stay set forth in this Court's June 1, 2009 Order has been in effect during the 21 months these cases have been pending. The indefinite continuation of the stay after the effective date is contrary to law. The confirmation order should make clear that the stay against governmental entities set forth in the June 1, 2009 Order is no longer in effect.

Overly Broad Third Party Non-Debtor Releases and Exculpation

34. The Plan contains broad releases and exculpation of non-debtor third parties who are not necessarily entitled to such relief (*see* Plan §§ 12.5 and 12.6). Besides the fact that these provisions are essentially an improper discharge of the Debtors, it is equally improper for the Plan to provide this relief to non-debtors. *SEC v Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 293 (2d Cir. 1992)* (non-debtor releases are proper only in "rare cases"). The factors necessary for releasing non-debtors are not present here. *See e.g., In re DowCorning Corp., 280 F.3d 648, 658 (6th Cir. 2002)* (specifying the seven factors that must be present if a release of non-debtor liabilities is to be appropriate). One of the required factors is that the Court must "make a record of specific factual findings" regarding the non-debtor liabilities. The Plan does not satisfy that requirement here because there is no information before the Court on exactly what liabilities of the non-debtors are being released now and in the future. Accordingly, the confirmation order should limit or eliminate the Plan's release and exculpation provisions.

Bankruptcy Court's Exclusive Jurisdiction Post-Confirmation

35. The Plan provides that the Bankruptcy Court shall have "exclusive" jurisdiction post-confirmation (Plan, § 11.1). This provision fails to account for the jurisdiction given to other State and federal courts, particularly with respect to environmental matters that may arise after the Plan's effective date. Under the Code, the Bankruptcy Court retains broad jurisdiction over certain matters related to the administration of the estate and the implementation and consummation of the Plan. The Bankruptcy Court's post-confirmation jurisdiction is not "exclusive," however. *See In re Mystic Tank Lines Corp.*, 544 F.3d 524, (3d Cir. 2008) (Bankruptcy Court did not have exclusive jurisdiction over State's claim for cleanup costs). The confirmation order should delete the term "exclusive" in relation to the Court's retention of jurisdiction.

Administrative Expenses

36. The failure to provide in the Plan for the payment in full of the Debtors' administrative obligations, including the obligation to pay post petition environmental compliance obligations at contaminated sites in New York also precludes confirmation of the Plan. *See* 11 U.S.C. § 1129(a)(9)(A); *In re Adelpia Business Solutions, Inc.*, 341 B.R. 415, 422 (Bankr. S.D.N.Y. 2003) (on the effective date of a plan, all administrative expenses must be paid in full). The confirmation order should expressly include that requirement.

Conclusion

37. We believe that the foregoing issues are of great importance to the States and to other unsecured creditors whose claims are not deemed allowed upon confirmation. New York respectfully requests that the Court condition confirmation of the Plan based upon the foregoing and grant such other relief as this Court deems just and proper.

Dated: February 11, 2011
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CERTIFICATE OF SERVICE

I, Maureen F. Leary, hereby certify that on the 11th day of February, 2011 I served a copy of the State of New York's Limited Objection to Debtors' Motion for Entry of an Order Confirming Liquidation Plan upon each of the parties by electronic and/or first class mail, postage prepaid:

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Hearing Date and Time: March 3, 2011 at 9:45 a.m.

Response Deadline: February 23, 2011 at 4:00 p.m. (by permission of Court)

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

In re:

**MOTORS LIQUIDATION COMPANY, *et al.*
(f/k/a General Motors Corp., *et al.*)**

Debtors.

Chapter 11

Case No. 09-50026 (REG)

(Jointly Administered)

**LIMITED RESPONSE OF WILMINGTON TRUST COMPANY AS
INDENTURE TRUSTEE TO THE OBJECTIONS OF (I) THE CALIFORNIA
DEPARTMENT OF TOXIC SUBSTANCES CONTROL, (II) THE
STATE OF NEW YORK, AND (III) THE TOWN OF SALINA
TO THE DEBTORS' AMENDED JOINT CHAPTER 11 PLAN**

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February 23, 2011

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Wilmington Trust Company as Indenture Trustee (“**WTC**”), by and through its undersigned counsel hereby submits this Limited Response (the “**Response**”) to the Objections of (i) the California Department of Toxic Substances Control (“**DTSC**”) to Debtors’ Joint Plan (the “**DTSC Objection**”) [Docket No. 9199], (ii) the State of New York on behalf of the New York State Department of Environmental Conservation (“**New York State**”) to Debtors’ Motion for Entry of an Order Confirming Liquidation Plan and GUC Trust (the “**New York State Objection**”) [Docket No. 9208], and (iii) the Town of Salina (“**Salina**,” and together with DTSC and New York State, the “**Objectors**”) to Amended Joint Chapter 11 Plan Proposed by Motors Liquidation Company f/k/a General Motors Corporation (the “**Salina Objection**,” and together with the DTSC Objection and the New York State Objection, the “**Objections**”) [Docket No. 9197]. In support of its Response, WTC represents as follows:¹

PRELIMINARY STATEMENT

1. The Objectors assert that the Debtors’ Amended Joint Chapter 11 Plan dated December 7, 2010 (the “**Plan**”) should not be confirmed because, *inter alia*, (i) the Plan improperly provides for the cash payment of the prepetition and post-petition fees and expenses of WTC as indenture trustee, (ii) WTC, as proposed trust administrator for the GUC Trust and AA Trust (each as defined below) is subject to disabling conflicts of interest that render the Plan

¹ WTC files this Response solely for the limited purpose of addressing the specific concerns raised by each of the Objectors with respect to (i) the appropriateness of the cash payment of WTC’s prepetition and post-petition fees, (ii) the ability of WTC to serve as administrator of the trusts created under the Plan, and (iii) the sufficiency of the oversight and control over such trusts. WTC anticipates that the Debtors and/or the Committee (each as defined below) will respond to all objections concerning distribution mechanics, equality of distribution and other issues related to the Plan and the trusts created thereunder. In order to avoid duplication of effort, WTC limits its Response to only the issues raised which directly implicate WTC.

non-confirmable, and (iii) the GUC Trust lacks sufficient oversight and controls to protect unsecured creditors.

