Hearing Date and Time: December 13, 2012 at 9:45 a.m. (Eastern Time)
Response Deadline: November 30, 2012 at 4:00 p.m. (Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	**09-50026 (REG)**
Debtors.	**(Jointly Administered)**

NOTICE OF HEARING ON MOTORS LIQUIDATION COMPANY GUC TRUST'S REINSTATED 159th OMNIBUS OBJECTION TO CLAIMS AND SUPPLEMENTAL OBJECTION TO PROOF OF CLAIM NO. 65807 FILED BY ROLLS-ROYCE CORPORATION

PLEASE TAKE NOTICE that upon (i) the *Debtors' 159th Omnibus Objection to Claims (Contingent Co-Liability Claims)*, dated January 26, 2011 (ECF No. 8840) (the "**Omnibus Objection**"), as to Proof of Claim No. 65807 (the "**Rolls-Royce Claim**") filed by Rolls-Royce Corporation, (ii) the *Stipulation and Agreed Order Regarding Claim No. 65807 Filed by Rolls-Royce Corporation*, dared September 12, 2012, by and among the Motors Liquidation Company GUC Trust and Rolls-Royce Corporation (f/k/a Allison Engine Company, Inc., f/k/a AEC Acquisition Company, Inc.) (ECF No. 12123), and (iii) the annexed supplemental objection, dated November 16, 2012 (the "**Supplemental Objection**," and together with the

Omnibus Objection, the "**Objections**"), of the Motors Liquidation Company GUC Trust to the Rolls-Royce Claim, a hearing will be held before the Honorable Robert E. Gerber, United States Bankruptcy Judge, in Room 523 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, on **December 13, 2012, at 9:45 a.m. (Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses to the Objections must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court (a) electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov) by registered users of the Bankruptcy Court's filing system, and (b) by all other parties in interest, on a CD-ROM or 3.5 inch disk, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399 and on (i) Weil, Gotshal & Manges LLP, attorneys for the Motors Liquidation Company GUC Trust, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (ii) the Debtors, c/o Motors Liquidation Company, 401 South Old Woodward Avenue, Suite 370, Birmingham, Michigan 48009 (Attn: Thomas Morrow); (iii) General Motors LLC, 400 Renaissance Center, Detroit, Michigan 48265 (Attn: Lawrence S. Buonomo, Esq.); (iv) Cadwalader, Wickersham & Taft LLP, attorneys for the United States Department of the Treasury, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (v) the United States Department of the Treasury, 1500 Pennsylvania Avenue NW, Room 2312, Washington, D.C. 20220 (Attn: Joseph Samarias, Esq.); (vi) Vedder Price, P.C., attorneys

for Export Development Canada, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael J. Edelman, Esq. and Michael L. Schein, Esq.); (vii) Kramer Levin Naftalis & Frankel LLP, attorneys for the statutory committee of unsecured creditors, 1177 Avenue of the Americas, New York, New York 10036 (Attn: Thomas Moers Mayer, Esq., Robert Schmidt, Esq., Lauren Macksoud, Esq., and Jennifer Sharret, Esq.); (viii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Tracy Hope Davis, Esq.); (ix) the U.S. Attorney's Office, S.D.N.Y., 86 Chambers Street, Third Floor, New York, New York 10007 (Attn: David S. Jones, Esq. and Natalie Kuehler, Esq.); (x) Caplin & Drysdale, Chartered, attorneys for the official committee of unsecured creditors holding asbestos-related claims, 375 Park Avenue, 35th Floor, New York, New York 10152-3500 (Attn: Elihu Inselbuch, Esq. and Rita C. Tobin, Esq.) and One Thomas Circle, N.W., Suite 1100, Washington, DC 20005 (Attn: Trevor W. Swett III, Esq. and Kevin C. Maclay, Esq.); (xi) Stutzman, Bromberg, Esserman & Plifka, A Professional Corporation, attorneys for Dean M. Trafelet in his capacity as the legal representative for future asbestos personal injury claimants, 2323 Bryan Street, Suite 2200, Dallas, Texas 75201 (Attn: Sander L. Esserman, Esq. and Robert T. Brousseau, Esq.); (xii) Gibson, Dunn & Crutcher LLP, attorneys for Wilmington Trust Company as GUC Trust Administrator and for Wilmington Trust Company as Avoidance Action Trust Administrator, 200 Park Avenue, 47th Floor, New York, New York 10166 (Attn: Keith Martorana, Esq.); (xiii) FTI Consulting, as the GUC Trust Monitor and as the Avoidance Action Trust Monitor, One Atlantic Center, 1201 West Peachtree Street, Suite 500, Atlanta, Georgia 30309 (Attn: Anna Phillips); (xiv) Crowell & Moring LLP, attorneys for the Revitalizing Auto Communities Environmental Response Trust, 590 Madison Avenue, 19th Floor, New York, New York 10022-2524 (Attn: Michael V. Blumenthal, Esq.);

