Hearing Date and Time: October 21, 2010 at 9:45 a.m. (Eastern Time) Objection Deadline: October 14, 2010 at 4:00 p.m. (Eastern Time)

KRAMER LEVIN NAFTALIS & FRANKEL LLP 1177 Avenue of the Americas New York, New York 10036 Telephone: (212) 715-9100 Facsimile: (212) 715-8000 Thomas Moers Mayer Timothy P. Harkness

Counsel for the Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT		
SOUTHERN DISTRICT OF NEW YORK		
	Х	
	:	
In re:	:	Chapter 11 Case No.:
	:	
MOTORS LIQUIDATION COMPANY., et al.,	:	09-50026 (REG)
f/k/a General Motors Corp., et al.	:	
	:	
Debtors.	:	(Jointly Administered)
	:	
	Х	

MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MOTORS LIQUIDATION COMPANY TO ENFORCE (A) THE FINAL DIP ORDER, (B) THE WIND-DOWN ORDER, <u>AND (C) THE AMENDED DIP FACILITY</u>

TABLE OF CONTENTS

PRELIMINA	RY STATEMENT
FACTS	
А.	"The Deal" – Negotiations Prior to the Bankruptcy Case
В.	The Term Loan Litigation
JURISDICTI	DN12
RELIEF REQ	UESTED12
BASIS FOR I	RELIEF REQUESTED12
А.	This Court Has the Authority to Enforce Its Orders
В.	The Amended DIP Facility and the Orders Should be Enforced According to Their Plain Terms
C.	The Course of Dealings and Surrounding Facts Show that Treasury Has No Interest in the Term Loan Litigation
D.	Treasury Should Be Judicially Estopped From Arguing that the Term Loan Litigation Belongs to Any Entity Other Than the Committee
NOTICE	

TABLE OF AUTHORITIES

FEDERAL CASES

Back v. AM Gen. Corp. (In re Chateaugay Corp.), 213 B.R. 633 (S.D.N.Y. 1997)	12
Bear, Stearns Funding, Inc. v. Interface Group-Nevada, Inc., No. 03 Civ. 8259 (CSH), 2007 WL. 1988150 (S.D.N.Y. July 10, 2007)	13 n.7
Cukierman v. Mechanics Bank of Richmond (In re J.F. Hink & Son), 815 F.2d 1314 (9th Cir. 1987)	16
Dickerson v. Colgrove, 100 U.S. (10 Otto) 578, 25 L. Ed. 618 (1880)	16
<i>GMAC Bus. Credit, L.L.C., v. Ford Motor Co., No. Civ.</i> 02-70297, 2002 WL. 32819769 (E.D. Mich. Sept. 30, 2002)	13
New England Dairies, Inc. v. Dairy Mart Convenience Stores, Inc. (In Re Dairy Mart Convenience Stores, Inc.), 272 B.R. 66 (S.D.N.Y. 2002)	13
United States of America v. Bartlett (In re Bartlett), 353 B.R. 398 (Bankr. D. Vt. 2006)	13
United States of America v. Owens, 54 F.3d 271 (6th Cir. 1995)	16
U.S. Lines, Inc. v. GAC Marine Fuels, Ltd. (In re McLean Indus., Inc.), 68 B.R. 690 (Bankr. S.D.N.Y. 1986)	12

STATE CASES

Goldman v. White Plains Ctr. for Nursing Care, LLC,
11 N.Y.3d 173 (2008)13 n.7

STATUTES & RULES

11 U.S.C. § 105(a)	
11 U.S.C. § 361	1,2
11 U.S.C. § 362	1,2

11 U.S.C. § 363	1, 2
11 U.S.C. § 364	1, 2
11 U.S.C. § 507	1, 2
28 U.S.C. § 157	12
28 U.S.C. § 157(b)(2)	12
28 U.S.C. § 1334	12
28 U.S.C. § 1408	12
28 U.S.C. § 1409	12
Fed. R. Bankr. P. 1015(c)	16
Fed. R. Bankr. P. 2002	1, 2
Fed. R. Bankr. P. 4001	1, 2
Fed. R. Bankr. P. 6004	1, 2
Fed. R. Bankr. P. 9007	16

MISCELLANEOUS

Black's Law Dictionary, 1020-21 (9th ed. 2009)	14
7 Collier on Bankruptcy § 1111(b)(1)(A)(i) (Alan N. Resnick & Henry J. Sommer eds., 16th Ed. rev. 2009)	14
11 Samuel Williston, Williston on Contracts § 31:4, at 277-78 (4th ed. 1999)	13 n.5

Hearing Date and Time: October 21, 2010 at 9:45 a.m. (Eastern Time) Objection Deadline: October 14, 2010 at 4:00 p.m. (Eastern Time)

KRAMER LEVIN NAFTALIS & FRANKEL LLP 1177 Avenue of the Americas New York, New York 10036 Telephone: (212) 715-9100 Facsimile: (212) 715-8000 Thomas Moers Mayer Timothy P. Harkness

Counsel for the Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK		
	Х	
	:	
In re:	:	Chapter 11 Case No.:
	:	
	:	09-50026 (REG)
f/k/a General Motors Corp., et al.	:	
	:	
Debtors.	:	(Jointly Administered)
	:	
	Х	

MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MOTORS LIQUIDATION COMPANY TO ENFORCE (A) THE FINAL DIP ORDER, (B) THE WIND-DOWN ORDER, AND (C) THE AMENDED DIP FACILITY

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

The Official Committee of Unsecured Creditors (the "<u>Committee</u>") of the above captioned debtors and debtors-in-possession in these chapter 11 cases (collectively, the "<u>Debtors</u>" or "<u>Old GM</u>"), by and through its undersigned counsel, hereby moves for entry of an order, substantially in the form annexed as <u>Exhibit A</u> hereto, enforcing: (i) the Final Order Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (A) Approving a DIP Credit Facility and Authorizing the Debtors to Obtain

Post-Petition Financing Pursuant Thereto, (B) Granting Related Liens and Super-Priority Status, (C) Authorizing the Use of Cash Collateral and (D) Granting Adequate Protection to Certain Pre-Petition Secured Parties dated June 25, 2009 (the "<u>Final DIP Order</u>") [Docket No. 2529]; (ii) the Order Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (A) Approving Amendment to DIP Credit Facility to Provide for Debtors' Post-Petition Wind-Down Financing dated July 5, 2009 (the "<u>Wind-Down</u> <u>Order</u>" and together with the Final DIP Order, the "<u>Orders</u>") [Docket No. 2969]; and (iii) the \$1,175,000,000 Amended and Restated Secured Superpriority Debtor-in-Possession Credit Agreement (the "<u>Amended DIP Facility</u>"), dated as of July 10, 2010, by and among the Debtors, the United States Department of the Treasury ("<u>Treasury</u>"), and Export Development Canada ("EDC").

PRELIMINARY STATEMENT

On August 26, 2010 – more than a year after the Committee sued for the return of \$1.5 billion paid on account of an apparently voidable security interest (as defined more precisely below, the "<u>Term Loan Litigation</u>") – Treasury for the first time asserted that Treasury, not unsecured creditors, owned the Term Loan Litigation. On August 31, 2010, the Debtors filed a Joint Chapter 11 Plan (the "<u>Proposed Plan</u>") [Docket No 6829], which, at Treasury's request, provided that ownership of the Term Loan Litigation would be determined by the Court or by negotiation between Treasury and the Committee.

Treasury's position with respect to the Term Loan Litigation contradicts the Final DIP Order, approving Treasury's original \$33.3 billion debtor-in-possession facility, the Wind-Down Order, approving the Amended DIP Facility and the Amended DIP Facility itself, each of

which Treasury agreed to before they were entered by the Court. The Orders and the Amended DIP Facility provide as follows:

- The Committee, and only the Committee, has the ability to bring the Term Loan Litigation.
- The Term Loan Litigation is specifically excluded from Treasury's collateral.
- Treasury's recourse is limited solely to its collateral. Thus Treasury has no interest in the Term Loan Litigation.

Treasury must live up to its agreements. The Committee asks this Court to enforce them.

FACTS

A. <u>"The Deal" – Negotiations Prior to the Bankruptcy Case</u>

1. Paul Weiss Rifkind Wharton & Garrison LLP ("<u>Paul Weiss</u>") and Houlihan, Lokey Financial Advisors, Inc. were retained before the commencement of these cases by major holders of the Debtors' publicly traded bonds. These firms negotiated the basic deal with Treasury that underpins these chapter 11 cases, as follows: Their major bondholder clients agreed not to object to the Debtors' sale under Section 363 of substantially all of the Debtors' assets to a new company controlled by Treasury ("<u>New GM</u>"). Treasury in return agreed to have New GM issue 10% of its common stock, and warrants with a value approximating an additional 10% of New GM equity, to the Debtors for distribution to the Debtors' unsecured creditors. *See* Mayer Decl. ¶ 2.¹

The deal was based on an estimate of the Debtors' unsecured claims at
 \$35 billion. Treasury agreed that if unsecured claims increased, then, in a range from \$35 billion

¹ All references to "Mayer Decl. ¶ ___" are to the accompanying Declaration of Thomas Moers Mayer, dated October 4, 2010, attached hereto as **Exhibit B**. All references to "Mayer Decl. Ex. __" are to the exhibits annexed to the Mayer Declaration.

to \$42 billion, New GM would issue up to an additional 2% of New GM common stock. Thus, within the \$35 to \$42 billion range, the 10% of New GM common stock was protected from dilution. However, no additional warrants would be issued by New GM. Thus the New GM warrants, which could comprise approximately half of unsecured creditors' value, would not be protected from dilution if claims ranged from \$35 billion to \$42 billion. If unsecured claims exceed \$42 billion, there would be no dilution protection at all. Current estimates of unsecured claims are not public with one exception: New GM's report for the second calendar quarter of 2010 states that it estimates unsecured claims against the Debtors will exceed \$37 billion. *See* Mayer Decl. ¶ 3; Mayer Dec. Ex. 1, General Motors Co. 10-Q filed August 16, 2010 at p. 40.

3. The deal was also based on Treasury's commitment to pay, at the closing of the sale, all claims of the Debtors' secured bank lenders – including claims under a \$1.5 billion (principal amount) term loan which was, at the time, believed to be fully secured by a non-voidable security interest and various mortgages (as more fully defined below, the "**Prepetition Term Loan**"). *See* Mayer Decl. ¶ 4.

4. The foregoing paragraphs are set forth on information and belief, based on Committee counsel's interviews of Paul Weiss and Houlihan Lokey Financial Advisors LLP and statements contained in the Debtors' Disclosure Statement filed on August 31, 2010 (the "<u>Disclosure Statement</u>") [Docket No. 6830]. The Committee does not believe the foregoing paragraphs are disputed.

B. <u>The Term Loan Litigation</u>

5. On June 1, 2009, (the "<u>Petition Date</u>"), all Debtors with material assets filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, as amended (the "<u>Bankruptcy Code</u>"). *See* Mayer Decl. ¶ 5. On June 3, 2009, the Committee was formed and retained professionals. *See* Mayer Decl. ¶ 6.

6. In the weeks following the Petition Date, the Committee negotiated the Amended DIP Facility and the Orders. Each of these documents was drafted by Treasury's counsel, which took or rejected comments from the Committee and other parties in the course of the negotiations. *See* Mayer Decl. \P 7.

7. A key all-hands meeting of counsel to the Debtors, the Committee and Treasury, plus Paul Weiss, and their respective financial advisors took place on June 19, 2009 (the "June 19 Negotiating Session"). See Mayer Decl. ¶ 8.

8. Prior to the June 19 Negotiating Session, the Committee had commenced its investigation of liens and security interests securing a prepetition \$1.5 billion term loan dated as of November 29, 2006 and amended March 4, 2009 (the "<u>Prepetition Term Loan</u>") from a bank syndicate (the "<u>Prepetition Term Lenders</u>")² agented by JPMorgan Chase Bank, N.A. ("<u>JPMorgan</u>"). The day before the June 19 Negotiating Session, JPMorgan's counsel called to inform Committee counsel that, prior to the Petition Date, a paralegal for counsel to the Debtors filed a UCC-3 termination statement with respect to the Prepetition Term Loan's security interests without authority. *See* Mayer Decl. ¶ 9. Subsequent discovery has uncovered facts supporting the Committee's contention that JPMorgan did in fact authorize the paralegal to file the UCC-3 termination statement. *See* Mayer Decl. ¶ 9. This matter is currently *sub judice* with this Court. *See* Mayer Decl. ¶ 9, *see also* Adversary Complaint dated July 31, 2009 [Case No. 09-00504].

9. The Committee was therefore particularly focused on a possible challenge to the Prepetition Term Lenders' security interest and recovery of the \$1.5 billion in cash slated to be paid, at the closing of the sale, to the lenders (the "<u>Term Loan Litigation</u>"). The

² The Final DIP Order and the Wind-Down Order refer to the Prepetition Term Lenders as the Prepetition Senior Facilities Secured Parties.

Committee's agenda for the June 19 Negotiating Session, and discussions thereafter, included preserving the benefit of the Term Loan Litigation for unsecured creditors. *See* Mayer Decl. ¶10; Mayer Decl. Ex. 2, E-mail to Treasury.

10. By June 25, 2009, the Debtors, Treasury, the Prepetition Term Lenders and the Committee had agreed on the terms of the Final DIP Order and the Debtors submitted the order to the Court. *See* Mayer Decl. ¶ 13; Mayer Decl. Ex. 3, June 25, 2009 Hearing Tr. at pp. 20-22. The Final DIP Order, among other things, provides that the Debtors release the Prepetition Term Lenders on behalf of the Debtors and all parties claiming through the Debtors (including, for example, Treasury) with one exception: the Committee, and only the Committee, was given both the right and standing to challenge the Prepetition Term Lenders' liens. *See* Mayer Decl. Ex. 4, Final DIP Order ¶ 19(d) at p. 25:

... provided, however, that such release shall not apply to the Committee with respect only to the perfection of first priority liens of the Prepetition Senior Facilities Secured Parties (it being agreed that if the Prepetition Senior Facilities Secured Parties, after payment, assert or seek to enforce any right or interest in respect of any junior liens, the Committee shall have the right to contest such right or interest in such junior lien on any grounds, including (without limitation) validity, enforceability, priority, perfection or value) (the "**Reserved Claims**").³ The Committee shall have automatic standing and authority to both investigate the Reserved Claims and bring actions based upon the Reserved Claims against the Prepetition Senior Facilities Secured Parties not later than July 31, 2009 (the "**Challenge Period**")....

11. As noted above, Treasury's counsel drafted the Final DIP Order. At the

June 25, 2009 hearing, Treasury asked the Court to enter the order. *See* Mayer Decl. Ex. 3, June 25, 2009 Hearing Tr. at pp. 21-22.

³ The term "Reserved Claims" shall have the meaning ascribed thereto in paragraph 19(d) of the Final DIP Order.