2. Despite the Objectors' assertions to the contrary, the payment of prepetition and post-petition fees and expenses of indenture trustees is not only appropriate and supported by applicable law, it is also commonplace and customary in the chapter 11 plan context. Case law interpreting Sections 1123(b)(6) and 1129(a)(4) of title 11 of the United States Code (the "**Bankruptcy Code**") has held that plan provisions which provide for the payment of the fees and expenses of specific creditors, including indenture trustees, are "appropriate" if such fees and expenses are subject to a reasonableness review and approval of the court. With respect to the fees and expenses of WTC as indenture trustee, the Plan provides that such fees are to be paid only following a reasonableness review to be performed by every major debtor and creditor constituency, with the Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") retaining ultimate authority to hear any disputes regarding such reasonableness. Moreover, as detailed further below, courts presiding over numerous cases in this and other Districts have confirmed chapter 11 plans containing similar (if not identical) provisions regarding the payment of the fees and expenses of indenture trustees in cash on the effective date of such plans. As such, the Plan provisions which purport to pay WTC's fees and expenses, as indenture trustee, meet the requirements of Bankruptcy Code Sections 1123(b)(6) and 1129(a)(4) and should not pose an obstacle to confirmation of the Plan.

3. Similarly, the arguments of the Objectors that the "multiple roles" proposed for WTC under the Plan result in disabling conflicts of interest are overstated and misguided. If the Plan is confirmed in its current form, WTC will serve as trust administrator to the GUC Trust and the AA Trust after the effective date of the Plan (the "**Effective Date**"). Serving in these

two capacities cannot lead to a conflict of interest as the purpose of both of these trusts is the same—to distribute the remaining assets of Motors Liquidation Company (“**MLC**”) to creditors of the MLC estate. While WTC currently serves as member and chair of the Official Committee of Unsecured Creditors (the “**Committee**”), it shall resign such posts upon dissolution of the Committee following the Effective Date. In addition, while WTC will continue to serve as indenture trustee after the Effective Date, the scope of its rights and obligations in such capacity will be stripped to all but the ministerial duties of disbursing cash, stock and warrants received as Plan distributions from each of the trusts following the Effective Date. As such, none of the roles to be filled by WTC under the Plan presents a conflict of interest that would prevent confirmation of the Plan.

4. Finally, the argument of the Objectors that the GUC Trust lacks sufficient oversight and controls reflects a failure to acknowledge or understand the multiple layers of review and approval that form the foundation of the GUC Trust. Each of the Objectors asserts that the monitor for the GUC Trust (the “**GUC Trust Monitor**”)—which is responsible for approving all actions of the GUC Trust other than the most ministerial distribution duties—lacks independence because it is selected by WTC. Such assertions are factually inaccurate; the Plan clearly provides that the GUC Trust Monitor be appointed by the Committee, an independent body which was appointed by the U.S. Trustee and represents the interests of all unsecured creditors. Moreover, and as detailed further below, Bankruptcy Court approval is required before the administrator for the GUC Trust can take any actions which might affect recoveries to unsecured creditors. In addition, WTC understands that the GUC Trust will be required to prepare and file with the Bankruptcy Court and with the U.S. Securities and Exchange Commission (the “**SEC**”) annual and quarterly reports detailing the activities and financial status

of the GUC Trust. Such reports will be available to the public for its review, and will be audited on a yearly basis by an independent auditor. Finally, the fees and expenses of the GUC Trust, including the fees and expenses of any professionals retained by the GUC Trust, will be tightly constrained by a detailed and inflexible budget which will be initially approved by the U.S. Treasury, the Debtors and the Committee, and then reviewed by the U.S. Treasury and the GUC Trust Monitor on a quarterly basis. As a result of the robust review and approval processes encompassed within the agreement governing the GUC Trust (the “**GUC Trust Agreement**”), the Objectors’ concerns regarding the insufficiency of controls should be assuaged.

BACKGROUND

5. WTC is the successor Indenture Trustee for approximately \$23 billion in U.S. dollar denominated bonds, debentures and notes (collectively, the “**Bonds**,” and the holders of claims arising from the Bonds, the “**Bondholders**”) issued by MLC, formerly known as General Motors Corporation.²

6. Beginning on June 1, 2009, the above-captioned debtors and debtors-in-possession (the “**Debtors**”) filed petitions with the Bankruptcy Court under chapter 11 of the Bankruptcy Code, commencing these bankruptcy cases (the “**Cases**”).

7. On June 3, 2009, the Office of the United States Trustee appointed WTC and fourteen other members to the Committee.³ WTC was thereafter selected chairperson of the Committee by the other Committee members (in such capacity, the “**Chairperson**”).

² WTC is the successor Indenture Trustee to Citibank, N.A., under two indenture agreements with General Motors Corporation pursuant to which General Motors Corporation 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.

³ Membership on the Committee has since been reduced to eight.

8. Throughout the course of these Cases, WTC has been actively involved in representing the interests of both Bondholders, in its capacity as indenture trustee, and general unsecured creditors, in its capacity as Chairperson of the Committee. Indeed, the New York State Objection recognizes the contributions of WTC throughout these cases, stating that “WTC has played a prominent role during the pendency of these cases as a member of the [Committee] and as Indenture Trustee for certain GM bondholders holding one of the largest allowed unsecured claims (\$23 billion).” New York State Objection, ¶ 15.

9. On December 7, 2010, the Debtors filed their Plan [Docket No. 8015], which contained the proposed GUC Trust Agreement as an exhibit. *See* Plan Exh. D. Section 2.5 of the Plan provides for the payment, in cash on the Effective Date, of the reasonable prepetition and post-petition fees and expenses of each of the indenture trustees and fiscal and paying agents which have represented a debtholder constituency in these cases (the “**Indenture Trustee Payment Provision**”). Plan § 2.5. The Indenture Trustee Payment Provision would include payment of the reasonable fees and expenses of WTC, but is not exclusive to WTC. The Indenture Trustee Payment Provision requires WTC (together with the other indenture trustees and fiscal and paying agents) to submit documented invoices to the Debtors, the holders of claims arising under the Debtors’ debtor-in-possession credit agreement (the “**DIP Lenders**”), and the Committee (with the exclusion of WTC and other indenture trustee Committee members) prior to payment of any fees and expenses. The Plan requires each of these constituencies to review the documented invoices for reasonableness. Any disputes concerning the reasonableness of the fees and expenses would be subject to the Bankruptcy Court’s review and approval.