and (xv) Kirk P. Watson, Esq., as the Asbestos Trust Administrator, 2301 Woodlawn Boulevard, Austin, Texas 78703, so as to be received no later than **November 30, 2012 at 4:00 p.m. (Eastern Time)** (the "**Response Deadline**").

PLEASE TAKE FURTHER NOTICE that if no responses are timely filed and served with respect to the Objections, the Motors Liquidation Company GUC Trust may, on or after the Response Deadline, submit an order substantially in the form of the proposed order annexed to the Supplemental Objection, which may be entered with no further notice or opportunity to be heard offered to any party.

Dated: New York, New York
November 16, 2012

/s/ Joseph H. Smolinsky
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SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

MOTORS LIQUIDATION COMPANY GUC TRUST'S SUPPLEMENTAL OBJECTION TO PROOF OF CLAIM NO. 65807 FILED BY ROLLS-ROYCE CORPORATION

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TO THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

The Motors Liquidation Company GUC Trust (the "**GUC Trust**"), formed by the above-captioned debtors (collectively, the "**Debtors**") in connection with the *Debtors' Second Amended Joint Chapter 11 Plan*, dated March 18, 2011 (as may be amended, modified or supplemented from time to time, the "**Plan**"), respectfully represents:

Relief Requested

1. The GUC Trust files this supplement to the *Debtors' 159th Omnibus Objection to Claims (Contingent Co-Liability Claims)*, dated January 26, 2011 (ECF No. 8840) (the "**Omnibus Objection**"), which was reinstated as to Proof of Claim No. 65807 (the "**Rolls-Royce Claim**") filed by Rolls-Royce Corporation (the "**Claimant**") pursuant to the *Stipulation and Agreed Order Regarding Claim No. 65807 Filed by Rolls-Royce Corporation*, dared September 12, 2012, by and among the Motors Liquidation Company GUC Trust and Rolls-Royce Corporation (f/k/a Allison Engine Company, Inc., f/k/a AEC Acquisition Company, Inc.) (ECF No. 12123) (the "**Reinstatement Stipulation**").

2. As set forth in the Omnibus Objection, the Rolls-Royce Claim is subject to partial disallowance under section 502(e)(1)(B) of title 11 of the United States Code (the "**Bankruptcy Code**"). While the GUC Trust is prepared to allow the Rolls-Royce Claim as a general unsecured claim in the amount of $1,404,798 on account of the Allowable Products Liability Portion and the Allowable Environmental Remediation Portion (as hereinafter defined) of the Rolls-Royce Claim, all other portions of the Rolls-Royce Claim, including the Future Environmental Remediation Portion (as hereinafter defined), should be disallowed under section 502(e)(1)(B).

3. In addition to section 502(e)(1)(B), the Future Environmental Remediation Portion of the Rolls-Royce Claim should be disallowed because (i) the Claimant has not provided sufficient support for the Future Environmental Remediation Portion, and (ii) such portion is premised upon environmental remediation costs that have not been discounted to present value despite the fact that such costs are calculated by the Claimant to be incurred over the course of 30 years.

Jurisdiction

4. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

Background

5. Prior to the commencement of these chapter 11 cases, the Claimant, then known as AEC Acquisition Corporation, entered into an asset purchase agreement with Motors Liquidation Company (f/k/a General Motors Corp.), dated September 14, 1993 (the "**APA**", a copy of which is annexed hereto as **Exhibit** "**A**"). Pursuant to the APA, the Claimant acquired substantially all of the assets of a division of Motors Liquidation Company known as the Allison Gas Turbine Division.