12. On June 29, 2009, the Debtors filed their Motion Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 to Amend DIP Credit Facility (the "Motion to Amend DIP Facility") [Docket No. 2755], which seeks approval of the Amended DIP Facility. *See* Mayer Decl. Ex. 5, Motion to Amend DIP Facility and specifically provides that the term "Collateral" excludes "avoidance actions arising under chapter 5 of the Bankruptcy Code and applicable state law against the Prepetition Senior Facilities Secured Parties (as defined in the DIP Facility)." *See* Mayer Decl. Ex. 5, Motion to Amend DIP Facility ¶ 10(d) at p. 4. In addition, the Motion to Amend DIP Facility provides that the "obligations under the Wind-Down Facility will be non-recourse to the Borrower or the Guarantors, and recourse would only be to the Collateral." *See* Mayer Decl. Ex. 5, Motion to Amend DIP Facility ¶ 10(f) at p. 4.

13. By July 2, 2009, after exchanging multiple drafts and comments thereon, the parties agreed on the terms of the Amended DIP Facility and the Wind-Down Order. The parties, including Treasury, asked the Court to enter the Wind-Down Order approving the Amended DIP Facility. *See* Mayer Decl. ¶ 15; Mayer Decl. Ex. 6, July 2, 2009 Hearing Tr. at pp. 101-07. On July 5, 2009, the Court signed and entered the Wind-Down Order approving the Amended DIP Facility in substantially the form attached as an exhibit thereto. *See* Mayer Decl. ¶ 17; Mayer Decl. Ex. 7, Wind-Down Order.

14. The Amended DIP Facility specifically excludes the Term Loan Litigation from Treasury's collateral by defining "Collateral" as follows:

[A]ll property and assets of the Loan Parties of every kind or type . . . (including avoidance actions arising under Chapter 5 of the Bankruptcy Code and applicable state law **except avoidance**

actions against the Prepetition Senior Facilities Secured Parties (as defined in the Final Order))

Mayer Decl. Ex. 8, Amended DIP Facility at p. 6 (emphasis added). The Amended DIP Facility defines the New GM stock and warrants as "New GM Equity Interests" and excludes those assets from Treasury's lien as "Excluded Collateral." Mayer Decl. Ex. 8, Amended DIP Facility at p. 9; *see also* Mayer Decl. Ex. 8, Amended DIP Facility § 8.20 at p. 67.

15. Not only does the Amended DIP Facility exclude the Term Loan

Litigation from Treasury's collateral but the Wind-Down Order does so as well:

[T]he DIP Liens shall not include security interests in or liens on avoidance actions arising under chapter 5 of the Bankruptcy Code against the Prepetition Senior Facilities Secured Parties (as defined in the DIP Credit facility) or any stock, warrants, options or other equity interests in New CarCo (as defined in the Amended DIP Facility) issued to or held by any Debtor (or any of its subsidiaries) pursuant to the Related Section 363 Transactions including any dividends, payments or other distributions thereon and any proceeds or securities received or receivable upon any disposition or exercise thereof (the "<u>New GM Equity Interests</u>").

Mayer Decl. Ex. 7, Wind-Down Order at p. 5.

16. Both the Amended DIP Facility and the Wind-Down Order explicitly

provide that Treasury's Wind-Doan Loan shall be *<u>non-recourse</u>*:

The Loans shall be non-recourse to the Borrower and the Guarantors and recourse only to the Collateral.

Mayer Decl. Ex. 8, Amended DIP Facility § 2.1 at p. 24 (second sentence).

[T]he Loans (as defined in the Amended DIP Facility) shall be non-recourse to the Borrower and the Guarantors, such that the DIP Lenders' recourse under the Amended DIP Facility shall be only to the Collateral (as defined in the Amended DIP Facility) securing the DIP Loans....

Mayer Decl. Ex. 7, Wind-Down Order at p. 6. As noted above, the Amended DIP Facility's

definition of "Collateral," used in both the Amended DIP Facility and the Wind-Down Order,

specifically excludes the Term Loan Litigation from "Collateral." *See* Mayer Decl. Ex. 8, Amended DIP Facility at p. 6; Mayer Decl. Ex. 7, Wind-Down Order at p. 6.

17. The foregoing provisions were no accident. By the end of the June 19 Negotiating Session, all parties in interest – including Treasury – agreed that Treasury's <u>collateral</u> would not include the Term Loan Litigation. *See* Mayer Decl. ¶ 11. Shortly after the June 19 Negotiating Session, Committee counsel further specifically requested that Treasury's <u>recourse</u> under the Amended DIP Facility be limited to its collateral – specifically <u>excluding</u> from such recourse the New GM stock, the New GM warrants <u>and</u> the Term Loan Litigation. *See* Mayer Decl. ¶ 12; Mayer Decl. Ex. 9, E-mail to Treasury. Committee counsel submitted comments amending the Amended DIP Facility § 2.1, limiting recourse to "Collateral", in an attachment to an e-mail dated June 30, 2009 and circulated to the Debtors, Treasury, and other parties in interest. *See* Mayer Decl. Ex. 10, June 30, 2009 E-mail to Debtors and Treasury. Treasury's counsel inserted this proposed language into the Amended DIP Facility through and including the execution version. *See* Mayer Decl. ¶ 12.

18. At the July 2, 2009 hearing on the Debtors' motion to approve the Amended DIP Facility, counsel to the Committee provided the Court with a brief overview of the Committee's discussions with the Debtors and Treasury regarding the Amended DIP Facility and the Wind-Down Order. *See* Mayer Decl. Ex. 6, July 2, 2009 Hearing Tr. at pp. 101-03. Treasury did not object to this narrative or the terms of the Amended DIP Facility or the Wind-Down Order. *See* Mayer Decl. Ex. 6, July 2, 2009 Hearing Tr.

19. Indeed, Treasury's counsel affirmed the Committee's representations and supplemented them by stating, "I should make clear that the funding facility is on a non-recourse

basis, as has been the case throughout these discussions." Mayer Decl. Ex. 6, July 2, 2009 Hearing Tr. at p. 103.

20. Hearing no objection, this Court entered the Wind-Down Order, which approved the Amended DIP Facility in substantially the form attached as an Exhibit thereto. *See* Mayer Decl. ¶ 17. Treasury subsequently insisted on further amendments, not approved by the Court, but such amendments are not relevant to this Motion. *See* Mayer Decl. ¶ 17. Treasury signed and consummated the Amended DIP Facility, with the provisions excluding the Term Loan Litigation from both collateral and recourse included in the executed final document, on July 10, 2009. *See* Mayer Decl. Ex. 8, Amended DIP Facility.

21. On July 31, 2009, pursuant to standing granted to the Committee under Final DIP Order ¶ 19(d), the Committee timely filed a complaint against the Prepetition Term Lenders seeking to: (i) avoid the security interest that was subject to the UCC-3 termination statement; (ii) avoid and recover funds from the Prepetition Term Lenders paid on account of such security interest; and (iii) disallow claims held by the Prepetition Term Lenders. *See* Adversary Complaint dated July 31, 2009 [Case No. 09-00504, Docket No. 1]. Cross motions for summary judgment are scheduled to be heard by the Court on November 1, 2010. *See* Mayer Decl. ¶ 18.

22. For almost a year, Treasury made no attempt to intervene in the lawsuit or assert any interest therein. *See* Mayer Decl. ¶ 19. Moreover, Treasury has not once objected to any of the Committee's fee applications seeking reimbursement for its work on the litigation. *See* Mayer Decl. ¶ 19.

23. The initial draft of the Proposed Plan, which was circulated to the Committee on July 23, 2010, provided that the Term Loan Litigation would be prosecuted for the

sole benefit of unsecured creditors.⁴ See Mayer Decl. \P 20. Specifically, the initial draft of the Proposed Plan provided that the distribution to unsecured creditors included the proceeds of the Term Loan Litigation. See Mayer Decl. \P 20.

24. On July 22, 2010, Treasury's counsel called Committee counsel and for the first time asserted that Treasury had an interest in the Term Loan Litigation. *See* Mayer Decl. ¶ 21. On July 26, 2010, August 16, 2010 and August 18, 2010, Committee counsel participated in conference calls with Treasury's counsel regarding, among other things, the status of the Term Loan Litigation. *See* Mayer Decl. ¶ 21. By no later than August 19, 2010, counsel to the Debtors informed counsel to the Committee that per Treasury's request, the Proposed Plan would provide that the beneficiary of the Term Loan Litigation be determined at a later date. *See* Mayer Decl. ¶ 21.

25. On August 26, 2010, more than a full year after the Committee initiated the Term Loan Litigation, Treasury filed the Statement of the United States of America with Respect to Cross-Motions for Summary Judgment ("Statement") [Docket No. 6805] requesting that any resolution of the cross motions for summary judgment not determine any person or entity's entitlements with respect to the ultimate distribution of any funds recovered from the Term Loan Litigation. *See* Mayer Decl. ¶ 22; Mayer Decl. Ex. 11, Statement.

26. On August 31, 2010, the Debtors filed the Proposed Plan, which provides that the Term Loan Litigation will be included in the Avoidance Action Trust as an Avoidance Action Trust Asset. *See* Mayer Decl. ¶ 23; Mayer Decl. Ex. 12, Debtors' Joint Chapter 11 Plan at § 1.22. The Proposed Plan further provides that interests in the Avoidance Action Trust will be distributed to Treasury or to unsecured creditors as the Court may decide or as the Committee

⁴ The Proposed Plan provides that the Term Loan Litigation may continue to be prosecuted post-confirmation.

and Treasury may agree. *See* Mayer Decl. ¶ 23; Mayer Decl. Ex. 12, Debtors' Joint Chapter 11 Plan at § 1.23.

JURISDICTION

27. This Court has subject matter 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)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

28. The Committee seeks the entry of an order, substantially in the form attached hereto as **Exhibit A**, enforcing the Orders and the Amended DIP Facility and thereby determining (as contemplated in the Proposed Plan at Treasury's insistence) that Treasury has no interest in the Term Loan Litigation and interests in the Avoidance Action Trust shall be distributed to unsecured creditors.

BASIS FOR RELIEF REQUESTED

A. This Court Has the Authority to Enforce Its Orders

29. A Bankruptcy Court has the inherent authority to enforce its own orders: "The duty of any court to hear and resolve legal disputes carries with it the power to enforce the order." *U.S. Lines, Inc. v. GAC Marine Fuels, Ltd. (In re McClean Indus., Inc.),* 68 B.R. 690, 695 (Bankr. S.D.N.Y. 1986) (citations omitted). This fundamental premise is codified in Section 105 of the Bankruptcy Code. *See* 11 U.S.C. § 105(a). *See also Back v. AM Gen. Corp. (In re Chateaugay Corp.),* 213 B.R. 633, 640 (S.D.N.Y. 1997) (discussing 11 U.S.C. § 105 and noting Bankruptcy Court's inherent power to enforce its own orders).

30. Pursuant to Paragraph 30 of the Final DIP Order, this Court retained exclusive jurisdiction "to interpret and enforce the provisions of the DIP Credit Facility, the Interim Order and this Final Order in all respects." *See* Mayer Decl. Ex. 4, Final DIP Order ¶ 30.

Similarly, pursuant to the final paragraph of the Wind-Down Order, this Court retained exclusive jurisdiction "to interpret and enforce the provisions of the Amended DIP Facility, the DIP Credit Facility, the Final DIP Order and this Order in all respects." *See* Mayer Decl. Ex. 7, Wind-Down Order at p. 7.

B. The Amended DIP Facility and the Orders Should be Enforced According to Their Plain Terms

31. The Committee asks the Court to enforce the Orders and the Amended DIP Facility according to the plain meaning of their provisions. *See New England Dairies, Inc. v. Dairy Mart Convenience Stores, Inc. (In Re Dairy Mart Convenience Stores, Inc.)*, 272 B.R. 66 (S.D.N.Y. 2002) (Court cannot read beyond the four corners of the Order); *United States of America v. Bartlett (In re Bartlett)*, 353 B.R. 398 (Bankr. D. Vt. 2006) ("after-the-fact exercise in interpretation cannot substitute for the plain language of the District Court Order."); *GMAC Bus. Credit, L.L.C., v. Ford Motor Co.*, No. Civ. 02-70297, 2002 WL 32819769, *4 (E.D. Mich. Sept. 30, 2002) ("Court orders must ordinarily be interpreted by examination of only the four corners of the document." (Internal quotations omitted)).⁵

32. The relevant provisions of the Orders, set forth above, are in no way ambiguous. The Orders and the Amended DIP Facility plainly demonstrate that: (i) the Committee and only the Committee has standing to bring the Term Loan Litigation; (ii) the Term Loan Litigation is explicitly excluded from "Collateral" as defined in the Amended DIP Facility;

⁵ It is also well-settled law that when a contract is clear and unambiguous on its face, a court will not look beyond the four corners of the contract to interpret the parties' intentions. *See* 11 Samuel Williston, *Williston on Contracts* § 31:4, at 277-78 (4th ed. 1999). Under New York law, "agreements are construed in accordance with the intent of the parties and the best evidence of the parties' intent is what they express in their written contract." *Goldman v. White Plains Ctr. for Nursing Care, LLC,* 11 N.Y.3d 173, 176, (2008). Where a contract is unambiguous on its face, "the intent of the parties must be gleaned from within the four corners of the instrument, and not from extrinsic evidence." *Bear, Stearns Funding, Inc. v. Interface Group-Nevada, Inc.,* No. 03 Civ. 8259 (CSH), 2007 WL 1988150, *10 (S.D.N.Y. July 10, 2007) (citation omitted). Accordingly, "a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms." *Id. (citing Greenfield v. Philles Records, Inc.,* 98 N.Y.2d 562, 569 (2002)).

and (iii) the Amended DIP Facility is recourse only to Collateral, and not to assets excluded therefrom.

33. By definition, a non-recourse loan is a "secured loan that allows the lender to attach only the collateral, and not the borrower's [other] assets, if the loan is not repaid." BLACK'S LAW DICTIONARY, 1020-21 (9th ed. 2009). "A lack of recourse means that a secured creditor may not pursue the debtor or its estate after realization of the collateral originally given." 7 COLLIER ON BANKRUPTCY § 1111(b)(1)(A)(i) (Alan N. Resnick & Henry J. Sommer eds., 16th Ed. rev. 2009). Since Treasury provided its \$1.175 billion loan on a non-recourse basis, Treasury cannot now look beyond its collateral for repayment of its loan.

C. The Course of Dealings and Surrounding Facts Show that Treasury Has No Interest in the Term Loan Litigation

34. Even if an ambiguity can be tortured from the straightforward provisions set forth above, the course of negotiations show beyond cavil that the Committee asked Treasury to exclude the Term Loan Litigation from its collateral and Treasury agreed. When the Committee followed through by asking Treasury to make its loan non-recourse, Treasury agreed to that, too.