10. In addition, the Plan provides for the establishment of two trusts to provide distributions to creditors of the Debtors’ estates: (i) the General Unsecured Creditors’ Trust (the

“**GUC Trust**”), which will generally provide distributions of the common stock and warrants of General Motors Company (“**New GM**”) currently held by MLC to unsecured creditors, and (ii) the Avoidance Action Trust (the “**AA Trust**,” and together with the GUC Trust, the “**Trusts**”), which will provide distributions of the proceeds, if any, of the Committee’s pending avoidance action lawsuit against JPMorgan Chase Bank, N.A. (and other banks and lending institutions),⁴ to either holders of unsecured claims or the DIP Lenders.⁵

11. Recently, WTC has been selected to serve as proposed administrator for the GUC Trust (in such capacity, the “**GUC Trust Administrator**”) and the AA Trust (in such capacity, the “**AA Trust Administrator**,” and together with the GUC Trust Administrator, the “**Trust Administrators**”). The decision to select WTC as the Trust Administrators was made in part to capitalize on efficiencies associated with WTC’s already significant knowledge and understanding of these Cases. By appointing WTC as the Trust Administrators, the Debtors avoid the costs inherent in educating a third-party trust administrator to the intricacies of these Cases. Moreover, as WTC has previously performed distributions to the Bondholders, the largest single creditor constituency in these Cases, there are mechanical synergies associated with WTC serving as administrator of the Trusts.

12. The need to maximize efficiencies and capitalize on synergies is not merely a cost saving measure in the context of these Cases. Administrative costs associated with the Trusts are

⁴ Such action is styled as *Official Committee of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A. et al.*, Case No. 09-50026, Adv. No. 09-00504 (Bankr. S.D.N.Y. July 31, 2009) (the “**Term Loan Avoidance Action**”).

⁵ A determination of the proper beneficiary of the AA Trust cannot be made at this time. Pursuant to this Court’s order dated November 4, 2010 [Docket No. 7642], the identity of the proper AA Trust beneficiary can only be ascertained after resolution of the Term Loan Avoidance Action in favor of the plaintiffs therein.

funded solely by a wind-down loan from the U.S. Treasury which is subject to a tightly controlled approved budget. Any cost overruns will necessarily need to be funded from the assets that would otherwise be available for distribution to unsecured creditors. The selection of WTC as the Trust Administrators is intended to minimize the possibility of such a contingency coming to fruition.

13. The Plan provides for the continued existence of the indenture trustees and fiscal and paying agents (including WTC) after the Effective Date solely for the limited purposes of receiving the surrendered global notes evidencing the indebtedness and to assist in making distributions to the holders of such indebtedness under the Plan. *See* Plan §§ 5.10, 6.7. The Plan contemplates that the only distributions to be assisted by the indenture trustees shall be the initial distribution from the GUC Trust (all subsequent distributions will be made directly from the GUC Trust Administrator to the beneficial holders of unsecured claims) and the distributions, if any, to be made from the AA Trust to holders of debt claims. *See* Plan §§ 5.3(b). The Plan provides that the indenture trustees (including WTC) shall be entitled to compensation for any distributions made pursuant to the Plan and shall retain their charging lien on such distributions. *See* Plan § 6.7.

LIMITED RESPONSE

A. The Indenture Trustee Payment Provision Is Customary, Appropriate, and Supported by Applicable Law

14. In their Objections, DTSC and New York State argue that the Indenture Trustee Payment Provision is inappropriate and is prohibited by the Bankruptcy Code. In support thereof, DTSC cites Section 726 and Section 503(b) of the Bankruptcy Code. Section 726 of the Bankruptcy Code is not applicable in the instant matter as these Cases are not brought pursuant to Chapter 7 of the Bankruptcy Code. Further, Section 503(b) of the Bankruptcy Code does not

apply because WTC is not seeking allowance of an administrative expense pursuant to Section 503(b) of the Bankruptcy Code.

15. While Section 503(b) provides one method for reimbursement of fees and expenses of a creditor in cash and in full, it is not the only method available under the Bankruptcy Code for the payment of such fees and expenses. *See In re Adelpia Commc'n Corp.*, 441 B.R. 6, 12 (Bankr. S.D.N.Y. 2010). Section 1123(b)(6) of the Bankruptcy Code provides that a chapter 11 plan “may include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code].” 11 U.S.C. § 1123(b)(6). This Court has interpreted Section 1123(b)(6) to provide a “broad grant of authority” for debtors to “allocate and distribute the value of debtors’ estates in a broad array of means.” *Adelpia*, 441 B.R. at 19. In that regard, the *Adelpia* court found that a chapter 11 plan could provide for the cash payment of individual creditor’s fees and expenses, without such creditor meeting the requirements of Section 503(b) of the Bankruptcy Code, as long as such fees and expenses were reasonable and were subject to the approval of the court pursuant to Section 1129(a)(4) of the Bankruptcy Code. *Id.* at 19. In so finding, the *Adelpia* court considered *In re Trans World Airlines, Inc.*, where the bankruptcy court for the Eastern District of Missouri specifically found that Section 1123(b)(6) provided the debtor in that case with authority to pay indenture trustee fees and expenses pursuant to a chapter 11 plan. *Id.* at 17 (citing *In re Trans World Airlines, Inc.*, 185 B.R. 302, 313 (Bankr. E.D. Mo. 1995)).

16. Moreover, the payment of the prepetition and post-petition indenture trustee fees pursuant to a plan is commonplace and customary in this and in other Districts. *See, e.g.*, Third Amended Joint Chapter 11 Plan at §§ 13.1(b), 13.1(g), *In re Lyondell Chemical Company*, Case No. 09-10023 (Bankr. S.D.N.Y.) (No. 3990) (providing for the payment of reasonable indenture

trustee fees and expenses, including legal fees, as administrative expenses upon the submission of documented invoices to the debtors); Second Amended Joint Plan of Reorganization at Article IV(F)(3), *In re Loehmann's Holdings, Inc.*, Case No. 10-16077 (Bankr. S.D.N.Y.) (No. 396) (providing for the payment of reasonable and documented indenture trustee fees and expenses, including legal fees, in cash in full on the effective date following a review performed by the debtors and the creditors' committee); Joint Plan of Reorganization at Section 6.6 (Exhibit A), *In re Delta Air Lines, Inc.*, Case No. 05-17923 (Bankr. S.D.N.Y.) (No. 5998) (providing for the payment of the reasonable fees and expenses, including counsel fees, of the indenture trustees); Order Confirming the Third Amended Joint Plan of Reorganization at Section 2.6 (Exhibit B), *In re General Growth Properties, Inc.*, Case No. 09-11977 (Bankr. S.D.N.Y.) (No. 6240) (providing for the payment of the reasonable fees and expenses, including counsel fees, of the indenture trustees without application to the court).