6. Under the terms of the APA, Motors Liquidation Company agreed to (1) conduct an environmental assessment of the assets to be transferred to the Claimant, including certain real property located in Indianapolis, Indiana, which is now owned by the Claimant (the "**Facility**"), (2) develop an action plan with the Claimant to address any environmental conditions that then constituted a violation of law, and (3) undertake and complete any cleanup, remediation and/or other actions that are required to be conducted under applicable environmental laws to address such conditions. (APA at 129-136) Pursuant to the APA, Motors Liquidation Company agreed to indemnify the Claimant from and against damages incurred by

the Claimant "as a result of any investigation, proceeding, claim, suit or action threatened or brought by a governmental agency or other third party" based on or related to an environmental condition that existed prior to the closing of the APA. (APA at 152)

7. In addition to the environmental obligations referenced above, Motors Liquidation Company agreed pursuant to the APA to indemnify the Claimant from, among other things, product liability claims asserted against the Claimant by third parties on account of products sold or services rendered prior to the closing of the APA. (APA at 186-196)

8. On June 1, 2009 (the "**Commencement Date**"), Motors Liquidation Company and certain of its affiliated Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code before the United States Bankruptcy Court for the Southern District of New York (the "**Court**"), which cases are jointly administered under Case No. 09-50026 (REG).

9. By motion dated August 25, 2009, the Debtors sought an order of this Court approving the rejection of the APA pursuant to section 502 (a) of the Bankruptcy Code. (ECF No. 3894) By order dated September 15, 2009, this Court approved the Debtors' rejection of the APA. (ECF No. 4059)

10. Upon the entry of the order approving the rejection of the APA, the Debtors ceased all then-active environmental remediation work at the Facility and arranged for the transition of such work to the Claimant. (Rolls-Royce Claim at 2) The Rolls-Royce Claim impliedly seeks costs both already incurred and to be incurred by the Claimant to complete the environmental remediation work at the Facility, which the Rolls-Royce Claim provides "cannot presently be ascertained and quantified." (Rolls-Royce Claim at 2) The Rolls-Royce Claim also seeks indemnification pursuant to the APA with respect to products liability claims asserted by third parties against the Claimant. (Rolls-Royce Claim at 3)

11. On January 26, 2011 (the "**Original Objection Date**"), the Debtors objected to the Rolls-Royce Claim pursuant to the Omnibus Objection on the ground that the Rolls-Royce Claim is subject to disallowance under section 502(e)(1)(B) of the Bankruptcy Code.

12. Due to the failure of the Claimant to file a response to the Omnibus Objection or appear at the hearing on the Omnibus Objection, on March 7, 2011, the Court entered an Order (the "**Disallowance Order**") (ECF No. 9629) disallowing and expunging the Rolls-Royce Claim.

13. On March 29, 2011, the Court entered the *Findings of Fact, Conclusions of Law, and Order Pursuant to Sections 1129(a) and (b) of the Bankruptcy Code and Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming Debtors' Second Amended Joint Chapter 11 Plan* (ECF No. 9941), which, among other things, authorized the GUC Trust to resolve certain claims against the Debtors.

14. Following assertions by the Claimant that notice of the Omnibus Objection was improperly provided to all necessary parties, on September 12, 2012, the Claimant and the GUC Trust entered into the Reinstatement Stipulation to reinstate the Rolls-Royce Claim and reinstate the Omnibus Objection solely as to the Rolls-Royce Claim. The Reinstatement Stipulation provides, among other things, that (i) the Rolls-Royce Claim as reinstated shall be limited to those liabilities specified in the Rolls-Royce Claim under the heading "*Environmental Remediation Claims*" and "*Product Failure and Liability Claims*"; (ii) notwithstanding any events occurring after the Original Objection Date (including subsequent payments actually incurred by the Claimant on account of the Rolls-Royce Claim), any portion of the Rolls-Royce Claim that would have been disallowed under section 502(e)(1)(B) of the Bankruptcy Code as of

the Original Objection Date shall also be subject to disallowance to the same extent upon the reinstatement of the Omnibus Objection; (iii) the Claimant shall produce to the GUC Trust detailed schedules (the "**Schedules**") describing with specificity the components of the Rolls-Royce Claim; (iv) the GUC Trust may file a supplemental objection setting forth any additional grounds for the disallowance of the Rolls-Royce Claim and any further support of its Omnibus Objection under section 502(e)(1)(B) of the Bankruptcy Code; and (v) in the event the Rolls-Royce Claim (or any portion thereof) is subsequently allowed, the Rolls-Royce Claim shall be allowed as a general unsecured claim in an amount not to exceed $9,000,000.