35. Finally, the background facts also show that Treasury does not have and cannot have any interest in the Term Loan Litigation. The basic deal underpinning these cases, as reflected in the Proposed Plan, is that New GM common stock and warrants are distributed to unsecured creditors, who are partially protected against dilution by receiving more common stock – but not more warrants – if claims increase from \$35 billion to \$42 billion. Unsecured creditors are completely unprotected against dilution by claims above \$42 billion. If the Term Loan Litigation is successful, the \$1.5 billion in cash recovered from the losing Prepetition Term Lenders will be matched by a \$1.5 billion dilutive increase in unsecured claims.

36. FTI, the Committee's financial advisor, has analyzed the recoveries that the general unsecured creditors would receive if the proceeds of the Term Loan Litigation inured to the benefit of unsecured creditors versus if they did not. Attached hereto as **Exhibit C** is the declaration of Anna Phillips ("**Phillips Decl.**"), which demonstrates the dilution that would occur should the Committee prevail in the Term Loan Litigation – thereby leaving the Prepetition Term Lenders with an unsecured claim of \$1.5 billion – without the unsecured creditors receiving the benefit of the proceeds of the litigation. Schedule 1 to the Phillips Decl. is a chart, prepared by FTI, which further demonstrates why it would have made no logical sense for the Committee to initiate the Term Loan Litigation unless its constituents were to receive the potential proceeds thereof.

37. Put simply, should the unsecured creditors receive the potential proceeds of the Term Loan Litigation, unsecured creditors stand to increase their overall percentage recovery by anywhere from 2.2% to 2.9%. Conversely, initiating the Term Loan Litigation without receiving the potential proceeds would result in as much as a 0.4% reduction to the general unsecured creditors' recovery. Phillips Decl. \P 3.

38. It thus makes sense for the Committee to have brought the litigation only if unsecured creditors get the cash. If Treasury gets the cash, the litigation will <u>decrease</u> unsecured creditor recoveries. The Committee would never have commenced the lawsuit and prosecuted it for over a year if Treasury owned it, and the Committee will discontinue the lawsuit if Treasury is determined to own it now – <u>no one will own the lawsuit</u>.

D. Treasury Should Be Judicially Estopped From Arguing that the Term Loan Litigation Belongs to <u>Any Entity Other Than the Committee</u>

39. This Court rightly expects parties appearing before it to live by – and to be bound by – their words and actions. "The notion that a party in bankruptcy can be permitted to

thwart a bankruptcy order which has been conceived and fostered through its participation has been vigorously rejected." *Cukierman v. Mechanics Bank of Richmond (In re J.F. Hink & Son)*, 815 F.2d 1314, 1318 (9th Cir. 1987) (internal quotations and citations omitted). "Such a change of position is sternly forbidden. It involves fraud and falsehood, and the law abhors both." *Dickerson v. Colgrove*, 100 U.S. 578, 580 (1880).

40. This rule applies to Treasury, as it would any other litigant. *United States of America v. Owens*, 54 F.3d 271, 275 (6th Cir. 1995) (Given its important role in protecting the judicial process, judicial estoppel may be asserted against the government when it conducts "what appears to be a knowing assault upon the integrity of the judicial system." (internal quotations omitted)).

41. Treasury's counsel drafted the Orders and the Amended DIP Facility, incorporating only such changes as its client deemed acceptable. Treasury supported the entry of each Order. Having agreed to the form of the Orders, having consented to their entry on the record, having represented to the Court that its DIP liens were "non-recourse," having sat idly by as the Committee vigorously pursued the Term Loan Litigation, Treasury should not be heard now to claim that it, and not the unsecured creditors represented by the Committee, should receive the benefit of the Committee's work.

NOTICE

42. Notice of this motion has been provided to counsel to the Debtors, counsel to Treasury, and parties in interest in accordance with the Fourth Amended Order Pursuant to 11 U.S.C. Section 105(a) and Fed. R. Bankr. P. 1015(c) and 9007 Establishing Notice and Case Management Procedures, dated August 24, 2010 [Docket No. 6750]. The Committee submits that such notice is sufficient and no other or further notice need be provided.

No prior request for the relief sought in this motion has been made by the Committee to this or any other Court.

WHEREFORE, the Committee respectfully requests that this Court (i) enter an order substantially in the form attached hereto as **Exhibit A** granting the relief sought herein, and (ii) grant such other and further relief as the Court may deem just and proper.

Dated: October 4, 2010 New York, New York

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By: /s/ *Thomas Moers Mayer* Thomas Moers Mayer Timothy P. Harkness 1177 Avenue of the Americas New York, New York 10036 Phone: (212) 715-9100 Fax: (212) 715-8000

Counsel for the Official Committee of Unsecured Creditors of Motors Liquidation Company, <u>et al</u>.

EXHIBIT A

.UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK		
	Х	
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)
	Х	

ORDER GRANTING THE MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MOTORS LIQUIDATION COMPANY TO ENFORCE (A) THE FINAL DIP ORDER, (B) THE WIND-DOWN ORDER, AND (C) THE AMENDED DIP FACILITY

Upon the Motion (the "<u>Motion</u>")¹ of the Official Committee of Unsecured Creditors (the "<u>Committee</u>") of the above captioned debtors and debtors-in-possession in these chapter 11 cases (collectively, the "<u>Debtors</u>" or "<u>Old GM</u>"), for entry of an order enforcing: (i) the Final Order Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (A) Approving a DIP Credit Facility and Authorizing the Debtors to Obtain Post-Petition Financing Pursuant Thereto, (B) Granting Related Liens and Super-Priority Status, (C) Authorizing the Use of Cash Collateral and (D) Granting Adequate Protection to Certain Pre-Petition Secured Parties dated June 25, 2009 (the "<u>Final DIP Order</u>") [Docket No. 2529]; (ii) the Order Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (A) Approving Amendment to DIP Credit Facility to Provide for Debtors' Post-Petition Wind-Down Financing dated July 5, 2009 (the "<u>Wind-Down Order</u>" and together with the Final DIP Order, the "<u>Orders</u>") [Docket No. 2969]; and (iii) the \$1,175,000,000 Amended and Restated Secured Superpriority Debtor-in-Possession Credit

¹ Unless otherwise indicated, capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion.

Agreement (the "Amended DIP Facility"), dated as of July 10, 2010, by and among the Debtors, the United States Department of the Treasury ("Treasury"), and Export Development Canada ("EDC"), as more fully set forth in the Motion; and the Court having subject matter jurisdiction to consider the Motion and the relief request therein pursuant to 28 U.S.C. § 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and the Motion being core proceedings under 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with the Fourth 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 to the parties identified on the Master Service List (as such term is defined therein), and no other or further notice needing to be provided; and the Court having considered: (a) the Motion; (b) the Declaration of Thomas Moers Mayer in support of the Motion; (c) the Declaration of Anna Phillips in support of the Motion; and (d) arguments and evidence provided on the record at the hearing (the "Hearing") before this Court on October 21, 2010; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore,

HEREBY FOUND AND DETERMINED THAT:

A. In the early stages of these cases the Committee and Treasury engaged in negotiations related to the proposed postpetition financing and ultimately agreed to a deal that

⁴ The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate.

resulted in the Court entering the Final DIP Order, the Wind-Down Order and the Amended DIP Facility which, among other things, provide that: (i) the Committee has standing to bring the Term Loan Litigation; (ii) the Term Loan Litigation is specifically excluded from Treasury's collateral; and (iii) that Treasury's recourse is limited solely to its collateral.

B. The Committee, on behalf of general unsecured creditors commenced the Term Loan Litigation on July 31, 2009.

C. On August 26, 2010, Treasury filed the Statement in which it asserted an interest in the Term Loan Litigation.

D. On August 31, 2010, the Debtors filed the Proposed Plan that provides that the Term Loan Litigation will be included in the Avoidance Action Trust as an Avoidance Action Trust Asset and further provides that interests in the Avoidance Action Trust will be distributed to Treasury or to unsecured creditors as the Court may decide or as the Committee and Treasury may agree.

E. The Court has subject matter jurisdiction over the Motion and the relief request therein pursuant to 28 U.S.C. section 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.). The Motion is a core proceeding pursuant to 28 U.S.C. section 157(b); and venue is proper before the Court pursuant to 28 U.S.C. sections 1408 and 1409.

F. Proper, timely, adequate and sufficient notice of the Motion and the relief requested therein has been provided in accordance with the Fourth Amended Order Pursuant to 11 U.S.C. Section 105(a) and Fed. R. Bankr. P. 1015(c) and 9007 Establishing Notice and Case Management Procedures, dated August 24, 2010 [Docket No. 6750], and such notice was good,

sufficient, and appropriate under the circumstances. No other or further notice of the Motion, the relief requested therein or entry of this Order is or shall be required.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is granted and any objections to the Motion are overruled for the reasons set forth on the record of the Hearing.

2. Pursuant to the terms of the Final DIP Order, the Wind-Down Order and the Amended DIP Facility negotiated between the Committee and Treasury, Treasury has no interest in the Term Loan Litigation or any proceeds thereof and only the Committee is authorized to prosecute the Term Loan Litigation.

3. Interests in the Avoidance Action Trust shall be distributed exclusively to the general unsecured creditors.

4. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York October __, 2010

THE HONORABLE ROBERT E. GERBER UNITED STATES BANKRUPTCY JUDGE

Counsel for the Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK		
	Х	
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)
	: X	

DECLARATION OF THOMAS MOERS MAYER IN SUPPORT OF THE MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MOTORS LIQUIDATION COMPANY TO ENFORCE (A) THE FINAL DIP ORDER, (B) THE WIND-DOWN ORDER, <u>AND (C) THE AMENDED DIP FACILITY</u>

STATE OF NEW YORK)) ss.: COUNTY OF NEW YORK)

THOMAS MOERS MAYER, under the penalty of perjury, deposes and says that:

1. I am a member of Kramer Levin Naftalis & Frankel LLP ("Kramer

Levin"), with responsibility for the Official Committee of Unsecured Creditors (the

"Committee") of the Debtors' bankruptcy cases of Motors Liquidation Company, (f/k/a General

Motors Corp.) et al. as debtors and debtors-in-possession in the Debtors bankruptcy cases

(collectively, the "Debtors"), and I submit this declaration (the "Declaration") in support of the

Motion of the Official Committee of Unsecured Creditors of Motors Liquidation Company to Enforce (A) The Final DIP Order, (B) The Wind-Down Order, and (C) The Amended DIP Facility (the "<u>Motion</u>"). Unless otherwise stated in this Declaration, I have personal knowledge of the facts hereinafter set forth.

2. This paragraph is stated upon information and belief. Paul Weiss Rifkind Wharton & Garrison LLP ("**Paul Weiss**") and Houlihan, Lokey Financial Advisors, Inc. were retained before the commencement of these cases by major holders of the Debtors' publicly traded bonds. These firms negotiated the basic deal with Treasury¹ that underpins these chapter 11 cases, as follows. Their major bondholder clients agreed not to object to the Debtors' sale under Section 363 of substantially all of the Debtors' assets to a new company controlled by Treasury ("<u>New GM</u>"). Treasury in return agreed to have New GM issue 10% of its common stock, and warrants with a value approximating an additional 10% of New GM equity, to the Debtors for distribution to the Debtors' unsecured creditors.

3. This paragraph is stated upon information and belief. The deal was based on an estimate of the Debtors' unsecured claims at \$35 billion. Treasury agreed that if unsecured claims increased, then, in a range from \$35 billion to \$42 billion, New GM would issue up to an additional 2% of New GM common stock. Thus, within the \$35 to \$42 billion range, the 10% of New GM common stock was protected from dilution. However, no additional warrants would be issued by New GM. Thus the New GM warrants, which comprise approximately half of unsecured creditors' value, would not be protected from dilution if claims ranged from \$35 billion to \$42 billion. If unsecured claims exceed \$42 billion, there would be no dilution protection at all. Current estimates of unsecured claims are not public with one exception: New

¹ Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Motion.

GM's report for the second calendar quarter of 2010 states that it estimates unsecured claims against the Debtors will exceed \$37 billion.

4. Upon information and belief, the deal was also based on Treasury's commitment to pay, at the closing of the sale, all claims of the Debtors' secured bank lenders – including claims under a \$1.5 billion (principal amount) term loan which was, at the time, believed to be fully secured by a non-voidable security interest and various mortgages (as more fully described below, the "**Prepetition Term Loan**").

5. On June 1, 2009, (the "<u>Petition Date</u>"), all Debtors with material assets filed voluntary petitions for relief under chapter 11 of title 11, United States Code, as amended.

6. On June 3, 2009, the Committee was formed and retained professionals.

7. In the weeks following the Petition Date, the Committee negotiated the Amended DIP Facility and the Orders. Each of these documents was drafted by Treasury's counsel, which took or rejected comments from the Committee and other parties in the course of the negotiations.

8. A key all-hands meeting of counsel to the Debtors, the Committee and Treasury, plus Paul Weiss, and their respective financial advisors took place on June 19, 2009.

9. Prior to the June 19 Negotiating Session, the Committee had commenced its investigation of liens and security interests securing a pre-petition \$1.5 billion term loan dated as of November 29, 2006 and amended March 4, 2009 (the "**Prepetition Term Loan**") from a bank syndicate (the "**Prepetition Term Lenders**")² agented by JPMorgan Chase Bank, N.A. ("**JPMorgan**"). The day before the June 19 Negotiating Session, JPMorgan's counsel called to inform Committee counsel that, prior to the Petition Date, a paralegal for counsel to the Debtors

 $^{^2}$ The Final DIP Order and the Wind-Down Order refer to the Prepetition Term Lenders as the Prepetition Senior Facilities Secured Parties.

filed a UCC-3 termination statement with respect to the Prepetition Term Loan's security interests without authority. Subsequent discovery has uncovered facts supporting the Committee's contention that JPMorgan did in fact authorize the paralegal to file the UCC-3 termination statement. This matter is currently *sub judice* with this Court.

10. The Committee was therefore particularly focused on a possible challenge to the Prepetition Term Lenders' security interest and recovery of the \$1.5 billion in cash slated to be paid, at the closing of the sale, to the lenders (the "<u>Term Loan Litigation</u>"). The Committee's agenda for the June 19 Negotiating Session, and discussions thereafter, included preserving the benefit of the Term Loan Litigation for unsecured creditors.

11. By the end of the June 19 Negotiating Session, all parties in interest – including Treasury – agreed that Treasury's *collateral* would not include proceeds from the Term Loan Litigation.

12. Shortly after the June 19 Negotiating Session, Committee counsel further specifically requested that Treasury's <u>recourse</u> under the Amended DIP Facility be limited to its collateral – specifically <u>excluding</u> from such recourse the New GM stock, the New GM warrants <u>and</u> the Term Loan Litigation. Treasury's counsel inserted this proposed language into the Amended DIP Facility and the language remained in each subsequent draft of the Amended DIP Facility through and including the execution version.

13. By June 25, 2009, the Debtors, Treasury, the Prepetition Term Lenders and the Committee had agreed on the terms of the Final DIP Order and the Debtors submitted the order to the Court. At the June 25, 2009 hearing, Treasury asked the Court to enter the order, which the Court did.

14. On June 29, 2009, the Debtors filed a Motion Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 to Amend DIP Credit Facility [Docket No. 2755].