17. In the instant case, Section 1123(b)(6) provides ample authority for the Indenture Trustee Payment Provision. The payment of fees and expenses is expressly conditioned on a reasonableness review by every major debtor and creditor constituency appearing in these Cases. If any dispute arises with respect to the reasonableness of WTC's fees and expenses (or the fees and expenses of any other indenture trustee or fiscal and paying agent), such fees and expenses will be subject to the review of the Bankruptcy Court. As such, the requirements of Section 1129(a)(4) of the Bankruptcy Code are met, and the DTSC and New York State Objections with respect to the Indenture Trustee Payment Provision should be overruled.

B. The Proposed Roles of WTC Do Not Present a Conflict of Interest

18. Each of the Objectors attempts to muddy the waters with respect to potential conflicts of interest by identifying, in sum, six separate "roles" for WTC following the Effective

Date.⁶ In point of fact, after accounting for duplication by the Objectors, WTC will serve in three separate roles after the Effective Date: (i) GUC Trust Administrator, (ii) AA Trust Administrator, and (iii) indenture trustee for the prepetition Bonds.⁷

19. The roles of GUC Trust Administrator and AA Trust Administrator are closely related as both positions require the respective Trust Administrator to maximize the assets of the Debtors' estates (through the claims resolution process and through prosecution of the Term Loan Avoidance Action, respectively) and to distribute such assets to the Debtors' creditor base. While the DTSC and New York State Objections accurately indicate that the beneficiaries to the AA Trust have not yet been determined, such lack of identity is of no moment. The ultimate beneficiaries to the AA Trust will be either the DIP Lenders or the unsecured creditors, not both. At no point will the AA Trust Administrator be required to choose between two masters—rather, once the proper beneficiary is identified, the AA Trust Administrator will act only in the best interests of that beneficiary, and no other.

20. While WTC will continue to act as indenture trustee for the Bonds, this too fails to create a conflict of interest. As stated above, following the Effective Date the indentures which govern the rights and duties of WTC as indenture trustee for the Bonds will be cancelled for all purposes other than the ministerial duties of disbursing cash, stock and warrants received

⁶ The cited roles include (i) GUC Trust Administrator, (ii) AA Trust Administrator, (iii) successor-in-interest Indenture Trustee to Citibank, N.A., (iv) WTC's post and pre-petition roles as indenture trustee, (v) WTC's responsibility to file statements of transfers and tax returns for the GUC Trust, and (vi) unsecured creditor of the MLC estate.

⁷ "Roles" (iii) and (iv) above both relate to WTC's role as indenture trustee for the Bonds, "role" (v) above is merely a reference to a duty that must be performed by the GUC Trust Administrator in administering the GUC Trust assets, and "role" (vi) above (status as an unsecured creditor) will be eliminated upon the payment of the outstanding fees and expenses of WTC, as indenture trustee, pursuant to the Indenture Trustee Payment Provision.

as Plan distributions from each of the Trusts. Plan § 6.7. As such, the indenture trustees (including WTC) will serve merely as vehicles to assist the Trust Administrators in performing their distribution obligations under the respective Trusts. In this regard, the duties and obligations of WTC as Trust Administrators and WTC as indenture trustee for the Bonds are completely aligned.

21. In a final attempt to fabricate a potential conflict, New York State argues that WTC, as a pre-Effective Date representative of holders of allowed claims (the Bonds) will be incentivized to diligently reduce disputed claims so as to increase the recovery to holders of allowed claims (including the Bonds). This argument fails to recognize that the primary purpose of the GUC Trust is to reduce disputed claims for the purposes of increasing recoveries to holders of allowed claims. This primary function does not present a conflict—the sole beneficiaries of the GUC Trust are holders of allowed claims; the GUC Trust Administrator has no duties to holders of disputed claims unless and until they become allowed claims. This truism would apply to any party serving as GUC Trust Administrator, whether or not they previously (or simultaneously) represented certain holders of allowed claims.

22. For each of the reasons outlined above, the roles proposed by the Plan to be filled by WTC post-Effective Date do not present an actual or potential conflict of interest. As such, the Objections should be overruled.

C. The Proposed Oversight and Control Over the GUC Trust Is Sufficient

23. In its Objection, New York State argues that the Plan should not be confirmed because there is insufficient oversight and control over the GUC Trust and the GUC Trust Administrator. In contrast to this assertion, the Plan and the GUC Trust Agreement contemplate

several layers of review for all actions taken by the GUC Trust and GUC Trust Administrator other than those actions associated with purely ministerial duties.

24. As an initial matter, the Plan contemplates that a GUC Trust Monitor will be appointed to review and approve all non-ministerial actions taken by the GUC Trust and the GUC Trust Administrator. *See, e.g.*, GUC Trust Agreement § 3.4(c) (approval necessary to remove Units from DTC); § 5.4(d) (approval necessary to withhold distributions of excess assets upon discovery of previously unknown general unsecured claims); § 5.7(a) (approval necessary to sell expiring warrants in a privately negotiated sale); § 6.2 (GUC Trust Monitor to review all reports prepared by the GUC Trust); § 6.3 (GUC Trust Monitor to review and approve all annual budgets and updates thereto); § 11.3 (approval necessary to resolve disputed claims over \$10 million, decisions to retain or terminate employment of trust professionals, incur costs over budget; and amend the GUC Trust Agreement).

25. The Objectors attempt to characterize the review and approval of the GUC Trust Monitor as lacking independence because the GUC Trust Monitor is appointed by the GUC Trust Administrator. Such assertion is simply inaccurate—the Plan provides that the Committee, with the consent of the Debtors, is tasked with selecting the GUC Trust Monitor. *See* Plan § 1.86. As noted above, the Committee, whose members were appointed by the U.S. Trustee, serves as an independent representative of and fiduciary to all unsecured creditors of the Debtors' estates.

26. The GUC Trust Agreement further contemplates that a second layer of review and approval, to be performed by the Bankruptcy Court, will be necessary prior to the consummation of any actions of the GUC Trust outside of the ordinary course of its business. *See, e.g.*, GUC Trust Agreement § 2.6(c) (approval necessary to make payments to trust professionals in excess of budget without DIP Lender consent); § 4.1 (approval necessary to extend the duration of the

GUC Trust); § 5.10 (approval necessary to make distributions other than as contemplated by the GUC Trust Agreement); § 6.1(b) (approval necessary to sell or use distributable assets to cover administrative costs); § 6.2 (all reports prepared by the GUC Trust to be filed with the Bankruptcy Court).