15. On November 15, 2011, the Claimant transmitted the Schedules to the GUC Trust, copies of which are annexed hereto as **Exhibit "B."** The Schedules indicate that, as of the Original Objection Date, the Claimant paid approximately $217,137 on account of environmental remediation at the Facility (the "**Allowable Environmental Remediation Portion**"). In addition to such amounts already incurred at the Facility as of the Original Objection Date, the Schedules project that further environmental remediation at the Facility will amount to $6,144,704 over a thirty year period (the "**Future Environmental Remediation Portion**"). The Schedules also reflect that, as of the Original Objection Date, the Claimant paid approximately $1,187,661 on account of various product liability claims asserted against the Claimant by third parties, as to which the Claimant seeks indemnification from the Debtors pursuant to the APA (the "**Allowable Products Liability Portion**"). Lastly, the Schedules indicate that, subsequent to the Original Objection Date, the Claimant has either paid or may potentially pay additional amounts in the future on account of product liability claims as to which the Claimant seeks indemnification from the Debtors (the "**Future Products Liability Portion**"). The GUC Trust submits that, with the exception of the Allowable Environmental

Remediation Portion and the Allowable Products Liability Portion, the Rolls-Royce Claim should be disallowed pursuant to section 502(e)(1)(B) of the Bankruptcy Code.

The Future Environmental Remediation Portion of the Rolls-Royce Claim is Subject to Disallowance Under Section 502(e)(1)(B)

16. To the extent that the Rolls-Royce Claim seeks costs not yet incurred for remediation work at the Facility after the Original Objection Date, the Rolls-Royce Claim should be disallowed under section 502(e)(1)(B) of the Bankruptcy Code, which provides, in relevant part:

> [T]he court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor to the extent that . . . such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution . . .

11 U.S.C. § 502(e)(1)(B). Congress enacted this provision to "prevent contingent, unresolved indemnification or contribution claims from delaying the consummation of a plan of reorganization or a final distribution in a liquidating case." *In re GCO Servs., LLC*, 324 B.R. 459, 466-67 (Bankr. S.D.N.Y. 2005); *accord In re Drexel Burnham Lambert Group Inc.*, 148 B.R. 982, 987 (Bankr. S.D.N.Y. 1992) (quoting *Syntex Corp. v. Charter Co. et al.* (*In re Charter Co.*), 862 F.2d 1500, 1502 (11th Cir. 1989)) ("An important consideration is the need for finality in a bankruptcy proceeding. The bankruptcy estate must not be burdened 'by estimated claims contingent in nature.'").

17. This Court is quite familiar with section 502(e)(1)(B) of the Bankruptcy Code and its application. As this Court found in its bench decisions in *In re Chemtura Corp.* and *In re Lyondell Chemical Co.*, disallowing contingent private party claims under section 502(e)(1)(B) furthers the objectives of environmental protection by encouraging private parties to perform prompt remedial activities at contaminated sites and then seek reimbursement for

their expenses. *In re Chemtura Corp.,* 443 B.R. 601 (Bankr. S.D.N.Y. 2011); *In re Lyondell Chem. Co.*, 442 B.R. 236 (Bankr. S.D.N.Y. 2011) (together, the "**Bench Decisions**"). Thus, section 502(e)(1)(B) of the Bankruptcy Code benefits the general public by encouraging prompt cleanups and benefits creditors by allowing debtors to expeditiously reorganize or liquidate.

18. Section 502(e)(1)(B) of the Bankruptcy Code results in the disallowance of a claim upon the showing of three elements: (i) the claim is for reimbursement or contribution; (ii) the claimant shares liability with the debtor on the claim; and (iii) the claim is contingent. *In re Provincetown-Boston Airlines, Inc.,* 72 B.R. 307, 309 (Bankr. M.D. Fla. 1987); *In re Eagle Picher Indus.,* 164 B.R. 265, 268 (S.D. Ohio 1994); *In re GCO Servs., LLC,* 324 B.R. at 465; *In re Drexel Burnham Lambert Group,* 148 B.R. at 985. A claim that satisfies all three of these elements must be disallowed.