15. By July 2, 2009, after exchanging multiple drafts and comments thereon, the parties agreed on the Amended DIP Facility and the Wind-Down Order. The parties, including Treasury, asked the Court to enter the Wind-Down Order approving the Amended DIP Facility.

16. At the July 2, 2009 hearing on the Debtors' motion to approve the Amended DIP Facility, counsel to the Committee provided the Court with a brief overview of the Committee's discussions with the Debtors and Treasury regarding the Amended DIP Facility and the Wind-Down Order. Treasury did not object to this narrative or the terms of the Amended DIP Facility or the Wind-Down Order.

17. Hearing no objection, this Court signed and entered the Wind-Down Order on July 5, 2009, approving the Amended DIP Facility in substantially the form attached as an exhibit thereto. Treasury subsequently insisted on further amendments, not approved by the Court, but such amendments are not relevant to this Motion. Treasury signed and consummated the Amended DIP Facility, with the provisions excluding the Term Loan Litigation from both collateral and recourse included in the executed final document, on July 10, 2009.

18. On July 31, 2009, pursuant to standing granted to the Committee under
Final DIP Order ¶ 19(d), the Committee filed a complaint against the Prepetition Term Lenders
seeking to: (i) avoid the security interest that was subject to the UCC-3 termination statement;
(ii) avoid and recover funds from the Prepetition Term Lenders paid on account of such security

interest; and (iii) disallow claims held by the Prepetition Term Lenders. Cross motions for summary judgment are scheduled to be heard by the Court on November 1, 2010.

19. For almost a year, Treasury made no attempt to intervene in the lawsuit or assert any interest therein. Moreover, Treasury has not once objected to any of the Committee's fee applications seeking reimbursement for its work on the litigation.

20. The initial draft of the Debtors' Proposed Plan, which was circulated to the Committee on July 23, 2010, provided that the Term Loan Litigation would be prosecuted for the sole benefit of unsecured creditors.³ Specifically, the initial draft of the Proposed Plan provided that the distribution to unsecured creditors included the proceeds of the Term Loan Litigation.

21. On July 22, 2010, Treasury's counsel called Committee counsel and for the first time asserted that Treasury had an interest in the Term Loan Litigation. On July 26, 2010, August 16, 2010 and August 18, 2010, Committee counsel participated in conference calls with Treasury's counsel regarding, among other things, the status of the Term Loan Litigation. By no later than August 19, 2010, counsel to the Debtors informed counsel to the Committee that per Treasury's request, the Proposed Plan would provide that the beneficiary of the Term Loan Litigation would be determined at a later date.

22. On August 26, 2010, Treasury filed the Statement of the United States of America with Respect to Cross-Motions for Summary Judgment [Docket No. 6805] requesting for the first time that any resolution of the cross motions for summary judgment not determine any person or entity's entitlements with respect to the ultimate distribution of any funds recovered from the Term Loan Litigation.

³ The Proposed Plan provides that the Term Loan Litigation may continue to be prosecuted post-confirmation.

23. On August 31, 2010, the Debtors filed the Proposed Plan, which provides that the Term Loan Litigation will be included in the Avoidance Action Trust as an Avoidance Action Trust Asset. The Proposed Plan further provides that interests in the Avoidance Action Trust will be distributed to Treasury or to unsecured creditors as the Court may decide or as the Committee and Treasury may agree.

24. Attached as Exhibit 1 is a true and correct copy of the 10-Q for General Motors Co. filed on August 16, 2010.

 Attached as Exhibit 2 is a true and correct copy of an e-mail from Gordon Novod to Treasury's Counsel, Debtors' Counsel, and Bondholders' Counsel, dated June 23, 2009, attaching Summary of June 19th Meeting by Issue List.

26. Attached as Exhibit 3 is a true and correct copy of the transcript of the June 25, 2009 hearing before this Court.

27. Attached as Exhibit 4 is a true and correct copy of the Final Order Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (A) Approving a DIP Credit Facility and Authorizing the Debtors to Obtain Post-Petition Financing Pursuant Thereto, (B) Granting Related Liens and Super-Priority Status, (C) Authorizing the Use of Cash Collateral and (D) Granting Adequate Protection to Certain Pre-Petition Secured Parties [Docket No. 2529], dated June 25, 2009.

28. Attached as Exhibit 5 is a true and correct copy of the Debtors Motion Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 to Amend DIP Credit Facility [Docket No. 2755], dated June 29, 2009.

29. Attached as Exhibit 6 is a true and correct copy of the transcript of the July 2, 2009 hearing before this Court.

30. Attached as Exhibit 7 is a true and correct copy of the Order Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (A) Approving Amendment to DIP Credit Facility to Provide for Debtors' Post-Petition Wind-Down Financing [Docket No. 2969], dated July 5, 2009.

31. Attached as Exhibit 8 is a true and correct copy of the \$1,175,000,000 Amended and Restated Secured Superpriority Debtor-in-Possession Credit Agreement, dated July 10, 2010.

32. Attached as Exhibit 9 is a true and correct copy of an e-mail from Amy Caton to Treasury's Counsel regarding GUM-DIP Order Draft, dated June 23, 2009.

33. Attached as Exhibit 10 is a true and correct copy of an e-mail from Amy Caton to Debtors' Counsel and Treasury's Counsel regarding KL Comments to the GM Wind-Down Facility, dated June 30, 2009, attaching KL Markup Wind-Down CA 6-30-09.

34. Attached as Exhibit 11 is a true and correct copy of the Statement of the United States of America with Respect to Cross-Motions for Summary Judgment [Docket No. 6805], dated August 26, 2010.

35. Attached as Exhibit 12 is a true and correct copy of the Debtors' Joint Chapter 11 Plan [Docket No. 6829], dated August 31, 2010.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true

and correct.

Executed: October 4, 2010 New York, New York

> <u>/s/ Thomas Moers Mayer</u> Thomas Moers Mayer

KRAMER LEVIN NAFTALIS & FRANKEL LLP Thomas Moers Mayer Timothy P. Harkness 1177 Avenue of the Americas New York, New York 10036 Telephone: (212) 715-9100 Facsimile: (212) 715-8000

Counsel for the Official Committee of Unsecured Creditors of Motors Liquidation Co., (f/k/a General Motors Corp.) <u>et al</u>.

Exhibit 1

General Motors Co

300 RENAISSANCE CENTER DETROIT, MI, 48265–3000 313–.55–6.5000

10-Q

Quarterly report pursuant to sections 13 or 15(d) Filed on 8/16/2010 Filed Period 6/30/2010





UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, DC 20549–1004

Form 10-Q

☑ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 For the quarterly period ended June 30, 2010

OR

 TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

 For the transition period from
 to

Commission file number 000-53930

GENERAL MOTORS COMPANY

(Exact Name of Registrant as Specified in its Charter)

STATE OF DELAWARE

(State or other jurisdiction of Incorporation or Organization)

300 Renaissance Center, Detroit, Michigan (Address of Principal Executive Offices) **27–0756180** (I.R.S. Employer Identification No.)

48265-3000 (Zip Code)

(313) 556-5000

Registrant's telephone number, including area code

Not applicable

(former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes \Box No \Box

Indicate by check mark whether the registrant has submitted electronically and posted on its company Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes \Box No \Box

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer \square Accelerated filer \square Non–accelerated filer \square Smaller reporting company \square Do not check if a smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes 🗆 No 🗹

As of August 1, 2010, the number of shares outstanding of \$0.01 par value common stock was 500,000,000 shares.

Website Access to Company's Reports

General Motors Company's internet website address is www.gm.com. Our annual report on Form 10–K, quarterly reports on Form 10–Q, current reports on Form 8–K, and amendments to those reports filed or furnished pursuant to section 13(a) or 15(d) of the Exchange Act are available free of charge through our website as soon as reasonably practicable after they are electronically filed with, or furnished to, the Securities and Exchange Commission.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

INDEX

			Page No.
		<u>Part I – Financial Information</u>	
Item 1.		Consolidated Financial Statements (Unaudited)	1
		Consolidated Statements of Operations	1
		Consolidated Balance Sheets	2
		Consolidated Statements of Equity (Deficit)	3
		Consolidated Statements of Cash Flows	4
		ndensed Consolidated Financial Statements	5
	Note 1.	Nature of Operations	5
	Note 2.	Chapter 11 Proceedings and the 363 Sale	5 7
	Note 3.	Basis of Presentation and Recent Accounting Standards	7
	Note 4.	Acquisition and Disposals of Businesses	10
	Note 5.	Marketable Securities	11
	Note 6.	Inventories	13
	Note 7.	Equity in Net Assets of Nonconsolidated Affiliates	13
	Note 8.	Goodwill	17
	Note 9.	Intangible Assets, net	18
	Note 10.		19
	Note 11.		22 23
	Note 12.		23
	Note 13.		24 27
	Note 14.		27
	Note 15.		27 32 38
	Note 16.		32
	Note 17.		38
	Note 18.		43
	Note 19.		44
	Note 20.	<u>Restructuring and Other Initiatives</u>	50
	Note 21.		54
	Note 22.		57 58
	Note 23.		58
	Note 24.		60
	Note 25.		61
	Note 26.		64
Item 2.		it's Discussion and Analysis of Financial Condition and Results of Operations	65
Item 3.		and Qualitative Disclosures About Market Risk	112
Item 4.	Controls and	<u>d Procedures</u>	116
		<u>Part II – Other Information</u>	
Item 1.	Legal Procee		118
Item 1A.	Risk Factors		119
Item 5.	Other Inform	nation	129
Item 6.	Exhibits		131
	<u>Signature</u>		132

PART I

Item 1. Condensed Consolidated Financial Statements (Unaudited)

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (In millions, except per share amounts)

1	0 · · · d	1400	N
	auu	lited	

	Successor				Predecessor				
				Six Months Ended		ee Months Ended		x Months Ended	
	Jui	ne 30, 2010	Jun	e 30, 2010	Jui	ne 30, 2009	Ju	ne 30, 2009	
Net sales and revenue	\$	33,174	\$	64,650	\$	23,047	\$	45,478	
Costs and expenses									
Cost of sales		28,759		56.350		29.384		53,995	
Selling, general and administrative expense		2,623		5,307		2,936		5,433	
Other expenses, net		39		85		169		1,154	
Total costs and expenses		31,421		61,742		32,489		60,582	
Operating income (loss)		1,753		2,908		(9,442)		(15,104)	
Equity in income of and disposition of interest in Ally Financial		·				1,880		1,380	
Interest expense		(250)		(587)		(3,375)		(4,605)	
Interest income and other non-operating income, net		59		544		408		833	
Loss on extinguishment of debt				(1)		(1,994)		(1,088)	
Reorganization expenses, net (Note 2)						(1,157)		(1,157)	
Income (loss) before income taxes and equity income		1,562		2,864		(13,680)		(19,741)	
Income tax expense (benefit)		361		870		(445)		(559)	
Equity income (loss), net of tax		411		814		(2)		46	
Net income (loss)		1,612		2,808		(13,237)		(19,136)	
Less: Net income (loss) attributable to noncontrolling interests		76		204		(332)		(15,156) (256)	
Net income (loss) attributable to stockholders		1,536		2,604		(12,905)		(18,880)	
Less: Cumulative dividends on preferred stock		202		405		(12,905)		(18,880)	
Less. Cumulative dividends on preferred stock		202		405		_			
Net income (loss) attributable to common stockholders	\$	1,334	\$	2,199	\$	(12,905)	\$	(18,880)	
Earnings (loss) per share (Note 22)									
Basic									
Net income (loss) attributable to common stockholders	\$	2.67	\$	4.40	\$	(21.12)	\$	(30.91)	
Weighted–average common shares outstanding Diluted		500		500		611		611	
Net income (loss) attributable to common stockholders	\$	2.55	\$	4.21	\$	(21.12)	\$	(30.91)	
Weighted-average common shares outstanding	φ	522	+	522	4	611	-	611	
						0.1			

Reference should be made to the notes to the condensed consolidated financial statements.

CONDENSED CONSOLIDATED BALANCE SHEETS (In millions, except share amounts) (Unaudited)

0

	Successor		
	June 30, 2010	Dec	ember 31, 2009
ASSETS			2009
Current Assets			
Cash and cash equivalents	\$ 26,773	\$	22,679
Marketable securities	4,761		134
Total cash, cash equivalents and marketable securities	31,534		22,813
Restricted cash and marketable securities	1,393		13,917
Accounts and notes receivable (net of allowance of \$272 and \$250)	8,662		7,518
Inventories	11,533		10,107
Assets held for sale	· —		388
Equipment on operating leases, net	3,008		2,727
Other current assets and deferred income taxes	1,677		1,777
Total current assets	57,807		59,247
on-Current Assets	27,007		.,2.,7
Equity in net assets of nonconsolidated affiliates	8,296		7,936
Assets held for sale	0,270		530
Property, net	18,106		18,687
Goodwill	30,186		30,672
Intangible assets, net	12,820		14,547
Other assets	4,684		4,676
Unici assets	4,004		4,070
Total non-current assets	74,092		77,048
otal Assets	\$131,899	\$	136,295
	<i><i><i>q</i>151,077</i></i>	ψ	150,295
LIABILITIES AND EQUITY			
urrent Liabilities	¢ 20.755	¢	10 725
Accounts payable (principally trade) Short-term debt and current portion of long-term debt (including debt at GM Daewoo of \$1,021 at June 30, 2010; Note 10)	\$ 20,755 5,524	\$	18,725 10,221
Liabilities held for sale	_		355
Accrued expenses (including derivative liabilities at GM Daewoo of \$352 at June 30, 2010; Note 10)	24,068		23,134
Total current liabilities	50,347		52,435
on-Current Liabilities	20,217		02,100
Long-term debt (including debt at GM Daewoo of \$722 at June 30, 2010; Note 10)	2,637		5,562
Liabilities held for sale	2,057		270
Postretiment benefits other than pensions	8,649		8,708
Pensions	25,990		27,086
Other liabilities and deferred income taxes	13,377		13,279
Total non-current liabilities	50,653		54,905
	50,055		51,90
otal Liabilities	101,000		107,340
ommitments and contingencies (Note 17)			
eferred stock, \$0.01 par value (1,000,000,000 shares authorized, 360,000,000 shares issued and outstanding (each with a \$25.00 liquidation	6.000		6.000
preference) at June 30, 2010 and December 31, 2009)	6,998		6,998
quity Common stock, \$0.01 par value (2,500,000,000 shares authorized, 500,000,000 shares issued and outstanding at June 30, 2010 and December 31,			
2009)	5		5
Capital surplus (principally additional paid-in capital)	24,052		24,050
Accumulated deficit	(2,195)		(4,394
Accumulated other comprehensive income	1,153		1,588
Total stockholders' equity	23,015		21,249
Noncontrolling interests	886		708
			/00
Total equity	23,901		21,957
otal Liabilities and Equity	\$131,899	\$	136,295

Reference should be made to the notes to the condensed consolidated financial statements.