27. The GUC Trust Agreement additionally provides for a third layer of review to be performed by any interested member of the public. Section 6.2 of the GUC Trust Agreement provides for the preparation of quarterly reports detailing the activities of the GUC Trust and the current financial status of the GUC Trust (including balance sheets, income statements, and statements of cash flows). The GUC Trust Agreement provides that such reports will be filed with the Bankruptcy Court and posted to a generally accessible website. GUC Trust Agreement § 6.2. In addition, WTC anticipates that a forthcoming revision to the GUC Trust Agreement will provide for certain modified reporting to the SEC. While the specifics of such reporting are currently under discussion with the SEC,⁸ it is contemplated that the obligations shall include the filing of modified Form 10-Ks, Form 10-Qs, and Form 8-Ks. Contrary to the assertions of the State of New York, the GUC Trust Agreement provides that the financial statements of the GUC Trust will be audited by a third-party independent public auditor on an annual basis. GUC Trust Agreement § 6.2(b).

28. A fourth layer of review is vested in the beneficiaries of the GUC Trust, who have the authority to remove the GUC Trust Administrator and/or the GUC Trust Monitor at any time. Pursuant to Article XII of the GUC Trust Agreement, the holders of a majority of the beneficial

⁸ Detailed discussions with respect to proposed reporting obligations have been ongoing for months among the SEC, the Debtors, WTC and the Committee.

interests in the GUC Trust may remove the GUC Trust Administrator or the GUC Trust Monitor for good cause shown. GUC Trust Agreement, Article XII.

29. In addition, the GUC Trust Agreement contemplates strict controls over the expenses incurred by the GUC Trust, including the fees and expenses of professionals retained by the GUC Trust. The GUC Trust Agreement provides for the establishment of an annual budget (the “**Budget**”) which must be approved, initially, by the Debtors, the U.S. Treasury and the Committee. *See* Plan § 1.31; GUC Trust Agreement § 6.3. The Budget will be updated and reviewed on a quarterly basis by the GUC Trust Monitor and the DIP Lenders. GUC Trust Agreement § 6.3. In order to ensure compliance with the Budget, the GUC Trust Agreement requires that the GUC Trust Administrator “hold back” 10% of the overall billings of each of the professionals retained by the GUC Trust on a monthly basis. GUC Trust Agreement § 2.6(c). A failure to comply with the Budget will result in the delayed payment of the “hold-back” of any offending trust professional until the dissolution of the GUC Trust or the termination of the employment of such professional.

30. For each of the reasons outlined above, it is apparent that the Plan and the GUC Trust Agreement contain sufficient oversight and controls over the GUC Trust and the GUC Trust Administrator. As such, the Objections should be overruled.

CONCLUSION

WHEREFORE, WTC respectfully requests that the Objections be overruled with respect to the issues raised herein, and that the Court grant such other and further relief as is just.

Dated: New York, New York
February 23, 2011

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

/s/ Matthew J. Williams

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AS INDENTURE TRUSTEE

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Results for: 18 Month, From 17-AUG-2010 TO 17-FEB-2012

Date	Open	High	Low	Close/Last	Volume
10:17	27.30	27.50	27.09	27.15	1,875,658
02/17/2012	27.17	27.68	27.01	27.34	17,511,560
02/16/2012	25.29	27.26	25.27	27.17	35,206,980
02/15/2012	25.73	25.7541	24.9	24.93	13,280,330
02/14/2012	25.21	25.45	25	25.4	9,883,903
02/13/2012	26	26	25.21	25.34	10,448,020
02/10/2012	25.48	25.52	25.25	25.5	9,815,785
02/09/2012	25.96	26.22	25.5	25.74	7,417,168
02/08/2012	26.31	26.42	25.58	25.75	17,391,360
02/07/2012	26.62	26.62	26.15	26.22	10,713,910
02/06/2012	26.47	26.83	25.95	26.7	17,222,360
02/03/2012	25	26.44	24.79	26.18	25,447,290
02/02/2012	24.65	24.69	24.3	24.31	6,637,195
02/01/2012	24.33	24.58	24.07	24.37	13,296,660
01/31/2012	24.53	24.59	23.95	24.02	9,143,121
01/30/2012	24.06	24.57	23.95	24.23	6,290,251
01/27/2012	23.8	24.54	23.33	24.37	14,761,520
01/26/2012	25.1	25.5	24.6	24.72	11,565,280
01/25/2012	24.89	25.01	24.38	24.92	13,441,470
01/24/2012	24.84	24.93	24.5	24.79	8,284,710
01/23/2012	25.14	25.25	24.79	24.92	8,912,696
01/20/2012	24.93	25.11	24.84	25	9,838,745
01/19/2012	24.69	24.98	24.45	24.82	15,199,590
01/18/2012	24.27	24.58	24.02	24.51	8,902,373
01/17/2012	24.6	24.68	24.165	24.2	9,352,273
01/13/2012	24.27	24.65	23.91	24.29	12,959,160
01/12/2012	24.35	24.82	23.76	24.67	16,709,680
01/11/2012	23.37	24.6399	23.34	24.47	21,889,540
01/10/2012	23.22	23.4	22.775	23.24	13,502,620
01/09/2012	23.2	23.43	22.7	22.84	12,061,080