A. The Future Environmental Remediation Portion seeks Reimbursement or Contribution

19. The concepts of reimbursement and contribution embodied in section 502(e)(1)(B) of the Bankruptcy Code have been interpreted by courts to encompass nearly any contingent claim against a debtor for money. *See In re Wedtech Corp*, 87 B.R. 279, 287 (S.D.N.Y. 1988). While reimbursement is not defined in the Bankruptcy Code, the term includes the concept of indemnification. *In re Lyondell Chem. Co.*, 442 B.R. at 257; *In re Pacor, Inc.*, 110 B.R. 686, 690 (E.D. Pa. 1990) ("[a]nalytically, indemnity is the same as reimbursement."); *see also In re Pettibone Corp.*, 162 B.R. 791, 809 (Bankr. N.D. Ill. 1994). The broad scope by which the terms reimbursement and contribution are construed is consistent with the intent of "Congress . . . to include all situations wherein indemnitors or contributors could be liable with the debtor within the scope of section 502(e)(1)(B)." *In re Lyondell Chem. Co.*, 442 B.R. at 257.

20. While the Future Environmental Remediation Portion is based on the Claimant's contractual rights under the APA, this Court has already held in these cases that contractual claims may be disallowed under section 502(e)(1)(B) when they are in substance claims for reimbursement or contribution. Transcript of May 31, 2012 Hearing at 74, *In re Motors Liquidation Company, et al.*, Case No. 09-50026 (Bankr. S.D.N.Y. May 31, 2012) (ECF No. 11803) (the "**Transcript of May 2012 Hearing**," annexed hereto as **Exhibit "C"**); see *In re Lyondell Chem. Co.*, 442 B.R. at 257 (rejecting argument that a direct contractual claim cannot be disallowed under section 502(e)(1)(B)); *In re Chemtura Corp,* 443 B.R. at 627; *see also In re Alper Holdings*, 2008 WL 4186333, at *5 (Bankr. S.D.N.Y. Sept. 10, 2008) (disallowing contractual indemnification claims pursuant to 502(e)(1)(B)); *In re GCO Servs., LLC*, 324 B.R. at 465; *In re Drexel*, 148 B.R. at 985 (section 502(e)(1)(B) "clearly applies to contractual claims for indemnification"); *In re Wedtech Corp.*, 87 B.R. at 287.

21. This Court has held that a claim is in substance for contribution when the claimant asserts that it will be forced to pay more than its fair share of environmental cleanup costs and, therefore, seeks payment for cleanup costs that might be incurred in the future. *In re Chemtura Corp,* 443 B.R. at 627*; see also In re Eagle-Picher Indus., Inc.*, 131 F.3d 1185 (6th Cir. 1997) ("Whether we call it 'reimbursement' or 'damages for dimunition in the value of property,' the process is the same. To hold otherwise would be to elevate form over substance."). There can be no doubt that the Rolls-Royce Claim is a claim to be made whole for monies that the Claimant has spent, or may spend in the future, on account of a debt for which the Claimant and the Debtors are both liable.

B. The Claimant Shares Liability with the Debtors on the Future Environmental Remediation Portion

22. The concept of shared liability or "co-liability" in section 502(e)(1)(B) of the Bankruptcy Code encompasses "any type of liability shared with the debtor, whatever its basis." *In re Drexel*, 148 B.R. at 987. The Future Environmental Remediation Portion is premised on the theory that, if the Debtors do not pay for future cleanup costs at the Facility, the Claimant will be required to pay more. As this Court has held, that "is the very essence of co-liability." (Transcript of May 2012 Hearing at 73) Shared liability is also demonstrated in this instance by the fact that the Debtors previously owned and remediated the Facility, which the Claimant has since continued to remediate.

23. The federal Comprehensive Environmental Response, Compensation, and Liability Act ("**CERCLA**"), codified at 42 U.S.C. §§ 9601 *et seq.*, imposes joint and several liability for environmental cleanup costs, natural resource damages, and certain other recoveries on four types of potentially responsible parties ("**PRPs**"): (a) the current "owner or operator" of a property contaminated with hazardous substances; (b) any person who previously owned or operated a property contaminated with hazardous substances; (c) any person who arranged for disposal of any hazardous substances at a contaminated site; and (d) any person who transported any hazardous substances to a contaminated site. *See* CERCLA § 107(a); 42 U.S.C. § 9607(a). Therefore, as the current "owner or operator" of the Facility, the Claimant is statutorily liable under CERCA for environmental cleanup costs, just as the Debtors, as person who previously owned or operated a property contaminated with hazardous substances, are statutorily liable for those same cleanup costs. CERCLA, therefore, clearly establishes that the Claimant and the Debtors are co-liable for any environmental cleanup that may be required at the Facility.