CONDENSED CONSOLIDATED STATEMENTS OF EQUITY (DEFICIT) (In millions) (Unaudited)

	Common Stockholders'										
	Common Stock	Capital <u>Surplus</u>		cumulated Deficit	A Co	Accumulated Other Omprehensive Income (Loss)		controlling nterests	Co	mprehensive Income (Loss)	Total Equity (Deficit)
Balance December 31, 2008, Predecessor	\$ 1,017	\$16,489	\$	(70,727)	\$	(32,339)	\$	484			\$ (85,076)
Net income (loss)				(18,880)				(256)	\$	(19,136)	(19,136)
Other comprehensive income (loss) Foreign currency translation											
adjustments	_	_				115		1		116	
Cash flow hedging gain, net	_	_				81		193		274	
Unrealized gain on securities	_	_		_		48		_		48	
Defined benefit plans						2.0(0				2.0(0	
Net prior service benefit	_	_				2,869				2,869	
Net actuarial loss Net transition asset / obligation				_		(6,317)		_		(6,317)	
Net transition asset / obligation						1				1	
Other comprehensive income (loss)						(3,203)		194		(3,009)	(3,009)
r · · · · · · · · · · · · · · · · · · ·						(-))				(-,,	(-))
Comprehensive income (loss)									\$	(22,145)	
Dividends declared or paid to noncontrolling interests				_		_		(17)			(17)
Other	1	6		(1)		—		(39)			(33)
Balance June 30, 2009, Predecessor	\$ 1,018	\$16,495	\$	(89,608)	\$	(35,542)	\$	366			\$(107,271)
Balance December 31, 2009, Successor Net income (loss)	\$ _5	\$24,050	\$	(4,394) 2,604	\$	1,588	\$	708 204	\$	2,808	\$ 21,957 2,808
Other comprehensive income (loss)											
Foreign currency translation						(100)		(27)		(210)	
adjustments Cash flow hedging loss, net	_	_				(189) (15)		(27)		(216) (15)	
Unrealized loss on securities						(13)		_		(13) (1)	
Defined benefit plans						(1)				(1)	
Net prior service cost	_					(5)				(5)	
Net actuarial loss		_				(225)				(225)	
Other comprehensive income (loss)	_					(435)		(27)		(462)	(462)
Comprehensive income (loss)									\$	2,346	
Effects of adoption of amendments to ASC 810–10 regarding variable interest											
entities (Note 3)	—							76			76
Cash dividends paid to GM preferred stockholders				(405)							(405)
Dividends declared or paid to noncontrolling interests		_		(403)		_		(59)			(403)
Repurchase of noncontrolling interest shares	_	2		_		_		(39)			(39)
Other	_	_		_		_		(7)			(7)
Balance June 30, 2010, Successor	\$ 5	\$24,052	\$	(2,195)	\$	1,153	\$	886			\$ 23,901

Reference should be made to the notes to the condensed consolidated financial statements.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (In millions) (Unaudited)

	 <u>uccessor</u> x Months	 edecessor
	Ended 1e 30, 2010	Ended e 30, 2009
Net cash provided by (used in) operating activities	\$ 5,695	\$ (15,086)
Cash flows from investing activities		
Expenditures for property	(1,851)	(3,134)
Investments in available-for-sale marketable securities, acquisitions	(4,621)	(202)
Investments in trading marketable securities, acquisitions	(178)	
Investments in available-for-sale marketable securities, liquidations	_	185
Investments in trading marketable securities, liquidations	163	
Investment in Ally Financial	_	(884)
Investment in companies, net of cash acquired	(50)	
Operating leases, liquidations	298	1,122
Change in restricted cash and marketable securities	12,616	(643)
Other	33	27
Net cash provided by (used in) investing activities	6,410	(3,529)
Cash flows from financing activities		
Net decrease in short-term debt	(223)	(1,033)
Proceeds from debt owed to UST, EDC and German government	_	29,937
Proceeds from other debt	434	335
Payments on debt owed to UST and EDC	(7,153)	
Payments on other debt	(438)	(7,446)
Payments to acquire noncontrolling interest	(6)	(5)
Fees paid for debt modification		(63)
Dividends paid to GM preferred stockholders	(405)	
Net cash provided by (used in) financing activities	(7,791)	21,725
Effect of exchange rate changes on cash and cash equivalents	(611)	207
Net increase (decrease) in cash and cash equivalents	3,703	3,317
Cash and cash equivalents reclassified (to) from assets held for sale	391	_
Cash and cash equivalents at beginning of the period	22,679	14,053
Cash and cash equivalents at end of the period	\$ 26,773	\$ 17,370

Reference should be made to the notes to the condensed consolidated financial statements.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Note 1. Nature of Operations

General Motors Company was formed by the United States Department of the Treasury (UST) in 2009 originally as a Delaware limited liability company, Vehicle Acquisition Holdings LLC, and subsequently converted to a Delaware corporation, NGMCO, Inc. This company, which on July 10, 2009 acquired substantially all of the assets and assumed certain liabilities of General Motors Corporation (363 Sale) and changed its name to General Motors Company, is sometimes referred to in this Quarterly Report on Form 10–Q for the periods on or subsequent to July 10, 2009 as "we," "our," "us," "ourselves," the "Company," "General Motors," or "GM," and is the successor entity solely for accounting and financial reporting purposes (Successor). General Motors Corporation is sometimes referred to in this Quarterly Report on Form 10–Q, for the periods on or before July 9, 2009, as "Old GM." Prior to July 10, 2009 Old GM operated the business of the Company, and pursuant to the agreement with the Securities and Exchange Commission (SEC) Staff, the accompanying condensed consolidated financial statements include the financial statements and related information of Old GM as it is our predecessor entity solely for accounting and financial reporting purposes (Predecessor). In connection with the 363 Sale, General Motors Corporation changed its name to Motors Liquidation Company, which is sometimes referred to in this Quarterly Report on Form 10–Q, for the periods on or after July 10, 2009, as "MLC." MLC continues to exist as a distinct legal entity for the sole purpose of liquidating its remaining assets and liabilities.

We develop, produce and market cars, trucks and parts worldwide. We analyze the results of our business through our three segments: General Motors North America (GMNA), General Motors International Operations (GMIO) and General Motors Europe (GME). Nonsegment operations are classified as Corporate. Corporate includes investments in Ally Financial Inc., formerly GMAC Inc. (Ally Financial), certain centrally recorded income and costs, such as interest, income taxes and corporate expenditures, certain nonsegment specific revenues and expenses, including costs related to the Delphi Benefit Guarantee Agreements (as subsequently defined in Note 17) and a portfolio of automotive retail leases.

Note 2. Chapter 11 Proceedings and the 363 Sale

Background

As a result of historical unfavorable economic conditions and a rapid decline in sales in the three months ended December 31, 2008 Old GM determined that, despite the previous actions it had then taken to restructure its U.S. business, it would be unable to pay its obligations in the normal course of business in 2009 or service its debt in a timely fashion, which required the development of a new plan that depended on financial assistance from the U.S. government.

In December 2008 Old GM requested and received financial assistance from the U.S. government and entered into a loan and security agreement with the UST, which was subsequently amended (UST Loan Agreement). In early 2009 Old GM's business results and liquidity continued to deteriorate, and, as a result, Old GM obtained additional funding from the UST under the UST Loan Agreement. Old GM, through its wholly owned subsidiary GMCL, also received funding from Export Development Canada (EDC), a corporation wholly–owned by the Government of Canada, under a loan and security agreement entered into in April 2009 (EDC Loan Facility).

As a condition to obtaining the loans under the UST Loan Agreement, Old GM was required to submit a plan in February 2009 that included specific actions intended to demonstrate that it was a viable entity and to use its best efforts to achieve certain debt reduction, labor modification and VEBA modification targets.

On March 30, 2009 the Presidential Task Force on the Auto Industry (Auto Task Force) determined that the plan was not viable and required substantial revisions. In conjunction with the March 30, 2009 announcement, the administration announced that it would offer Old GM adequate working capital financing for a period of 60 days while it worked with Old GM to develop and implement a more accelerated and aggressive restructuring that would provide a sound long-term foundation.

Old GM made further modifications to its plan in an attempt to satisfy the Auto Task Force requirement that Old GM undertake a substantially more accelerated and aggressive restructuring plan. The additional significant cost reduction and restructuring actions included reducing Old GM's indebtedness and VEBA obligations in addition to other cost reduction and restructuring actions.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Our Annual Report on Form 10–K for the year ended December 31, 2009 (2009 Form 10–K) provides additional detail on Old GM's liquidity constraints, the terms and conditions of its various funding arrangements with U.S. and Canadian governmental entities, and its various cost reduction and restructuring activities.

Chapter 11 Proceedings

Old GM was not able to complete the cost reduction and restructuring actions, including the debt reductions and VEBA modifications, which resulted in extreme liquidity constraints. As a result, on June 1, 2009 Old GM and certain of its direct and indirect subsidiaries filed voluntary petitions for relief under Chapter 11 (Chapter 11 Proceedings) of the U.S. Bankruptcy Code (Bankruptcy Code) in the U.S. Bankruptcy Court for the Southern District of New York (Bankruptcy Court).

In connection with the Chapter 11 Proceedings, Old GM entered into a secured superpriority debtor-in-possession credit agreement with the UST and EDC (DIP Facility) and received additional funding commitments from EDC to support Old GM's Canadian operations.

363 Sale

On July 10, 2009 we completed the acquisition of substantially all of the assets and assumed certain liabilities of Old GM and certain of its direct and indirect subsidiaries (collectively, the Sellers). The 363 Sale was consummated in accordance with the Amended and Restated Master Sale and Purchase Agreement, dated June 26, 2009, as amended, (Purchase Agreement) between us and the Sellers, and pursuant to the Bankruptcy Court's sale order dated July 5, 2009.

Accounting for the Effects of the Chapter 11 Proceedings and the 363 Sale

Chapter 11 Proceedings

Accounting Standards Codification (ASC) 852, "Reorganizations," (ASC 852) is applicable to entities operating under Chapter 11 of the Bankruptcy Code. ASC 852 generally does not affect the application of U.S. GAAP that we and Old GM followed to prepare the consolidated financial statements, but it does require specific disclosures for transactions and events that were directly related to the Chapter 11 Proceedings and transactions and events that resulted from ongoing operations.

Old GM prepared its consolidated financial statements in accordance with the guidance in ASC 852 in the period June 1, 2009 through June 30, 2009. Revenues, expenses, realized gains and losses, and provisions for losses directly related to the Chapter 11 Proceedings were recorded in Reorganization expenses, net. Reorganization expenses, net do not constitute an element of operating loss due to their nature and due to the requirement of ASC 852 that they be reported separately. Old GM's balance sheet prior to the 363 Sale distinguished prepetition liabilities subject to compromise from prepetition liabilities not subject to compromise and from postpetition liabilities.

Application of Fresh-Start Reporting

The Bankruptcy Court did not determine a reorganization value in connection with the 363 Sale. Reorganization value is defined as the value of our assets without liabilities. In order to apply fresh-start reporting, ASC 852 requires that total postpetition liabilities and allowed claims be in excess of reorganization value and prepetition stockholders receive less than 50.0% of our common stock. Based on our estimated reorganization value, we determined that on July 10, 2009 both the criteria of ASC 852 were met and, as a result, we applied fresh-start reporting. In applying fresh-start reporting at July 10, 2009, which generally follows the provisions of ASC 805, "Business Combinations," (ASC 805) we recorded the assets acquired and the liabilities assumed from Old GM at fair value except for deferred income taxes and certain liabilities associated with employee benefits. Our consolidated balance sheet at July 10, 2009, which includes the adjustments to Old GM's consolidated balance sheet as a result of the 363 Sale and the application of fresh-start reporting, and related disclosures are discussed in Note 2 to our consolidated financial statements in our 2009 Form 10–K. These adjustments are final and no determinations of fair value are considered provisional.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (Continued)

Reorganization Expenses, net

The following table summarizes Old GM's Reorganization expenses, net in the six months ended June 30, 2009 prior to the 363 Sale (dollars in millions):

	Pro	edecessor
	Six	Months
		Ended <u>e 30, 2009</u>
Loss from the extinguishment of debt resulting from Old GM's repayment of credit facilities and U.S. term loan Loss on contract rejections, settlements of claims and other lease terminations Professional fees	\$	(958) (408) (38) 247
Gain related to release of accumulated other comprehensive income (loss) associated with derivatives		247
Total reorganization expenses, net	\$	(1,157)

Note 3. Basis of Presentation and Recent Accounting Standards

We filed a Registration Statement on Form 10 on April 7, 2010, as amended on May 17, 2010, pursuant to an agreement with the SEC Staff, as described in a no-action letter issued to Old GM by the SEC Staff on July 9, 2009 regarding our filing requirements and those of MLC. On June 7, 2010 our Registration Statement on Form 10 became effective and we became subject to the filing requirements of Section 13 and 15(d) of the Securities Exchange Act of 1934. In accordance with the agreement with the SEC Staff, the accompanying unaudited condensed consolidated financial statements include the financial statements and related information of Old GM, for the period prior to July 10, 2009, our predecessor entity solely for accounting and financial purposes and the entity from whom we purchased substantially all of its assets and assumed certain of its liabilities.

The 363 Sale resulted in a new entity, General Motors Company, which is the successor entity solely for accounting and financial reporting purposes. Because we are a new reporting entity, our financial statements are not comparable to the financial statements of Old GM.

The accompanying condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the SEC for interim financial information. Accordingly, they do not include all of the information and footnotes required by U.S. GAAP for complete financial statements. The accompanying condensed consolidated financial statements include all adjustments, comprised of normal recurring adjustments, considered necessary by management to fairly state our results of operations, financial position and cash flows. The operating results for interim periods are not necessarily indicative of results that may be expected for any other interim period or for the full year. These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in our 2009 Form 10-K.

In the three months ended June 30, 2010 we changed our managerial reporting structure so that certain entities geographically located within Russia and Uzbekistan were transferred from our GME segment to our GMIO segment. We have revised the segment presentation for all periods presented.

Use of Estimates in the Preparation of the Financial Statements

The condensed consolidated financial statements are prepared in conformity with U.S. GAAP, which requires the use of estimates, judgments, and assumptions that affect the reported amounts of assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenue and expenses in the periods presented. We believe that the accounting estimates employed are appropriate and the resulting balances are reasonable; however, due to the inherent uncertainties in making estimates actual results could differ from the original estimates, requiring adjustments to these balances in future periods.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Principles of Consolidation

Our condensed consolidated financial statements include our accounts and those of our subsidiaries that we control due to ownership of a majority voting interest. In addition, we consolidate variable interest entities (VIEs) when we are the VIE's primary beneficiary. Our share of earnings or losses of nonconsolidated affiliates are included in our consolidated operating results using the equity method of accounting when we are able to exercise significant influence over their operating and financial decisions. When we are not able to exercise significant influence over such affiliates, we use the cost method of accounting. All intercompany balances and transactions have been eliminated in consolidation. Old GM utilized the same principles of consolidation in its condensed consolidated financial statements.