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Date	Open	High	Low	Close/Last	Volume
01/06/2012	22.26	23.03	22.24	22.92	18,155,930
01/05/2012	21.1	22.29	20.96	22.17	17,787,980
01/04/2012	21.05	21.37	20.75	21.15	7,842,174
01/03/2012	20.83	21.18	20.75	21.05	9,286,035
12/30/2011	20.12	20.37	20.05	20.27	6,933,591
12/29/2011	19.85	20.25	19.71	20.21	6,809,731
12/28/2011	20.08	20.13	19.76	19.86	7,106,115
12/27/2011	20.43	20.43	20.08	20.09	5,843,562
12/23/2011	20.81	20.89	20.45	20.5	6,448,141
12/22/2011	20.25	20.85	20.17	20.7	7,238,471
12/21/2011	19.74	20.435	19.58	20.32	13,030,700
12/20/2011	19.42	19.9	19.35	19.69	13,921,150
12/19/2011	20.12	20.23	19	19.05	15,578,340
12/16/2011	20.16	20.52	19.97	20.15	9,087,521
12/15/2011	19.76	20.215	19.51	20.1	10,110,570
12/14/2011	19.95	20.01	19.42	19.47	15,047,800
12/13/2011	20.96	21	19.95	20.11	12,607,240
12/12/2011	20.66	20.9	20.56	20.8	6,243,175
12/09/2011	21.09	21.4	21.06	21.15	6,418,228
12/08/2011	21.76	21.76	20.85	20.98	11,500,000
12/07/2011	21.62	22.11	21.48	21.94	9,051,522
12/06/2011	21.6	21.875	21.28	21.68	10,645,420
12/05/2011	21.52	21.99	21.43	21.59	9,761,680
12/02/2011	21.35	21.73	21.13	21.28	9,759,405
12/01/2011	21.24	21.77	20.93	20.96	12,015,310
11/30/2011	21.02	21.31	20.94	21.29	11,116,580
11/29/2011	20.73	20.85	20.3	20.31	7,657,850
11/28/2011	20.95	21.43	20.65	20.74	8,916,337
11/25/2011	20.22	20.71	20.21	20.34	2,757,591
11/23/2011	20.48	20.69	20.06	20.24	9,499,998
11/22/2011	20.92	21.12	20.7	20.73	7,262,769
11/21/2011	21.1	21.18	20.54	21.05	11,752,100
11/18/2011	22.01	22.18	21.62	21.68	6,583,332
11/17/2011	22.72	22.75	21.56	21.79	12,590,140
11/16/2011	23.24	23.35	22.62	22.65	9,219,271
11/15/2011	22.81	23.53	22.6	23.35	13,866,450
11/14/2011	22.56	23.29	22.51	22.99	13,414,430
11/11/2011	22.95	23.1	22.22	22.51	15,438,280
11/10/2011	22.44	22.85	21.93	22.7	15,866,570
11/09/2011	23.07	23.57	22.15	22.31	32,879,530
11/08/2011	24.2	25.17	23.98	25.04	19,866,290
11/07/2011	23.93	24.15	23.52	24.01	9,779,156
11/04/2011	23.89	23.92	23.31	23.61	9,435,845
11/03/2011	23.82	24.115	22.76	24.03	19,950,330

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Date	Open	High	Low	Close/Last	Volume
11/02/2011	23.7	23.73	22.92	23.2	14,355,260
11/01/2011	24.82	24.9	23.25	23.33	25,352,660
10/31/2011	25.92	26.16	25.61	25.85	8,853,422
10/28/2011	26.22	26.55	26	26.45	10,677,700
10/27/2011	25.87	26.47	25.2	26.32	18,397,590
10/26/2011	25.02	25.28	24.69	24.99	17,446,010
10/25/2011	24.86	25.19	24.16	24.86	11,368,810
10/24/2011	24.28	25.24	24.25	24.98	13,496,240
10/21/2011	23.4	24.38	23.2	24.35	12,322,230
10/20/2011	23.02	23.18	22.51	22.96	9,488,094
10/19/2011	23.52	23.55	22.96	23.09	7,591,724
10/18/2011	23.19	23.87	22.77	23.54	14,076,470
10/17/2011	24.17	24.19	23.15	23.18	8,603,285
10/14/2011	23.68	24.16	23.36	24.16	14,710,060
10/13/2011	23.38	23.38	22.5	23.15	9,832,494
10/12/2011	22.94	23.9695	22.86	23.41	17,249,910
10/11/2011	22.43	22.69	22.28	22.5	10,255,560
10/10/2011	22.51	22.965	22.36	22.62	11,291,660
10/07/2011	22.58	22.93	21.82	22.01	14,456,790
10/06/2011	22.3	22.6	21.75	22.35	13,486,630
10/05/2011	21.33	22.29	20.76	22.27	17,107,400
10/04/2011	19.45	21.46	19.05	21.42	23,658,120
10/03/2011	20.13	20.9	19.65	19.73	13,883,230
09/30/2011	20.44	20.5	20.1	20.18	10,109,690
09/29/2011	20.72	20.97	20.115	20.76	10,775,190
09/28/2011	21.2	21.44	20.37	20.41	10,095,310
09/27/2011	21.6	21.8295	21.08	21.19	11,170,900
09/26/2011	21.315	21.44	20.53	21.08	8,420,059
09/23/2011	19.77	21.28	19.77	21	13,721,910
09/22/2011	20.59	20.99	20.04	20.24	17,263,540
09/21/2011	22.39	22.7	21.22	21.28	9,785,231
09/20/2011	23.05	23.1	22.42	22.43	9,478,250
09/19/2011	22.15	23.17	22.05	23.05	14,014,990
09/16/2011	22.68	22.77	22.34	22.61	7,889,765
09/15/2011	22.59	22.79	22.15	22.7	8,000,244
09/14/2011	22.22	22.49	21.62	22.18	11,585,280
09/13/2011	21.87	22.33	21.5	22	11,111,330
09/12/2011	21.15	21.95	21	21.87	9,316,797
09/09/2011	22.36	22.45	21.47	21.76	11,908,060
09/08/2011	22.79	23.13	22.24	22.48	11,782,470
09/07/2011	21.82	23.04	21.82	22.86	13,395,710
09/06/2011	21.36	21.58	20.88	21.44	14,281,230
09/02/2011	22.41	22.55	21.73	22.07	14,082,820
09/01/2011	24.09	24.25	22.905	23.03	16,892,370