24. The co-liability requirement does not require that the debtor and claimant be subject to a common civil proceeding or agency action. In fact, co-liability can be based on two entirely different grounds for liability, so long as the underlying liability is the same. *See, e.g., In re Eagle-Picher Indus., Inc.*, 131 F.3d at 1190 ("Whether under CERCLA or the [New Jersey] Spill [Compensation Control] Act or some other law, [the claimant's] claims are for environmental cleanup costs associated with [a single] property, the very same costs for which [the debtor] may turn out to be co-liable," which is "precisely the kind of contingent co-liability envisioned by section 502(e)(1)(B).").

25. Co-liability is not just a product of statutory law. Contractual indemnification or reimbursement claims under purchase agreements for environmental response costs from the owner of a contaminated site to a buyer also meet the co-liability element of section 502(e)(1)(B) of the Bankruptcy Code because indemnification, by its very nature, "presupposes co-liability." *In re GCO Servs., LLC*, 324 B.R. at 466 (disallowing contingent claims by ERISA trustees).

26. Nor is co-liability premised on the actual filing of multiple proofs of claim. *In re Chemtura Corp.*, 436 B.R. 286, 294 (Bankr. S.D.N.Y. 2010). In *In re Hemingway Transport, Inc.*, the claimant had been issued an EPA administrative order to perform a CERCLA removal action, while the debtor had only received a prepetition PRP notice letter notifying it of its potential liability. The EPA did not file a claim for CERCLA liability in the bankruptcy proceedings, opting to first proceed against the claimant. Nevertheless, the Court of Appeals ruled that the debtor and claimant would be co-liable on a debt to the EPA if a surrogate claim were to be filed on behalf of the EPA in order to ensure a single — but not double — payment from the debtor's estate. *See* 993 F.2d at 925-28.

C. The Future Environmental Remediation Portion is Contingent

27. As this Court has explained, "until and unless amounts are actually paid, claims remain contingent for Section 502(e)(1)(B) purposes. The contingency contemplated by Section 502(e)(1)(B) relates to both payment and liability. Therefore, a claimant's claim is contingent until its liability is established and payment has issued." Transcript of May 2012 Hearing at 71; *In re Chemtura Corp*., 443 B.R.at 618. Accordingly, a claim is contingent until the claimant's liability has been established and the claimant has paid the principal creditor. *See In re Drexel*, 148 B.R. at 987.

28. Typically, the determination as to whether a claim is contingent is made "at the time of the allowance or disallowance of the claim, which courts have established is the date of the ruling." *Drexel*, 148 B.R. at 985; *accord In re GCO Servs.*, 324 B.R. at 466. However, in this instance, the Reinstatement Stipulation between the Claimant and the GUC Trust specifically provides that contingency shall be determined as of the Original Objection Date for the purposes of disallowing the Rolls-Royce Claim under section 502(e)(1)(B). (Reinstatement Stipulation at 4) Therefore, the Future Environmental Remediation Portion is contingent and must be disallowed pursuant to section 502(e)(1)(B) of the Bankruptcy Code.

The Claimant Does Not Set Forth Sufficient Facts to Support the Future Environmental Remediation Portion of the Rolls-Royce Claim

29. Even if the Future Environmental Remediation Portion of the Rolls-Royce Claim is not subject to disallowance under section 502(e)(1)(B) of the Bankruptcy Code, the Court should disallow the Future Environmental Remediation Portion due to a failure by the Claimant to set forth facts necessary to support the claim. A proof of claim *must* "set forth the facts necessary to support the claim" for it to receive the prima facie validity accorded under the Bankruptcy Rules. *In re Chain*, 255 B.R. 278, 280 (Bankr. D. Conn. 2000) (internal quotation

omitted); *In re Marino*, 90 B.R. 25, 28 (Bankr. D. Conn. 1988); *see Ashford v. Consol. Pioneer Mortgage*, 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995), *aff'd* , 91 F.3d 151 (9th Cir. 1996); *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173- 74 (3d Cir. 1992). This Court's order establishing the deadline and procedures for the filing of proofs of claim in these cases (ECF No. 4079) (the "**Bar Date Order**") also requires, among other things, that a proof of claim must "set forth with specificity the legal and factual basis for the alleged [c]laim [and] include supporting documentation or an explanation as to why such documentation is not available." (Bar Date Ord. at 2.) Neither the Rolls-Royce Claim nor the Schedules provide the required factual basis or documentation to support the claim.