Correction of Presentation in Condensed Consolidated Statement of Cash Flows

In the three months ended June 30, 2010 we identified several items which had not been properly classified in our condensed consolidated statement of cash flows for the three months ended March 31, 2010. We determined that we had not properly classified the effects of the devaluation of Venezuelan Bolivar Fuerte (BsF), which reduced our cash balance by \$199 million. This reduction should have been presented as part of the Effect of exchange rate changes on cash and cash equivalents rather than a reduction of Net cash provided by operating activities. Additionally, the change in the cash component of the Saab Automobile AB (Saab) assets classified as held for sale of \$330 million should have been presented as part of Cash and cash equivalents reclassified (to) from assets held for sale rather than an increase in Net cash flows from operating activities. The net effects of the remaining corrections are included in the table below. For the six months ended June 30, 2010, we have correctly presented these items in our condensed consolidated statement of cash flows. Although we do not consider the effects of these errors to be material, we intend to correct our condensed consolidated statement of cash flows for the three months ended March 31, 2010 in our Quarterly Report on Form 10–Q for the three months ending March 31, 2011 when filed. The originally reported and corrected amounts are summarized in the following table (dollars in millions):

	AS		
	Originally		As
	<u>Reported</u>	<u>Adjustments</u>	Corrected
Net cash provided by (used in) operating activities	\$ 1,746	\$ 104	\$ 1,850
Net cash provided by (used in) investing activities	646	(195)	451
Net cash provided by (used in) financing activities	(1,688)	(50)	(1,738)
Effect of exchange rate changes on cash and cash equivalents	(53)	(250)	(303)
Cash and cash equivalents reclassified (to) from assets held for sale	(20)	391	371
Cash and cash equivalents at beginning of the period	22,679	—	22,679
Cash and cash equivalents at end of the period	\$ 23,310	\$ —	\$ 23,310

A 6

Venezuelan Exchange Regulations

Our Venezuelan subsidiaries changed their functional currency from the BsF, the local currency, to the U.S. Dollar, our reporting currency, on January 1, 2010 because of the hyperinflationary status of the Venezuelan economy. Further, pursuant to the official devaluation of the Venezuelan currency and establishment of the dual fixed exchange rates in January 2010, we remeasured the BsF denominated monetary assets and liabilities held by our Venezuelan subsidiaries at the nonessential rate of 4.30 BsF to \$1.00. The remeasurement resulted in a charge of \$25 million recorded in Cost of sales in the three months ended March 31, 2010. During the six months ended June 30, 2010 all BsF denominated transactions have been remeasured at the nonessential rate of 4.30 BsF to \$1.00.

In June 2010, the Venezuelan government introduced additional foreign currency exchange control regulations, which imposed restrictions on the use of the parallel foreign currency exchange market, thereby making it more difficult to convert BsF to U.S. Dollars. We periodically accessed the parallel exchange market, which historically enabled entities to obtain foreign currency for transactions that could not be processed by the Commission for the Administration of Currency Exchange (CADIVI). The restrictions on the foreign currency exchange market could affect our Venezuelan subsidiaries' ability to pay its non–BsF denominated obligations that do not qualify to be processed by CADIVI at the official exchange rates as well as our ability to benefit from those operations.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table provides condensed financial information for our Venezuelan subsidiaries at and for the six months ended June 30, 2010, which includes amounts receivable from and payable to, and transactions with, affiliated entities (dollars in millions):

Total assets (a)	\$1,347
Total liabilities (b)	\$1,116
Revenue for six months ended June 30, 2010	\$ 443
Net income attributable to stockholders for six months ended June 30, 2010 (c)	\$ 215

- (a) Includes BsF denominated and non-BsF denominated monetary assets of \$273 million and \$720 million.
- (b) Includes BsF denominated and non-BsF denominated monetary liabilities of \$553 million and \$518 million.
- (c) Includes a gain of \$119 million related to the devaluation of the Bolivar in January 2010 and a gain of \$125 million due to favorable foreign currency exchanges that were processed by CADIVI in the three months ended June 30, 2010. The \$119 million gain on the devaluation was offset by a \$144 million loss recorded in the U.S. on BsF denominated assets, which is not included in the net income reported above.

In addition, the total amount pending government approval for settlement is BsF 1.2 billion (equivalent to \$428 million), for which the requests have been pending starting from 2007. The amount includes payables to affiliated entities of \$287 million, which includes dividends payable of \$144 million.

Recently Adopted Accounting Principles

Transfers of Financial Assets

In January 2010 we adopted certain amendments to ASC 860–10, "Transfers and Servicing" (ASC 860–10). ASC 860–10 eliminates the concept of a qualifying special–purpose entity (SPE), establishes a new definition of participating interest that must be met for transfers of portions of financial assets to be eligible for sale accounting, clarifies and amends the derecognition criteria for a transfer of financial assets to be accounted for as a sale, and changes the amount that can be recorded as a gain or loss on a transfer accounted for as a sale when beneficial interests are received by the transferor. The adoption of these amendments did not have a material effect on the condensed consolidated financial statements.

Variable Interest Entities

In January 2010 we adopted amendments to ASC 810–10, "Consolidation" (ASC 810–10). These amendments require an enterprise to qualitatively assess the determination of the primary beneficiary of a VIE based on whether the enterprise: (1) has the power to direct the activities of a VIE that most significantly affect the entity's economic performance; and (2) has the obligation to absorb losses of the entity or the right to receive benefits from the entity that could potentially be significant to the VIE. These amendments also require, among other considerations, an ongoing reconsideration of the primary beneficiary. In February 2010 the Financial Accounting Standards Board (FASB) issued guidance that permitted an indefinite deferral of these amendments for entities that have all the attributes of an investment company or that apply measurement principles consistent with those followed by investment companies. An entity that qualifies for the deferral will continue to be assessed under the overall guidance on the consolidation of VIEs in effect prior to the adoption of these amendments. This deferral was applicable to certain investment funds associated with our employee benefit plans and investment funds managing investments on behalf of urrelated third parties.

The amendments were adopted prospectively. Upon adoption, we consolidated General Motors Egypt (GM Egypt) which resulted in an increase in Total assets of \$254 million, an increase in Total liabilities of \$178 million, and an increase in Noncontrolling interests of \$76 million. Due to our application of fresh-start reporting on July 10, 2009 and because our investment in GM Egypt was accounted for using the equity method of accounting, there was no difference between the net assets added to the condensed consolidated balance sheet upon consolidation and the amount of previously recorded interest in GM Egypt. As a result, there was no cumulative effect of a change in accounting principle to Accumulated deficit. The effect of these amendments was measured based on

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

the amount at which the asset, liability and noncontrolling interest would have been carried or recorded in the condensed consolidated financial statements if these amendments had been effective since inception of our relationship with GM Egypt. Refer to Note 10 for additional information regarding the effect of the adoption of these amendments.

Accounting Standards Not Yet Adopted

In September 2009 the FASB issued Accounting Standards Update (ASU) 2009–13, "Multiple–Deliverable Revenue Arrangements" (ASU 2009–13). ASU 2009–13 addresses the unit of accounting for multiple–element arrangements. In addition, ASU 2009–13 revises the method by which consideration is allocated among the units of accounting. The overall consideration is allocated to each deliverable by establishing a selling price for individual deliverables based on a hierarchy of evidence, including vendor–specific objective evidence, other third party evidence of the selling price, or the reporting entity's best estimate of the selling price of individual deliverables in the arrangement. ASU 2009–13 will be effective prospectively for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010. We are currently evaluating the effects, if any, that ASU 2009–13 will have on the condensed consolidated financial statements.

Note 4. Acquisition and Disposals of Businesses

Acquisition of Delphi Businesses

In July 2009 we entered into the Delphi Master Disposition Agreement (DMDA) with Delphi Corporation (Delphi) and other parties, which was consummated in October 2009. Under the DMDA, we agreed to acquire Delphi's global steering business (Nexteer) and four domestic component manufacturing facilities as well as make an investment in a new entity, New Delphi, which acquired substantially all of Delphi's remaining assets. At October 6, 2009 the fair value of Nexteer and the four domestic facilities was \$287 million and the assets acquired and liabilities assumed were consolidated and included in the results of our GMNA segment. Total assets of \$1.2 billion were comprised primarily of accounts and notes receivables, inventories and property, plant and equipment. Total liabilities of \$0.9 billion were comprised primarily of accounts payable, accrued expenses, short–term debt and other liabilities.

We funded the acquisitions, transaction-related costs and settlements of certain pre-existing arrangements through net cash payments of \$2.7 billion. We also assumed liabilities and wind-down obligations of \$120 million, waived our claims associated with the Delphi liquidity support agreements of \$850 million and waived our rights to claims associated with previously transferred pension costs for hourly employees. Of these amounts, we contributed \$1.7 billion to New Delphi and paid the Pension Benefit Guarantee Corporation (PBGC) \$70 million in October 2009. Our investment in New Delphi is accounted for using the equity method.

In January 2010 we announced that we intended to pursue a sale of Nexteer. In July 2010 we entered into a definitive agreement for the sale of Nexteer as discussed in Note 26 to our condensed consolidated financial statements.

Sale of India Operations

In December 2009 we and SAIC Motor Hong Kong Investment Limited (SAIC–HK) entered into a joint venture, SAIC GM Investment Limited (HKJV) to invest in automotive projects outside of markets in China, initially focusing on markets in India. On February 1, 2010 we sold certain of our operations in India (India Operations), part of our GMIO segment, in exchange for a promissory note due in 2013. The amount due under the promissory note may be partially reduced, or increased, based on the India Operation's cumulative earnings before interest and taxes for the three year period ending December 31, 2012. In connection with the sale we recorded net consideration of \$190 million and an insignificant gain. The sale transaction resulted in a loss of control and the deconsolidation of the India Operations on February 1, 2010. Accordingly, we removed the assets and liabilities of the India Operations from our consolidated financial statements and recorded an equity interest in HKJV to reflect cash of \$50 million we contributed to HKJV and a \$123 million commitment to provide additional capital that we are required to make in accordance with the terms of the joint venture agreement. We have recorded a corresponding liability to reflect our obligation to provide additional capital.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Saab Bankruptcy and Sale

In February 2009 Saab, part of the GME segment, filed for protection under the reorganization laws of Sweden in order to reorganize itself into a stand-alone entity. Old GM determined that the reorganization proceeding resulted in a loss of the elements of control necessary for consolidation and therefore Old GM deconsolidated Saab in February 2009. Old GM recorded a loss of \$824 million in Other expenses, net related to the deconsolidation. The loss reflects the remeasurement of Old GM's net investment in Saab to its estimated fair value of \$0, costs associated with commitments and obligations to suppliers and others, and a commitment to provide up to \$150 million of DIP financing. We acquired Old GM's investment in Saab in connection with the 363 Sale. In August 2009 Saab exited its reorganization proceeding, and we regained the elements of control and consolidated Saab at an insignificant fair value.

In February 2010 we completed the sale of Saab and in May 2010 we completed the sale of Saab Automobile GB (Saab GB) to Spyker Cars NV. Of the negotiated cash purchase price of \$74 million, we received \$50 million at closing and received the remaining \$24 million in July 2010. We also received preference shares in Saab with a face value of \$326 million and an estimated fair value that is insignificant and received \$114 million as repayment of the DIP financing that we provided to Saab during 2009. In the three months ended March 31, 2010 we recorded a gain of \$123 million in Interest income and other non–operating income, net reflecting cash received of \$166 million less net assets with a book value of \$43 million.

Sale of 1% Interest in Shanghai General Motors Co., Ltd.

In February 2010 we sold a 1% ownership interest in Shanghai General Motors Co., Ltd. (SGM) to SAIC–HK, reducing our ownership interest to 49%. The sale of the 1% ownership interest to SAIC was predicated on our ability to work with SAIC to obtain a \$400 million line of credit from a commercial bank to us. We also received a call option to repurchase the 1% which is contingently exercisable based on events which we do not unilaterally control. As part of the loan arrangement SAIC provided a commitment whereby, in the event of default, SAIC will purchase the ownership interest in SGM that we pledged as collateral for the loan. We recorded an insignificant gain on this transaction in the six months ended June 30, 2010.

Acquisition of AmeriCredit Corp.

Refer to Note 26 for information concerning the pending acquisition of AmeriCredit Corp.

Note 5. Marketable Securities

The following tables summarize information regarding investments in Marketable securities (dollars in millions):

	Successor						
	Three	Ionths					
	June	ided 80, 2010 ealized	En <u>June 3</u> Unre	June 30, <u>2010</u> Fair			
	Gains	Losses	Gains	Losses	Value		
Trading securities:							
Equity	\$ —	\$5	\$ —	\$ 5	\$ 30		
United States government and agencies					12		
Mortgage — and asset-backed			1		29		
Foreign government	1	1	1	1	30		
Corporate debt	1	1	1	1	29		
Total trading securities	\$ 2	\$ 7	\$ 3	\$ 7	\$ 130		

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	Successor									
	June 30, 2010 December 31, 2						er 31, 200	9		
		Unrealized		nrealized Fair		<u>realized</u> Fair		Unre	alized	Fair
	Cost	Gains	Losses	Value	Cost	Gains	Losses	Value		
Available–for–sale securities:										
United States government and agencies	\$ 939	\$ —	\$ —	\$ 939	\$ 2	\$ —	\$ —	\$ 2		
Certificates of deposit	1,326			1,326	8		_	8		
Corporate debt	2,366		_	2,366		_	_			
-										
Total available-for-sale securities	\$4.631	<u></u>	s —	\$4,631	\$10	<u></u>	\$ —	\$ 10		
	+ .,	+	-	+ .,		+	+	+		

We maintained \$79 million of the available–for–sale securities as compensating balances to support letters of credit of \$66 million at June 30, 2010 and December 31, 2009. We have access to these securities in the normal course of business; however, the letters of credit may be withdrawn if the minimum collateral balance is not maintained.

In addition to the securities previously discussed, securities of \$16.2 billion and \$11.2 billion with original maturities of 90 days or less were classified as cash equivalents and marketable securities of \$1.5 billion and \$13.6 billion were classified as Restricted cash and marketable securities at June 30, 2010 and December 31, 2009.

