

FOLEY & LARDNER LLP  
Mark A. Aiello (*pro hac vice pending*)  
Salvatore A. Barbatano  
One Detroit Center  
500 Woodward Avenue, Suite 2700  
Detroit, MI 48226-3489  
Telephone: (313) 234-7100  
Facsimile: (313) 234-2800

*Attorneys for Inergy Automotive Systems (USA), L.L.C.*

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

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

**OBJECTION OF INERGY AUTOMOTIVE SYSTEMS (USA), L.L.C. TO  
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND CURE AMOUNTS RELATED THERETO**

Inergy Automotive Systems (USA), L.L.C. (“Supplier”), by its attorneys Foley & Lardner LLP, hereby submits this objection (the “Objection”) to the Debtors’ assumption and assignment of certain executory contracts and the Debtor’s proposed Cure Amounts related thereto. In support of its Objection, Supplier states as follows:

**PRELIMINARY STATEMENT**

1. Supplier is in receipt of that certain Notice of (I) Debtors’ Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Real Property, and Unexpired Leases of Nonresidential Real Property and (II) Cure Amounts Related Thereto (the “Assumption and Assignment Notice”), dated June 5, 2009, in which the Debtors designate certain agreements (the

“Assumable Executory Contracts”) between Supplier and the Debtors that may be assumed and assigned to Vehicle Acquisition Holdings LLC (the “Purchaser”).

2. Supplier reserves its rights to object to any additional and/or amended notice of assumption and assignment received from the Debtors and/or the Purchaser and to any changes to the information contained on the secure website referenced in the Assumption and Assignment Notice.

## **ARGUMENT**

### **I. The Proposed Cure Amount Is Inadequate**

3. As of June 15, 2009, on the website referenced in the Assumption and Assignment Notice, the Debtors assert a Cure Amount that they claim is sufficient to cure all prepetition defaults under the Designated Agreements as of June 1, 2009 (the “Commencement Date”).

4. The proposed Cure Amount does not accurately reflect all prepetition defaults and is therefore insufficient.

5. The proposed Cure Amount does not include any post-petition defaults and is therefore insufficient.

6. Section 365(b)(1)(A) of the Bankruptcy Code provides that the trustee may not assume an executory contract unless the trustee “cures, or provides adequate assurance that the trustee will promptly cure” any default under the contract. 11 U.S.C. § 365(b)(1)(A). Congress’ intent in imposing cure and adequate assurance conditions on the ability of a debtor to assume an executory contract was to ensure that contracting parties receive the full benefit of their bargain if they are forced to continue performance. *See In re Ionosphere Clubs, Inc.*, 85 F.3d 992, 999 (2d Cir. 1996). Resolution of claims of default arising under an assumed contract seeks to

restore the debtor-creditor relationship to pre-default conditions, thereby bringing the contract back into compliance with its terms. *In re Wireless Data, Inc.*, 547 F.3d 484 (2d Cir. 2008).

7. Debtors must cure all defaults under the Assumable Executory Contracts, including pre-petition defaults and post-petition defaults.

8. The Debtors' proposed Cure Amount would deprive Supplier of the full benefit of its bargain and would fail to restore the parties to pre-default conditions.

9. The correct amount required to cure all prepetition and post-petition defaults is greater than the amount asserted by the Debtors.

10. "Cure Amounts" are defined in the Master Sale and Purchase Agreement as "all cure amounts payable in order to cure any monetary defaults required to be cured under Section 365(b)(1) of the Bankruptcy Code or otherwise to effectuate, pursuant to the Bankruptcy Code, the assumption by the applicable Seller and assignment to Purchaser of the Purchased Contracts." The proposed Cure Amount does not include defaults accruing during the period after June 1, 2009. Supplier reserves the right to submit such additional amounts to be added to the amount stated in the paragraph above.

## **II. The Assumption and Assignment Notice Improperly Allows For the Assumable Executory Contracts to be Assumed Without Payment of the Cure Amount or Adequate Assurance of Prompt Cure**

11. Paragraph 8 of the Assumption and Assignment Notice provides in relevant part:

If a timely Contract Objection is filed solely as to the Cure Amount (a "Cure Objection"), then the Assumable Executory Contract shall nevertheless be assumed and assigned to the Purchaser on the Assumption Effective Date (as hereinafter defined), the Purchaser shall pay the undisputed portion of the Cure Amount on or as soon as reasonably practicable after the Assumption Effective Date, and the disputed portion of the Cure Amount shall be determined as follows and paid as soon as reasonably practicable following resolution of such disputed Cure Amount.