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Date	Open	High	Low	Close/Last	Volume
08/31/2011	23.87	24.49	23.83	24.03	12,321,460
08/30/2011	23.46	23.74	23.05	23.58	8,142,280
08/29/2011	23.3	23.96	23.27	23.79	10,553,020
08/26/2011	22.2	23.08	21.8	22.87	10,173,100
08/25/2011	22.49	22.74	22.1	22.3	10,927,080
08/24/2011	21.89	22.39	21.57	22.37	14,381,950
08/23/2011	21.78	22.06	21.21	22.06	19,910,480
08/22/2011	22.54	22.72	21.18	21.71	26,957,440
08/19/2011	23.25	23.44	21.71	22.16	34,382,680
08/18/2011	23.99	24.08	23.27	23.6	15,809,420
08/17/2011	26	26.09	24.9	24.94	12,030,060
08/16/2011	26.22	26.69	25.69	25.83	10,102,990
08/15/2011	26.03	26.54	25.79	26.42	12,958,810
08/12/2011	26.3	26.5	25.49	25.75	18,656,030
08/11/2011	24.11	26.17	24.11	25.81	25,141,570
08/10/2011	24.66	25	23.83	23.92	20,624,350
08/09/2011	25.09	25.56	24	25.54	26,523,190
08/08/2011	24.61	25.35	23.79	24.57	32,547,770
08/05/2011	26.07	26.46	24.49	26.31	34,828,810
08/04/2011	27.16	27.2	25.71	25.99	38,683,610
08/03/2011	27.03	27.17	26.13	27.17	15,778,040
08/02/2011	27.75	28.09	27.02	27.05	18,156,990
08/01/2011	28.88	28.88	27.7	28.07	12,748,840
07/29/2011	27.62	28.1	27.31	27.68	12,060,290
07/28/2011	28.22	28.9	28.02	28.1	11,024,320
07/27/2011	28.9	29	28.03	28.14	14,495,250
07/26/2011	29.67	29.7	28.96	29.09	9,210,521
07/25/2011	29.53	29.84	29.39	29.5	8,486,800
07/22/2011	29.97	30.29	29.88	30.1	7,731,969
07/21/2011	29.39	30.02	29.16	29.96	12,190,000
07/20/2011	29.45	29.48	29.05	29.24	6,947,108
07/19/2011	29.2	29.49	28.76	29.33	10,219,110
07/18/2011	29.57	29.65	28.62	29.1	13,816,560
07/15/2011	30.39	30.62	29.515	29.76	10,389,370
07/14/2011	30.85	30.97	30.03	30.1	10,712,130
07/13/2011	30.87	31.3	30.61	30.75	8,059,887
07/12/2011	30.24	30.94	30.02	30.68	10,508,440
07/11/2011	30.98	31.2	30.55	30.75	8,278,698
07/08/2011	31.25	31.7	31.16	31.58	9,825,439
07/07/2011	31.79	32.08	31.65	31.8	13,290,690
07/06/2011	31.37	31.68	31.09	31.19	14,199,330
07/05/2011	30.87	31.36	30.58	30.86	8,756,114
07/01/2011	30.35	30.86	29.92	30.58	17,951,970
06/30/2011	30.3	30.56	30.22	30.36	18,489,820

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Date	Open	High	Low	Close/Last	Volume
06/29/2011	30.79	30.79	30.25	30.3	12,603,920
06/28/2011	30.21	30.79	30.18	30.5	12,682,660
06/27/2011	29.79	30.46	29.6	30.26	15,348,090
06/24/2011	30.15	30.3	29.66	29.92	49,956,900
06/23/2011	29.53	30.2	29.32	30.14	13,780,210
06/22/2011	29.62	30.18	29.5	29.97	15,510,080
06/21/2011	29.51	30	29.43	29.59	12,594,760
06/20/2011	28.87	29.595	28.77	29.52	8,875,490
06/17/2011	28.73	29.06	28.57	29	16,732,220
06/16/2011	28.7	28.99	28.165	28.59	14,066,380
06/15/2011	28.77	29.11	28.64	28.95	11,657,730
06/14/2011	28.92	29.49	28.86	29.11	10,948,380
06/13/2011	28.9	29.08	28.29	28.59	9,791,128
06/10/2011	29.3	29.3	28.65	28.85	11,731,740
06/09/2011	29.2	29.58	28.91	29.45	13,571,740
06/08/2011	28.52	29.34	28.4	28.86	16,530,890
06/07/2011	28.89	29.04	28.39	28.78	15,274,810
06/06/2011	29.02	29.4106	28.55	28.56	13,411,670
06/03/2011	29.28	29.56	28.9	29.12	21,959,190
06/02/2011	30.33	30.56	29.4	29.6	22,424,310
06/01/2011	31.7	31.7	30.15	30.23	19,110,160
05/31/2011	31.44	31.87	31.13	31.81	22,822,350
05/27/2011	30.77	31.48	30.59	31.28	9,049,814
05/26/2011	31.08	31.1	30.52	30.68	11,974,930
05/25/2011	30.56	31.38	30.5	31.27	14,307,850
05/24/2011	31.13	31.2	30.5	30.83	8,778,514
05/23/2011	30.68	31.16	30.5	30.96	8,970,541
05/20/2011	31.36	31.5	31.1	31.18	7,208,478
05/19/2011	31.53	31.79	31.31	31.47	9,578,323
05/18/2011	31.07	31.62	31	31.52	9,947,339
05/17/2011	31.06	31.38	30.83	31.1	11,157,590
05/16/2011	31.25	31.5	31.08	31.1	7,279,313
05/13/2011	31.46	31.54	30.85	31.07	10,837,120
05/12/2011	31.07	31.6	30.93	31.42	14,088,290
05/11/2011	31.57	31.8629	31.11	31.3	9,071,903
05/10/2011	31.47	31.64	31.33	31.61	7,841,788
05/09/2011	31.74	32.065	31.36	31.39	10,648,600
05/06/2011	32.5	32.6	31.84	31.91	12,802,720
05/05/2011	32.06	32.68	31.49	32.02	26,618,110
05/04/2011	33.16	33.47	32.71	33.04	20,487,390
05/03/2011	32.38	33.2	32.36	32.99	29,880,140
05/02/2011	32.41	32.5	31.92	32.18	11,012,180
04/29/2011	31.99	32.58	31.91	32.09	13,706,290
04/28/2011	31.76	32.095	31.48	31.91	15,810,420