The following table summarizes proceeds from and realized gains and losses on disposals of investments in marketable securities classified as available-for-sale (dollars in millions):

	Su	ccessor	Prec	lecessor
	Three		Three	
	Months		Months	
	Ended	Six Months	Ended	Six Months
	June 30,	Ended	June 30,	Ended
	<u></u>	<u>June 30, 2010</u>		<u>June 30, 2009</u>
Sales proceeds	\$ 1	\$ 1	\$ 95	\$ 185
Realized gains	\$ —	\$	\$ 2	\$ 3
Realized losses	\$ —	\$ —	\$ 4	\$ 10

The following table summarizes the fair value of investments classified as available–for–sale securities by contractual maturity at June 30, 2010 (dollars in millions):

	Succes	sor
	Amortized Cost	Fair Value
Due in one year or less	\$ 4,630	\$4,630
Due after one year through five years	1	1
Due after five years through ten years	_	
Due after ten years		—
Total contractual maturities of available-for-sale securities	\$ 4,631	\$4,631

Refer to Note 21 for the amounts recorded as a result of other than temporary impairments on debt and equity securities.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

Note 6. Inventories

The following table summarizes the components of our Inventories (dollars in millions):

	Su	ccessor
	June 30, 2010	December 31, 2009
Productive material, work in process, and supplies Finished product, including service parts	\$ 5,199 6,334	\$ 4,201 5,906
Total inventories	\$11,533	\$ 10,107

Note 7. Equity in Net Assets of Nonconsolidated Affiliates

Nonconsolidated affiliates are entities in which an equity ownership interest is maintained and for which the equity method of accounting is used, due to the ability to exert significant influence over decisions relating to their operating and financial affairs.

The following table summarizes information regarding equity in income (loss) of and disposition of interest in nonconsolidated affiliates (dollars in millions):

	Su	ccessor	Pred	ecessor
	Three		Three	
	Months		Months	
	Ended	Six Months	Ended	Six Months
	June 30, 2010	Ended <u>June 30, 2010</u>	June 30, 2009	Ended <u>June 30, 2009</u>
SGM and SGMW (a)	\$ 378	\$ 734	\$ 183	\$ 289
Ally Financial (b)		_	(597)	(1,097)
Gain on Conversion of UST Ally Financial Loan (c)		_	2,477	2,477
Total equity in income of and disposition of interest in Ally Financial (b)			1,880	1,380
New United Motor Manufacturing, Inc. (d)		_	(226)	(243)
Others	33	80	41	_
Total equity in income of nonconsolidated affiliates	\$ 411	\$ 814	\$ 1,878	\$ 1,426

(a) Includes SGM (49%) in the three and six months ended June 30, 2010 and (50%) in the three and six months ended June 30, 2009 and SAIC-GM-Wuling Automobile Co., Ltd. (SGMW) (34%).

(b) Ally Financial converted its status to a C corporation effective June 30, 2009. At that date, Old GM began to account for its investment in Ally Financial using the cost method rather than the equity method as Old GM no longer exercised significant influence over Ally Financial. In connection with Ally Financial's conversion into a C corporation, each unit of each class of Ally Financial Membership Interests was converted into shares of capital stock of Ally Financial with substantially the same rights and preferences as such Membership Interests.

(c) In May 2009 the UST exercised its option to convert the outstanding amounts owed on the UST Ally Financial Loan (as subsequently defined) into shares of Ally Financial's Class B common Membership Interests.

(d) New United Motor Manufacturing (NUMMI) (50%) was retained by MLC as part of the 363 Sale.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Investment in Ally Financial

As part of the approval process for Ally Financial to obtain Bank Holding Company status in December 2008, Old GM agreed to reduce its ownership in Ally Financial to less than 10% of the voting and total equity of Ally Financial by December 24, 2011. At June 30, 2010 our equity ownership in Ally Financial was 16.6% as subsequently discussed.

In December 2008 Old GM and FIM Holdings, an assignee of Cerberus ResCap Financing LLC, entered into a subscription agreement with Ally Financial under which each agreed to purchase additional Common Membership Interests in Ally Financial, and the UST committed to provide Old GM with additional funding in order to purchase the additional interests. In January 2009 Old GM entered into the UST Ally Financial Loan Agreement pursuant to which Old GM borrowed \$884 million (UST Ally Financial Loan) and utilized those funds to purchase 190,921 Class B Common Membership Interests in Ally Financial. The UST Ally Financial Loan was scheduled to mature in January 2012 and bore interest, payable quarterly, at the same rate of interest as the UST Loans. The UST Ally Financial Loan Agreement was secured by Old GM's Common and Preferred Membership Interests in Ally Financial. As part of this loan agreement, the UST had the option to convert outstanding amounts into a maximum of 190,921 shares of Ally Financial's Class B Common Membership Interests on a pro rata basis.

In May 2009 the UST exercised this option, the outstanding principal and interest under the UST Ally Financial Loan was extinguished, and Old GM recorded a net gain of \$483 million. The net gain was comprised of a gain on the disposition of Ally Financial Common Membership Interests of \$2.5 billion recorded in Equity in income of and disposition of interest in Ally Financial and, a loss on extinguishment of the UST Ally Financial Loan of \$2.0 billion recorded in Loss on extinguishment of debt. After the exchange, Old GM's ownership was reduced to 24.5% of Ally Financial's Common Membership Interests.

Ally Financial converted its status to a C corporation effective June 30, 2009. At that date, Old GM began to account for its investment in Ally Financial using the cost method rather than the equity method as Old GM no longer exercised significant influence over Ally Financial. In connection with Ally Financial's conversion into a C corporation, each unit of each class of Ally Financial Membership Interests was converted into shares of capital stock of Ally Financial with substantially the same rights and preferences as such Membership Interests. On July 10, 2009 we acquired the investment in Ally Financial's common and preferred stocks in connection with the 363 Sale.

In December 2009 the UST made a capital contribution to Ally Financial of \$3.8 billion consisting of the purchase of trust preferred securities of \$2.5 billion and mandatory convertible preferred securities of \$1.3 billion. The UST also exchanged all of its existing Ally Financial non-convertible preferred stock for newly issued mandatory convertible preferred securities valued at \$5.3 billion. In addition the UST converted mandatory convertible preferred securities valued at \$5.3 billion. In addition the UST converted mandatory convertible preferred securities valued at \$5.3 billion. In addition the UST converted mandatory convertible preferred securities valued at \$5.4 billion into Ally Financial common stock. These actions resulted in the dilution of our investment in Ally Financial common stock from 24.5% to 16.6%, of which 6.7% is held directly and 9.9% is held in an independent trust. Pursuant to previous commitments to reduce influence over and ownership in Ally Financial, the trustee, who is independent of us, has the sole authority to vote and is required to dispose of our 9.9% ownership in Ally Financial to the trust by December 24, 2011.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following tables summarize financial information of Ally Financial for the period Ally Financial was accounted for as a nonconsolidated affiliate (dollars in millions):

Three		
Months		
Ended	Six	Months
June 30,		nded
2009	June	<u>30, 2009</u>
Consolidated Statements of Loss		
Total financing revenue and other interest income\$ 3,389	\$	6,916
Total interest expense \$ 1,940	\$	3,936
Depreciation expense on operating lease assets \$ 1,056	\$	2,113
Gain on extinguishment of debt \$ 13	\$	657
Total other revenue\$ 867	\$	2,117
Total noninterest expense \$ 1,726	\$	3,381
Loss from continuing operations before income tax expense \$(1,583)	\$	(2,260)
Income tax expense from continuing operations \$ 1,096	\$	972
Net loss from continuing operations\$(2,679)	\$	(3,232)
Loss from discontinued operations, net of tax \$(1,224)	\$	(1,346)
Net loss \$(3,903)	\$	(4,578)
	Jur	<u>1e 30, 2009</u>
Condensed Consolidated Balance Sheet	•	11.440
Loans held for sale	\$	11,440
Total finance receivables and loans, net	\$	87,520
Investment in operating leases, net	\$	21,597
Other assets	\$	22,932
Total assets	\$	181,248
Total debt	\$	105,175
Accrued expenses and other liabilities	\$	41,363
Total liabilities	\$	155,202
Preferred stock held by UST	\$	12,500
Preferred stock	\$	1,287
Total equity	\$	26,046

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS ---- (Continued)

Ally Financial – Preferred and Common Membership Interests

The following tables summarize the activity with respect to the investment in Ally Financial Common and Preferred Membership Interests for the period Ally Financial was accounted for as a nonconsolidated affiliate (dollars in millions):

		Predec	essor	
		Ally nancial		lly ancial
	Men	ommon nbership terests	Mem	erred bership crests
Balance at January 1, 2009	\$	491	<u> </u>	43
Old GM's proportionate share of Ally Financial's losses	Ŷ	(500)	Ŷ	
Investment in Ally Financial Common Membership Interests		884		
Other, primarily accumulated other comprehensive loss		(121)		_
Balance at March 31, 2009		754		43
Old GM's proportionate share of Ally Financial's losses (a)		(630)		(7)
Gain on disposition of Ally Financial Common Membership Interests (b)		2,477		
Conversion of Ally Financial Common Membership Interests (b)		(2,885)		_
Other, primarily accumulated other comprehensive loss		284		
Balance at June 30, 2009	\$	—	\$	36

(a) Due to impairment charges and Old GM's proportionate share of Ally Financial's losses, the carrying amount of Old GM's investments in Ally Financial Common Membership Interests was reduced to \$0. Old GM recorded its proportionate share of Ally Financial's remaining losses to its investment in Ally Financial Preferred Membership Interests.

(b) Due to the exercise of the UST's option to convert the UST Ally Financial Loan into Ally Financial Common Membership Interests, in connection with the UST Ally Financial Loan conversion, Old GM recorded a gain of \$2.5 billion on disposition of Ally Financial Common Membership Interests and a \$2.0 billion loss on extinguishment based on the carrying amount of the UST Ally Financial Loan and accrued interest of \$0.9 billion.

Transactions with Nonconsolidated Affiliates

Nonconsolidated affiliates are involved in various aspects of the development, production and marketing of cars, trucks and parts. The following tables summarize the effects of transactions with nonconsolidated affiliates which are not eliminated in consolidation (dollars in millions):

	Successor		Predecessor			
	Three		Three			
	Months		Months			
	Ended Six Months June 30, Ended		Ended June 30,	Six Months Ended		
	<u>2010</u>	June 30, 2010	<u>2009</u>	June 30, 2009		
Results of Operations						
Net sales and revenue	\$ 479	\$ 909	\$ 297	\$ 549		
Cost of sales	\$ 816	\$ 1,570	\$ 36	\$ 233		
Selling, general and administrative expense	\$ —	\$ (3)	\$ (3)	\$ (5)		
Interest income and other non-operating income, net	\$ —	\$	\$ —	\$ 1		

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (Continued)

		Successor		
		June 30, 2010		nber 31, 2009
Financial Position				
Accounts and notes receivable, net		\$ 271	\$	594
Accounts payable (principally trade)		\$ 341	\$	396
	Sua	00550	Dwor	lecessor
		cessor		
	Six 1	Months	Six	Months
		nded 30, 2010		nded 30, 2009
Cash Flows	<u>sunc</u>	<u></u>	<u>o une</u>	<u></u>
Operating	\$	701	\$	258
Investing	\$	654	\$	278
Financing	\$	—	\$	

Note 8. Goodwill

The following table summarizes the changes in the carrying amount of Goodwill (dollars in millions):

Successor	
GMNA GMIO GME	Total
Balance at January 1, 2010 \$26,409 \$ 928 \$3,335	\$30,672
Effect of foreign currency translation – (29) (457)	(486)
Balance at June 30, 2010 \$26,409 \$ 899 \$2,878	\$30,186

We recorded Goodwill of \$30.5 billion upon application of fresh-start reporting. If all identifiable assets and liabilities had been recorded at fair value upon application of fresh-start reporting, no goodwill would have resulted. However, when applying fresh-start reporting, certain accounts, primarily employee benefit plan and income tax related, were recorded at amounts determined under specific U.S. GAAP rather than fair value and the difference between the U.S. GAAP and fair value amounts gave rise to goodwill, which is a residual. Our employee benefit related accounts were recorded in accordance with ASC 712, "Compensation — Nonretirement Postemployment Benefits" and ASC 715, "Compensation — Retirement Benefits" and deferred income tax essere recorded in accordance with ASC 740, "Income Taxes." Further, we recorded valuation allowances against certain of our deferred tax assets, which under ASC 852 also resulted in Goodwill. These valuation allowances were due in part to Old GM's history of recurring operating losses, and our projections at the 363 Sale date of continued near-term operating losses in certain jurisdictions. While the 363 Sale constituted a significant restructuring that eliminated many operating and financing costs, Old GM had undertaken significant restructurings in the past that failed to return certain jurisdictions to profitability. At the 363 Sale date, we concluded that there was significant uncertainty as to whether the recent restructuring actions would return these jurisdictions to sustained profitability, thereby necessitating the establishment of a valuation allowance against certain deferred tax assets. None of the goodwill from this transaction is deductible for tax purposes.

In the three months ended June 30, 2010 there were event driven changes in circumstances within our GME reporting unit that warranted the testing of goodwill for impairment. Anticipated competitive pressure on our margins in the near- and medium-term led us to believe that the goodwill associated with our GME reporting unit may be impaired. Utilizing the best available information as of June 30, 2010 we performed a step one goodwill impairment test for our GME reporting unit, and concluded that goodwill was not impaired. The fair value of our GME reporting unit was estimated to be approximately \$325 million over its carrying amount. If we had not passed step one, we believe the amount of any goodwill impairment would approximate \$140 million based on the estimated differences at June 30, 2010 between the fair value to U.S. GAAP adjustments that gave rise to goodwill, primarily related to employee benefit plans and income taxes.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

We utilized a discounted cash flow methodology to estimate the fair value of our GME reporting unit. The valuation methodologies utilized were consistent with those used in our application of fresh-start reporting on July 10, 2009, as discussed in Note 2 to our 2009 Form 10–K, and in our 2009 annual and event driven GME impairment tests and result in Level 3 measures within the valuation hierarchy. Assumptions used in our discounted cash flow analysis that had the most significant effect on the estimated fair value of our GME reporting unit include:

- Our estimated weighted-average cost of capital (WACC);
- Our estimated long-term growth rates; and
- Our estimate of industry sales and our market share.

We used a WACC of 22.0% that considered various factors including bond yields, risk premiums, and tax rates; a terminal value that was determined using a growth model that applied a long–term growth rate of 0.5% to our projected cash flows beyond 2015; and industry sales of 18.4 million vehicles and a market share for Opel/Vauxhall of 6.45% in 2010 increasing to industry sales of 22.0 million vehicles and a 7.4% market share in 2015.

Our fair value estimate assumes the achievement of the future financial results contemplated in our forecasted cash flows, and there can be no assurance that we will realize that value. The estimates and assumptions used are subject to significant uncertainties, many of which are beyond our control, and there is no assurance that anticipated financial results will be achieved.