12. The Assumption Effective Date is defined in Paragraph 14 of the Assumption and Assignment Notice as the later of the date proposed by the debtors, which date may be the Closing or a later date, and “the date following expiration of the Objection Deadline if no Contract Objection, other than to the Cure Amount, has been timely filed, or, if a Contract Objection, other than to the Cure Amount, has been filed, the date of the Assumption Resolution Stipulation or the date of a Bankruptcy Court order authorizing the assumption and assignment to the Purchaser of the Assumable Executory Contract.”

13. The Assumption and Assignment Notice thus allows for the possibility that that the Assumable Executory Contracts will be assumed and assigned before a dispute as to the proper Cure Amount is resolved.

14. As noted above, Section 365(b)(1)(A) of the Bankruptcy Code provides that the trustee may not assume an executory contract unless the trustee “cures, or provides adequate assurance that the trustee will promptly cure” any default under the contract. 11 U.S.C. § 365(b)(1)(A).

15. Further, Section 365(f)(2)(A) provides that the trustee may only assign a contract if “the trustee assumes such contract...in accordance with the provisions of this section.” 11 U.S.C. § 365(f)(2)(A).

16. The Bankruptcy Code thus unequivocally requires that *before* a contract can be assumed or assigned, any defaults must either be cured or adequate assurance that a prompt cure will be provided must be given. *See, e.g., In re Skylark Travel, Inc.*, 120 B.R. 352, 355 (Bankr. S.D.N.Y. 1990) (“[i]f the debtor wishes to assume the [contract] it must first cure the default as required by 11 U.S.C. § 365(b)”).

17. The Assumable Executory Contracts should not be assumed and assigned to the Purchaser unless and until the Debtors or the Purchaser cure any defaults thereunder or give adequate assurance that a prompt cure will be provided.

**RELIEF REQUESTED**

WHEREFORE, Supplier requests that the Court enter an order denying the Debtor's request to assume and assign the Assumable Executory Contracts, and grant such other and further relief as the Court deems just and proper.

Dated: June 15, 2009

FOLEY & LARDNER LLP

By: /s/ Salvatore A. Barbatano \_\_\_\_\_  
Mark A. Aiello (*pro hac vice pending*)  
Salvatore A. Barbatano  
FOLEY & LARDNER LLP  
One Detroit Center  
500 Woodward Avenue, Suite 2700  
Detroit, MI 48226-3489  
Telephone: (313) 234-7100  
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 15, 2009, I caused the Objection Of Inergy Automotive Systems (USA), L.L.C. To Assumption And Assignment Of Certain Executory Contracts And Cure Amounts Related Thereto to be served via U.S. Mail on the following at the addresses set forth below:

General Motors Corporation  
Attn: Warren Command Center  
Mail Code 480-206-114  
30009 Van Dyke Avenue  
Warren, Michigan 48090-9025

Weil, Gotshal & Manges LLP  
Attorneys for the Debtors  
Attn: Harvey R. Miller, Esq.  
Stephen Karotkin, Esq.  
Joseph H. Smolinsky, Esq  
767 Fifth Avenue  
New York, New York 10153

U.S. Treasury  
Attn: Matthew Feldman, Esq.  
1500 Pennsylvania Avenue NW  
Room 2312  
Washington, D.C. 20220

Cadwalader, Wickersham & Taft LLP  
Attn: John J. Rapisardi, Esq.  
Attorneys for the Purchaser  
One World Financial Center  
New York, New York 10281

Vedder Price, P.C.  
Michael J. Edelman, Esq.  
Michael L. Schein, Esq.  
Attorneys for Export Development Canada  
1633 Broadway, 47th Floor,  
New York, New York 10019

Office of the United States Trustee  
Southern District of New York  
Attn: Diana G. Adams, Esq.  
33 Whitehall Street, 21st Floor  
New York, New York 10004

Kramer Levin Naftalis & Frankel LLP  
Attorneys for the Official Committee of  
Unsecured Creditors  
Attn: Gordon Z. Novod, Esq.  
1177 Avenue Of The Americas  
New York, NY 10036

Dated: June 15, 2009

FOLEY & LARDNER LLP

By: /s/ Salvatore A. Barbatano  
Mark A. Aiello (*pro hac vice pending*)  
Salvatore A. Barbatano  
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500 Woodward Avenue, Suite 2700  
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