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Date	Open	High	Low	Close/Last	Volume
04/27/2011	31.47	31.79	31.28	31.78	14,946,140
04/26/2011	31.39	31.51	30.96	31.27	15,659,550
04/25/2011	31	31.19	30.32	31.14	15,437,320
04/21/2011	30.05	31	30.01	30.95	18,922,870
04/20/2011	29.76	30.38	29.42	29.93	22,039,360
04/19/2011	29.81	29.91	29.17	29.59	19,854,540
04/18/2011	30.06	30.34	29.9	29.97	12,743,570
04/15/2011	30.59	30.72	30.18	30.24	9,883,402
04/14/2011	30.65	30.86	30.35	30.58	9,010,604
04/13/2011	31.23	31.32	30.59	30.86	13,771,290
04/12/2011	30.4	31.34	30.1	31.15	19,648,900
04/11/2011	31.34	31.45	30.55	30.77	15,164,140
04/08/2011	32.4	32.75	31.325	31.52	16,055,040
04/07/2011	32.84	32.84	32.07	32.31	11,229,480
04/06/2011	33	33.28	32.52	32.87	8,131,178
04/05/2011	32.32	32.87	32.1	32.87	10,106,760
04/04/2011	32.5	32.72	32.2	32.39	12,331,430
04/01/2011	31.39	32.63	30.84	32.41	29,872,960
03/31/2011	31.4	31.55	31	31.03	8,968,251
03/30/2011	31.16	31.64	31.04	31.55	7,654,798
03/29/2011	30.93	31.17	30.68	31.1	9,701,428
03/28/2011	31.58	31.58	30.85	30.85	10,304,280
03/25/2011	31.49	31.7	31.09	31.47	15,201,280
03/24/2011	31.32	31.6	31.24	31.39	15,731,390
03/23/2011	30.6	31.28	30.2	31.16	23,015,040
03/22/2011	31.28	31.35	30.51	30.74	16,977,660
03/21/2011	32.24	32.3	31.23	31.28	13,182,460
03/18/2011	31.74	31.95	31.4202	31.85	9,860,702
03/17/2011	32.18	32.39	31.33	31.44	11,024,390
03/16/2011	32.42	32.53	31.4	31.78	14,137,160
03/15/2011	30.98	32.49	30.65	32.35	21,458,670
03/14/2011	32.14	32.3	31.43	31.59	9,976,120
03/11/2011	31.25	32.055	31.24	31.93	14,022,590
03/10/2011	31.47	31.7768	30.95	31.42	38,329,460
03/09/2011	32.74	32.7586	32.1	32.25	11,223,380
03/08/2011	31.74	32.82	31.69	32.72	14,509,370
03/07/2011	32.35	32.5	31.52	31.7	15,075,020
03/04/2011	33.07	33.079	32.01	32.39	24,240,590
03/03/2011	33.03	33.17	32.65	33.03	17,597,620
03/02/2011	32.9	33.17	32.59	32.88	14,275,910
03/01/2011	33.69	33.75	32.4295	32.95	27,319,570
02/28/2011	33.49	33.74	32.86	33.53	15,885,340
02/25/2011	33.67	34.2	33.05	33.25	28,998,790
02/24/2011	34.9	35	32.05	33.02	63,547,020

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Date	Open	High	Low	Close/Last	Volume
02/23/2011	35.85	35.94	33.8	34.59	28,190,860
02/22/2011	35.86	36.15	35.45	35.77	13,857,800
02/18/2011	36.42	36.76	36.38	36.51	6,814,543
02/17/2011	36.55	36.7	36.3	36.37	7,460,978
02/16/2011	36.11	36.84	36.02	36.75	8,680,365
02/15/2011	36.19	36.41	35.8	36.11	10,335,760
02/14/2011	36.55	36.56	35.47	36.29	7,072,348
02/11/2011	35.76	36.57	35.55	36.45	13,505,850
02/10/2011	36.17	36.64	35.52	35.88	11,474,060
02/09/2011	36.82	36.91	36.28	36.41	6,395,298
02/08/2011	36.97	37.05	36.4	36.89	6,242,920
02/07/2011	36.95	37.09	36.61	36.7	7,328,655
02/04/2011	36.25	36.73	35.89	36.59	11,114,090
02/03/2011	35.97	36.06	35.13	36.06	19,347,650
02/02/2011	36.46	36.56	35.58	35.68	17,433,260
02/01/2011	36.93	37.23	36.13	36.45	27,990,640
01/31/2011	36.89	37.05	35.89	36.49	13,953,760
01/28/2011	38	38.02	36.01	36.6	37,125,400
01/27/2011	38.2	38.95	38.03	38.67	13,948,700
01/26/2011	38.75	38.91	37.86	37.89	11,533,780
01/25/2011	37.85	38.49	37.71	38.4	12,301,060
01/24/2011	37.71	37.8601	37.03	37.64	12,152,510
01/21/2011	37.33	37.85	36.82	37.24	9,548,466
01/20/2011	37.11	37.29	36.27	37.18	15,818,470
01/19/2011	37.78	37.9275	37.26	37.4	12,645,900
01/18/2011	38.05	38.33	37.32	38.03	8,918,153
01/14/2011	38.18	38.47	38.04	38.2	5,866,903
01/13/2011	38.66	38.71	38.11	38.27	11,358,190
01/12/2011	38.95	39.37	38.37	38.62	16,708,140
01/11/2011	38.66	39.43	38.51	38.75	14,830,980
01/10/2011	39.34	39.36	38.44	38.56	18,340,530
01/07/2011	38.84	39.33	38.51	38.98	19,899,330
01/06/2011	38.24	39.48	38.07	38.9	38,555,510
01/05/2011	37.47	38.3	37.47	38.07	22,446,030
01/04/2011	37.1	37.99	36.68	37.9	32,346,990
01/03/2011	37.32	38	37.03	37.06	24,861,890
12/31/2010	36.84	36.96	36.57	36.86	6,163,538
12/30/2010	36.1	36.98	36.02	36.82	16,979,770
12/29/2010	35.47	36.3	35.25	36.02	20,923,700
12/28/2010	35.38	35.67	35.07	35.32	23,476,270
12/27/2010	34.41	34.89	34.19	34.6	7,363,073
12/23/2010	34.67	35.52	34.62	34.81	20,529,110
12/22/2010	33.72	34.95	33.53	34.92	20,871,840
12/21/2010	33.86	33.94	33.72	33.85	8,993,729

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Date	Open	High	Low	Close/Last	Volume
12/20/2010	33.91	34.05	33.74	33.76	12,476,400
12/17/2010	33.53	34	33.19	34	35,660,470
12/16/2010	33.57	33.86	33.56	33.61	9,885,617
12/15/2010	33.81	34.01	33.61	33.61	10,181,430
12/14/2010	33.73	33.92	33.45	33.89	15,165,560
12/13/2010	33.96	34.05	33.7	33.8	11,028,310
12/10/2010	33.85	33.99	33.53	33.81	11,735,950
12/09/2010	34.36	34.43	33.62	33.74	18,398,830
12/08/2010	34.61	34.73	34.33	34.45	12,603,070
12/07/2010	34.75	34.89	34.46	34.68	20,820,570
12/06/2010	34.48	34.78	34.41	34.48	11,675,690
12/03/2010	34.55	34.6	33.97	34.55	19,385,140
12/02/2010	34.92	34.98	34.51	34.68	23,247,930
12/01/2010	34.65	34.95	34.42	34.78	34,584,970
11/30/2010	33.53	34.25	33.36	34.2	57,466,050
11/29/2010	33.8	33.81	33.07	33.8	27,692,220
11/26/2010	33.41	33.81	33.21	33.8	12,301,250
11/24/2010	33.73	33.8	33.22	33.48	26,136,760
11/23/2010	33.95	33.99	33.19	33.25	31,033,420
11/22/2010	34.2	34.48	33.81	34.08	36,642,370
11/19/2010	34.15	34.5	33.11	34.26	107,840,100
11/18/2010	35	35.99	33.89	34.19	456,921,800

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* This data reflects the latest intra-day delayed pricing.

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