

Martin J. Weis (PA I.D. No. 51379)
DLWORTH PAXSON LLP
1500 Market Street, Suite 3500E
Philadelphia, Pennsylvania 19102-2101
Telephone: (215) 575-7000
Facsimile: (215) 575-7200

Attorney for Medco Health Solutions, Inc.

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

In re:

GENERAL MOTORS CORP., *et al.*,

Debtors.

Chapter 11

Case No. 09-50026 (REG)

Jointly Administered

**LIMITED OBJECTION OF MEDCO HEALTH SOLUTIONS, INC. TO THE DEBTORS'
PROPOSED ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND THE CURE COSTS RELATED THERETO**

Medco Health Solutions, Inc. ("Medco") hereby submits this limited objection to the assumption and assignment by General Motors Corp. ("GM" of "The Debtor") of its contract between Medco and GM and in support thereof avers as follows:

1. On June 1, 2009, GM and certain affiliates filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

2. On or about June 2, 2009, the Court entered an order authorizing procedures for determining, among other things, the assumption and assignment of executory contracts that may be assumed by the Debtor and the pre-petition cure amounts for each of these contracts (the "Sale Procedures Order") [Docket No. 274].

3. With respect to the assumption and assignment of executory contracts and unexpired leases, the Sale Procedures Order provides that GM is to serve, on each non-debtor

party to an executory contract or unexpired lease that GM intends to assume and assign to the purchaser, a notice of assumption and assignment of executory contracts and unexpired leases. Each notice is to set forth instructions for accessing information from a website containing the contracts to be assumed and assigned as well as the proposed cure amounts.

4. Although Medco has not, to date, obtained a copy of the notice of assumption, assignment and cure associated with a benefits contract between Medco and GM, (“the Medco GM Contract”), Medco has been advised by GM that the Medco GM Contract is on the list of assumable contracts. And while arrangements have been made to obtain a duplicate copy of the notice, Medco is filing this objection out of an abundance of caution to preserve all rights related to the proposed assumption and assignment of the Medco GM Contract.

5. To the extent that the notice does not accurately reflect the cure amount on the Medco GM Contract, Medco objects to the proposed cure and requests that GM representatives, in the first instance, work with Medco to reconcile these amounts due.

6. In addition, any proposed cure must include all amounts payable to Medco under the contract through the date of the assumption and assignment. Under the Bankruptcy Code, the Debtor is required to cure all amounts due Medco through the date of the assignment. See 11 U.S.C. Section 365(b)(1); In re Rickel Home Centers, Inc., 209 F.3d 291, 298 (3d Cir. 2000); In re Handy Andy Home Improvement Centers, Inc., 196 B.R. 87, 93 (Bankr. N.D. Ill. 1996) (the debtor must cure pre-and post-petition defaults prior to assumption).

7. Pursuant to sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code, Medco reserves the right to demand that the Debtor and/or the purchaser provides adequate assurance of future performance before the Medco GM Contract is assumed and assigned. *See e.g., In re Metromedia Fiber Network, Inc.*, 335 B.R. 41, 65-66 (Bankr. S.D.N.Y. 2005); *In re*

Embers 86th Street, Inc., 184 B.R. 892, 900-901 (Bankr. S.D.N.Y. 1995). See also Rickel, 209 F.3d at 299 (trustee may only assign an unexpired lease if trustee assumes the lease in accordance with Section 365 and there is adequate assurance of future performance by the assignee).

WHEREFORE, Medco Health Solutions, Inc. respectfully requests that the Court not approve the assumption and assignment of the Medco GM Contract absent reconciliation and payment of the cure amounts and satisfactory proof of adequate assurance of future performance by any proposed assignee.

/s/ Martin J. Weis
Martin J. Weis
Dilworth Paxson LLP
1500 Market Street, Suite 3500E
Philadelphia, PA 19102-2101
Telephone: (215) 575-7000
Facsimile: (215) 575-7200
mweis@dilworthlaw.com

Attorney for Medco Health Solutions, Inc.

Martin J. Weis (PA I.D. No. 51379)
DILWORTH PAXSON LLP
1500 Market Street, Suite 3500E
Philadelphia, Pennsylvania 19102-2101
Telephone: (215) 575-7000
Facsimile: (215) 575-7200

Attorney for Medco Health Solutions, Inc.

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

In re:

GENERAL MOTORS CORP., *et al.*,

Debtors.

Chapter 11

Case No. 09-50026 (REG)

Jointly Administered

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 19, 2009, copies of the Limited Objection of Medco Health Solutions, Inc. to the Debtors' Proposed Assumption and Assignment of Certain Executory Contracts and the Cure Costs Related Thereto, were served upon the following entities via regular U.S. mail:

Diana G. Adams, Esquire
Office of the U.S. Trustee for the Southern District of New York
33 Whitehall Street, 21st Floor
New York, NY 10004

Warren Command Center, Mailcode 480-206-114
General Motors Corporation
Cadillac Building
30009 Van Dyke Avenue
Warren, MI 48090-9025

Harvey Miller, Esquire
Stephen Karotkin, Esquire
Joseph H. Smolinsky, Esquire
Weil, Gotshal & Manges, LLP
767 Fifth Avenue
New York, NY 10153

John J. Rapisardi, Esquire
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281

Matthew Feldman, Esquire
U.S. Department of Treasury
1500 Pennsylvania Avenue NW, Room 2312
Washington, DC 20220

Michael J. Edelman, Esquire
Michael L. Schein, Esquire
Vedder Price, P.C.
1633 Broadway, 47th Floor
New York, NY 10019

Kenneth Eckstein, Esquire
Thomas Moers Mayer, Esquire
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036

Chambers Copy

Hon. Robert E. Gerber
United States Bankruptcy Court
Southern District of New York
One Bowling Green, Room 621
New York, NY 10004-1408

/s/ Martin J. Weis
Martin J. Weis
Dilworth Paxson LLP
1500 Market Street, Suite 3500E
Philadelphia, PA 19102-2101
Telephone: (215) 575-7000
Facsimile: (215) 575-7200
mweis@dilworthlaw.com

Attorney for Medco Health Solutions, Inc.

Dated: June 19, 2009