30. As noted above, the Rolls-Royce Claim is silent as to what damages the Claimant seeks, stating only that such damages "cannot presently be ascertained and qualified." (Rolls-Royce Claim at 2.) The Schedules submitted by the Claimant indicate that the Claimant believes the Rolls-Royce Claim is entitled to approximately $6,144,704 on account of the Future Environmental Remediation Portion. The Claimant apparently reaches this conclusion by calculating the average monthly amount spent by the Claimant at the Facility from April 2010 to August 2012 and multiplying such amount by 360 on the assumption that remediation will continue at that site for 360 months or 30 years. However, the Claimant provides no evidence to support its presumption that remediation at the Facility, which has been ongoing since before the Commencement Date, needs to occur for an additional 30 years. The Claimant also fails to provide any support for its conclusion that the average monthly expenditures incurred by Claimant from April 2010 to August 2012 are in any way indicative of what the Claimant will spend over the course of the next 30 years. It is therefore impossible for the GUC Trust to

determine the accuracy of the Claimant's assertion that it is entitled to the asserted future remediation costs.

31. The GUC Trust and the Debtors have assessed hundreds of claims seeking remuneration for costs associated with environmental cleanups. This experience suggests that environmental remediation costs typically are front-loaded: active remediation, such as contaminated soil excavation or groundwater treatment, often occurs in the first few years of a site remediation, and represents the bulk of the total cleanup costs. After active remedial activities have been completed, environmental regulators often require a long period of passive remediation, such as groundwater monitoring to ensure declining contaminant concentrations, which typically costs substantially less than active remediation. Therefore, costs incurred in the early years of a site remediation often are several orders of magnitude greater than the costs incurred in the later years. As such, the GUC Trust cannot accept the Claimant's rationale that costs incurred by the Claimant over the past three years are representative of costs the Claimant is likely to incur over the next 30 years absent some supporting evidence, which the Claimant has failed to provide. Given the failure of the Claimant to set for the required factual basis or documentation to support the Future Environmental Remediation Portion, such portion of the Rolls-Royce Claim must be disallowed.

32. In addition, the Claimant also fails to take into account the time-value of money. While the Future Environmental Remediation Portion contemplates costs associated with remedial activities that were calculated to occur over the next 30 years, that portion of the Rolls-Royce Claim has not been reduced to present value. *In re Trace Int'l Holdings Inc.*, 284 B.R. 32, 39 (Bankr. S.D.N.Y. 2002) ("Any portion of a claim that is unmatured as of the petition date must . . . be discounted to its value as of the petition date.") (citing *In re CSC Indus., Inc.,*

232 F.3d 505, 507 (6th Cir. 2000), *cert. denied,* 534 U.S. 819 (2001); *Kucin v. Devan,* 251 B.R. 269, 273 (D. Md. 2000); *In re Thomson McKinnon Securities, Inc.,* 149 B.R. 61, 75 (Bankr. S.D.N.Y. 1992)). The Schedules indicate that the net present value of the future remediation costs is approximately $4,202,302 using a 2.83 percent discount rate; however, the Claimant nevertheless seeks the total of $6,144,704 on account of the Future Environmental Remediation Portion in nominal dollars. In so doing, the Claimant seeks a windfall that would disadvantage other similarly situated creditors.

The Future Products Liability Portion of the Rolls-Royce Claim is Subject to Disallowance

33. The GUC Trust asserts that the Future Product Liability Portion of the Rolls-Royce Claim is subject to disallowance under section 502(e)(1)(B) of the Bankruptcy Code. As previously stated, a claim is subject to disallowance under section 502(e)(1)(B) if the following three elements are present: "(1) the claim must be for reimbursement or contribution; (2) the party asserting the claim must be liable with the debtor on the claim of a third party; and (3) the claim must be contingent at the time of its allowance or disallowance." *In re Chemtura Corp.*, 436 B.R. at 294.

34. The first element is clearly present as to the Future Products Liability Portion as the Claimant is seeking contractual indemnification from the Debtors pursuant to the APA. Contractual indemnification constitutes reimbursement or contribution within the meaning of section 502(e)(1)(B). *See In re Alper Holdings*, 2008 WL 4186333, at *5. The second element as to co-liability is also satisfied as the Future Products Liability Portion is comprised of claims against the Claimant that are premised on a product sold or service rendered prior to the closing of the APA. To the extent that a product or service was rendered prior to the closing of the APA, it would have been manufactured or serviced by Motors Liquidation Company through

its Allison Gas Turbine Division. *In re Chemtura*, 436 B.R. at 295 (co-liability is present where "the causes of action in the underlying lawsuit assert claims upon which, if proven, the debtor could be liable but for the automatic stay.") (quoting *Wedtech*, 85 B.R. at 290). Finally, the third element is met as claims remain contingent for the purposes of section 502(e)(1)(B) until and unless payment is actually made. (Transcript of May 2012 Hearing at 71). In this instance, while the Claimant has paid certain amounts after the Original Objection Date, the Reinstatement Stipulation between the Claimant and the GUC Trust specifically provides that contingency shall be determined as of the Original Objection Date for the purposes of section 502(e)(1)(B). (Stipulation at 4) Accordingly, the Future Products Liability Portion should be disallowed under section 502(e)(1)(B).

35. Even if the Future Products Liability Portion is not subject to disallowance under section 502(e)(1)(B), the Future Products Liability Portion should not be allowed with respect to the two product liability claims asserted against the Claimant that are respectively identified on the Schedules as the "Scrogin" and the "Bastos" claims. (Schedules at 6-10) With respect to the Scrogin claim, the GUC Trust has reason to believe that the Claimant released the Debtors from all liabilities and waived its rights to seek a recovery from the Debtors on account of the Scrogin claim. In the event that the Claimant continues to seek a recovery on account of the Scrogin claim, the GUC Trust may seek discovery of certain relevant documents from the Claimant. With respect to the Bastos claim, the Schedules indicate that the Claimant may have had independent liability that was not attributable to the Debtors. The Schedules do not explain the reason for the Claimant's independent liability or provide any reduction on account of the Claimant's independent liability.

Notice

36. Notice of this supplemental objection has been provided to the Claimant and to the parties in interest in accordance with the *Sixth Amended Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c) and 9007 Establishing Notice and Case Management Procedures*, dated May 5, 2011 (ECF No. 10183). The GUC Trust submits that such notice is sufficient and no other or further notice need be provided.

37. Except as provided herein with respect to the Omnibus Objection, no previous request for the relief sought herein has been made by the GUC Trust to this or any other Court.

WHEREFORE the GUC Trust respectfully requests entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: New York, New York
November 16, 2012

/s/ Joseph H, Smolinsky
Harvey R. Miller
Stephen Karotkin
Joseph H. Smolinsky

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Attorneys for Motors Liquidation
Company GUC Trust

Hearing Date and Time: December 13, 2012 at 9:45 a.m. (Eastern Time)
Response Deadline: November 30, 2012 at 4:00 p.m. (Eastern Time)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

ORDER GRANTING MOTORS LIQUIDATION COMPANY GUC TRUST'S REINSTATED 159th OMNIBUS OBJECTION TO CLAIMS AND SUPPLEMENTAL OBJECTION TO PROOF OF CLAIM NO. 65807 FILED BY ROLLS-ROYCE CORPORATION

Upon (i) the *Debtors' 159th Omnibus Objection to Claims (Contingent Co-Liability Claims)*, dated January 26, 2011 (ECF No. 8840) (the "**Omnibus Objection**"),[1] as to Proof of Claim No. 65807 (the "**Rolls-Royce Claim**") filed by Rolls-Royce Corporation, (ii) the *Stipulation and Agreed Order Regarding Claim No. 65807 Filed by Rolls-Royce Corporation*, dared September 12, 2012, by and among the Motors Liquidation Company GUC Trust and Rolls-Royce Corporation (f/k/a Allison Engine Company, Inc., f/k/a AEC Acquisition Company, Inc.) (ECF No. 12123), and (iii) the supplemental objection, dated November 16, 2012 (the "**Supplemental Objection**," and together with the Omnibus Objection, the "**Objections**"), of the Motors Liquidation Company GUC Trust to the Rolls-Royce Claim; and due and proper notice of the Objections having been provided, and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Objections is in the best interests of the Debtors, their estates, creditors, and all parties in interest and that the

[1] Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in the Supplemental Objection.

legal and factual bases set forth in the Objections establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the relief requested in the Objections is granted as provided herein; and it is further

ORDERED that, pursuant to section 502(e)(1)(B) of the Bankruptcy Code, the Rolls-Royce Claim is partially disallowed and reduced to a general unsecured claim in the amount of $1,404,798; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York
_________, 2012

____
United States Bankruptcy Judge