Note 9. Intangible Assets, net

The following table summarizes the components of Intangible assets, net (dollars in millions):

	Successor					
	June 30, 2010 December 31, 2009				9	
	Gross		Net	Gross		Net
	Carrying <u>Amount</u>	Accumulated Amortization	Carrying <u>Amount</u>	Carrying <u>Amount</u>	Accumulated Amortization	Carrying <u>Amount</u>
Amortizing Intangibles						
Technology and intellectual property	\$ 7,729	\$ 2,670	\$ 5,059	\$ 7,741	\$ 1,460	\$ 6,281
Brands	5,348	143	5,205	5,508	72	5,436
Dealer network and customer relationships	2,067	129	1,938	2,205	67	2,138
Favorable contracts	509	79	430	542	39	503
Other	19	6	13	17	3	14
Total amortizing intangible assets	15.672	3,027	12.645	16.013	1.641	14,372
Non amortizing in-process research and development	175		175	175		175
Total intangible assets	\$15,847	\$ 3,027	\$12,820	\$16,188	\$ 1,641	\$14,547

The following table summarizes amortization expense related to Intangible assets, net (dollars in millions):

	Successor		Pred	Predecessor	
	Three		Three		
	Months		Months		
	Ended	Six Months	Ended	Six Months	
	June 30, 2010	Ended June 30, 2010	June 30, 2009	Ended June 30, 2009	
Amortization expense related to intangible assets, net	\$ 667	\$ 1,403	\$ 21	\$ 43	

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table summarizes estimated amortization expense related to Intangible assets, net in each of the next five fiscal years (dollars in millions):

	d Amortization xpense
2011	\$ 1,785
2011 2012	\$ 1,560
2013	\$ 1,227
2014	\$ 611
2013 2014 2015	\$ 314

Note 10. Variable Interest Entities

Consolidated VIEs

VIEs that we do not control through a majority voting interest that are consolidated because we are or Old GM was the primary beneficiary primarily include: (1) previously divested suppliers for which we provide or Old GM provided guarantees or financial support; (2) a program announced by the UST in March 2009 to provide financial assistance to automotive suppliers (Receivables Program); (3) vehicle sales and marketing joint ventures that manufacture, market and sell vehicles in certain markets; (4) leasing SPEs which held real estate assets and related liabilities for which Old GM provided residual guarantees; and (5) an entity which manages certain private equity investments held by our and Old GM's defined benefit plans, along with six associated general partner entities.

Certain creditors and beneficial interest holders of these VIEs have or had limited, insignificant recourse to our general credit or Old GM's general credit. In the event that creditors or beneficial interest holders were to have such recourse to our or Old GM's general credit, we or Old GM could be held liable for certain of the VIEs' obligations. GM Daewoo Auto & Technology Co. (GM Daewoo), a non-wholly owned consolidated subsidiary that we control through a majority voting interest, is also a VIE because in the future it may require additional subordinated financial support. The creditors of GM Daewoo's short-term debt of \$1.0 billion, long-term debt of \$722 million and current derivative liabilities of \$352 million at June 30, 2010 do not have recourse to our general credit.

The following table summarizes the carrying amount of assets and liabilities of consolidated VIEs that we do not also control through a majority voting interest (dollars in millions):

		Successor		
	June 30,	<u>2010 (a)(b)</u>	<u>December</u>	· 31, 2009 (a)
Assets:				
Cash and cash equivalents	\$	81	\$	15
Restricted cash		3		191
Accounts and notes receivable, net		121		14
Inventories		77		15
Other current assets		29		
Property, net		52		5
Other assets		37		33
Total assets	\$	400	\$	273
Liabilities:				
Accounts payable (principally trade)	\$	196	\$	17
Short-term debt and current portion of long-term debt		1		205
Accrued expenses		22		10
Other liabilities and deferred income taxes		47		23
Total liabilities	\$	266	\$	255

(a) Amounts exclude GM Daewoo.

(b) Amounts at June 30, 2010 reflect the effect of our adoption of amendments to ASC 810–10 in January 2010, which resulted in the consolidation of GM Egypt. At June 30, 2010 GM Egypt had Total assets of \$344 million and Total liabilities of \$238 million.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS ---- (Continued)

The following table summarizes the amounts recorded in earnings related to consolidated VIEs that we do not also control through a majority voting interest (dollars in millions):

	Successor				Predecessor			
	Three	Months	Six	Months	Three	Months	Six M	Months
	Ended June 30, 2010 (a)(b)			Ended June 30, 2010 (a)(b)		Ended June 30, 2009 (a)		nded 1, 2009 (a)
Net sales and revenue	\$	197	\$	370	\$	15	\$	30
Cost of sales		152		287		(1)		6
Selling, general and administrative expense		7		17		24		28
Other expenses, net		1		2		1		2
Interest expense		1		4		1		1
Interest (income) and other non-operating								
(income), net		(2)		(3)				
Income tax expense		5		8				
1								
Net income (loss)	\$	33	\$	55	\$	(10)	\$	(7)

(a) Amounts exclude GM Daewoo.

(b) Amounts recorded in the three and six months ended June 30, 2010 reflect our adoption of amendments to ASC 810–10 in January 2010, which resulted in the consolidation of GM Egypt. In the three and six months ended June 30, 2010 GM Egypt recorded Net sales and revenue of \$187 million and \$349 million.

GM Egypt

GM Egypt is a 31% owned automotive manufacturing organization that was previously accounted for using the equity method. GM Egypt was founded in March 1983 to assemble and manufacture vehicles in Egypt. Certain voting and other rights permit us to direct those activities of GM Egypt that most significantly affect its economic performance. In connection with our adoption of amendments to ASC 810–10, we consolidated GM Egypt in January 2010.

Receivables Program

We determined that the Receivables Program was a VIE and that we and Old GM were the primary beneficiary. At December 31, 2009 our equity contributions were \$55 million and the UST had outstanding loans of \$150 million to the Receivables Program. In the three months ended March 31, 2010 we repaid these loans in full. The Receivables Program was terminated in accordance with its terms in April 2010. Upon termination, we shared residual capital of \$25 million in the program equally with the UST and paid a termination fee of \$44 million.

Nonconsolidated VIEs

VIEs that are not consolidated because we are not or Old GM was not the primary beneficiary primarily include: (1) troubled suppliers for which we provide or Old GM provided guarantees or financial support; (2) vehicle sales and marketing joint ventures that manufacture, market and sell vehicles and related services; (3) leasing entities for which residual value guarantees were made; (4) certain research entities for which annual ongoing funding requirements exist; and (5) Ally Financial.

Guarantees and financial support are provided to certain current or previously divested suppliers in order to ensure that supply needs for production are not disrupted due to a supplier's liquidity concerns or possible shutdowns. Types of financial support that we provide and Old GM provided include, but are not limited to: (1) funding in the form of a loan; (2) guarantees of the supplier's debt or credit facilities; (3) one-time payments to fund prior losses of the supplier; (4) indemnification agreements to fund the suppliers' future losses or obligations; (5) agreements to provide additional funding or liquidity to the supplier in the form of price increases or changes in payment terms; and (6) assisting the supplier in finding additional investors. The maximum exposure to loss related to these VIEs is not expected to be in excess of the amount of net accounts and notes receivable recorded with the suppliers and any related guarantees and loan commitments.



GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

We have and Old GM had investments in joint ventures that manufacture, market and sell vehicles in certain markets. The majority of these joint ventures are typically self-funded and financed with no contractual terms that require us to provide future financial support. However, future funding is required for HKJV, as subsequently discussed. The maximum exposure to loss is not expected to be in excess of the carrying amount of the investments recorded in Equity in net assets of nonconsolidated affiliates, and any related capital funding requirements.

The following table summarizes the amounts recorded for nonconsolidated VIEs and the related off-balance sheet guarantees and maximum contractual exposure to loss, excluding Ally Financial, which is disclosed in Note 23 (dollars in millions):

		Successor						
	_		June 30, 2010		December 31, 2009			9
		rrying mount		m Exposure Loss (a)		rrying <u>nount</u>		m Exposure oss (b)
Assets:								
Accounts and notes receivable, net	\$	60	\$	60	\$	8	\$	8
Equity in net assets of nonconsolidated affiliates		285		285		96		50
Other assets		73		73		26		26
Total assets	\$	418	\$	418	\$	130	\$	84
Liabilities:								
Accounts payable	\$	48	\$	(48)	\$		\$	
Accrued expenses		12		15				
Other liabilities		225		_				
Total liabilities	\$	285	\$	(33)	\$	—	\$	—
Off–Balance Sheet:								
Residual value guarantees			\$	_			\$	32
Loan commitments (c)				102				115
Other guarantees				3				4
Other liquidity arrangements (d)				230				
Total guarantees and liquidity arrangements			\$	335			\$	151

(a) Amounts at June 30, 2010 included \$128 million related to troubled suppliers.

(b) Amounts at December 31, 2009 included \$139 million related to troubled suppliers.

- (c) Amount at June 30, 2010 included a second lien term facility provided to American Axle and Manufacturing Holdings, Inc. (American Axle) of \$100 million and other undrawn loan commitments of \$2 million. Amount at December 31, 2009 included a second lien term facility provided to American Axle of \$100 million and undrawn loan commitments of \$15 million.
- (d) Amounts at June 30, 2010 included capital funding requirements, primarily an additional contingent future funding requirement of up to \$223 million related to HKJV.

Stated contractual voting or similar rights for certain of our joint venture arrangements provide various parties with shared power over the activities that most significantly affect the economic performance of certain nonconsolidated VIEs. Such nonconsolidated VIEs are operating joint ventures located in developing international markets.

American Axle

In September 2009 we paid \$110 million to American Axle, a former subsidiary and current supplier, to settle and modify existing commercial arrangements and acquire warrants to purchase 4 million shares of American Axle's common stock. This payment was made in response to the liquidity needs of American Axle and our desire to modify the terms of our ongoing commercial arrangement. Under the new agreement, we also provided American Axle with a second lien term loan facility of up to \$100 million. Additional warrants will be granted if amounts are drawn on the second lien term loan facility.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (Continued)

As a result of these transactions, we concluded that American Axle was a VIE for which we were not the primary beneficiary. This conclusion did not change upon our adoption of amendments to ASC 810–10 in January 2010 because we lack the power through voting or similar rights to direct those activities of American Axle that most significantly affect its economic performance. Our variable interests in American Axle include the warrants we received and the second lien term loan facility, which expose us to possible future losses depending on the financial performance of American Axle. At June 30, 2010 no amounts were outstanding under the second lien term loan. At June 30, 2010 our maximum contractual exposure to loss related to American Axle was \$125 million, which represented the fair value of the warrants of \$25 million recorded in Non–current assets and the potential exposure of \$100 million related to the second lien term loan facility.

Ally Financial

We own 16.6% of Ally Financial's common stock and preferred stock with a liquidation preference of \$1.0 billion. We have previously determined that Ally Financial is a VIE as it does not have sufficient equity at risk; however, we are not the primary beneficiary. This conclusion did not change upon our adoption of amendments to ASC 810–10 in January 2010 because we lack the power through voting or similar rights to direct those activities of Ally Financial that most significantly affect its economic performance. Refer to Notes 7 and 23 for additional information on our investment in Ally Financial, our significant agreements with Ally Financial and our maximum exposure under those agreements.

Saab

In February 2010 we completed the sale of Saab and in May 2010 we completed the sale of Saab GB to Spyker Cars NV. Our primary variable interest in Saab is the preference shares that we received in connection with the sale, which have a face value of \$326 million and were recorded at an estimated fair value that is insignificant. We concluded that Saab is a VIE as it does not have sufficient equity at risk. We also determined that we are not the primary beneficiary because we lack the power to direct those activities that most significantly affect its economic performance. We continue to be obligated to fund certain Saab related liabilities, primarily warranty obligations related to vehicles sold prior to the disposition of Saab. At June 30, 2010 our maximum exposure to loss related to Saab was \$60 million. Refer to Note 4 for additional information on the sale of Saab.

HKJV

In December 2009 we established the HKJV operating joint venture to invest in automotive projects outside of China, initially focusing on markets in India. HKJV purchased our India Operations in February 2010. We determined that HKJV is a VIE because it will require additional subordinated financial support, and we determined that we are not the primary beneficiary because we share the power with SAIC–HK to direct the activities that most significantly affect HKJV's economic performance. We recorded a liability of \$123 million for our future capital funding commitment to HKJV and we have an additional contingent future funding requirement of up to \$223 million should certain conditions be met. Refer to Note 4 for additional information regarding HKJV.

Note 11. Depreciation and Amortization

The following table summarizes depreciation and amortization, including asset impairment charges, included in Cost of sales and Selling, general and administrative expense (dollars in millions):

	Su	ccessor	Predecessor		
	Three		Three		
	Months		Months		
	Ended	Six Months	Ended	Six Months	
	June 30, 2010	Ended <u>June 30, 2010</u>	June 30, 2009	Ended <u>June 30, 2009</u>	
Depreciation and impairment of plants and equipment	\$ 481	\$ 1,010	\$ 2,621	\$ 3,870	
Amortization and impairment of special tools	393	787	1,036	2,072	
Depreciation and impairment of equipment on operating leases	135	253	86	319	
Amortization of intangible assets	667	1,403	21	43	
Total depreciation, amortization and asset impairment charges	\$ 1,676	\$ 3,453	\$ 3,764	\$ 6,304	

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS ---- (Continued)

Old GM initiated restructuring plans prior to the 363 Sale to reduce the total number of powertrain, stamping and assembly plants and to eliminate certain brands and nameplates. As a result, Old GM recorded incremental depreciation and amortization on certain of these assets as they were expected to be utilized over a shorter period of time than their previously estimated useful lives. We record incremental depreciation and amortization for changes in useful lives subsequent to the initial determination. In the three and six months ended June 30, 2009 Old GM recorded incremental depreciation and amortization of approximately \$1.8 billion and \$2.3 billion.

Note 12. Restricted Cash and Marketable Securities

Cash and marketable securities subject to contractual restrictions and not readily available are classified as Restricted cash and marketable securities. Restricted cash and marketable securities are invested in accordance with the terms of the underlying agreements. Funds previously held in the UST Credit Agreement (as subsequently defined in Note 13) and currently held in the Canadian Health Care Trust (HCT) escrow and other accounts have been invested in government securities and money market funds in accordance with the terms of the escrow agreements. At June 30, 2010 and December 31, 2009 we held \$1.5 billion and \$13.6 billion of the Restricted cash and marketable securities balance in marketable securities. Refer to Note 19 for additional information. The following table summarizes the components of Restricted cash and marketable securities (dollars in millions):

	Successor					
	June	<u>June 30, 2010</u>		ne 30, 2010 De		ber 31, 2009
Current						
UST Credit Agreement (a)	\$		\$	12,475		
Canadian Health Care Trust (b)		956		955		
Receivables Program (c)				187		
Securitization trusts		37		191		
Pre-funding disbursements		235		94		
Other (d)		165		15		
Total current restricted cash and marketable securities		1,393		13,917		
Non-current (e)		-,				
Collateral for insurance related activities		638		658		
Other non-current (d)		623		831		
Total restricted cash and marketable securities	\$	2,654	\$	15,406		

(a) In April 2010 the UST Loans and Canadian Loan (as subsequently defined in Note 13) were paid in full and funds remaining in escrow were no longer subject to restrictions.

(b) Under the terms of an escrow agreement between General Motors of Canada Limited (GMCL), the EDC and an escrow agent, GMCL established a CAD \$1.0 billion (equivalent to \$893 million when entered into) escrow to fund certain of its healthcare obligations.

(c) The Receivables Program provided financial assistance to automotive suppliers by guaranteeing or purchasing certain receivables payable by us. In April 2010 the Receivable Program was terminated in accordance with its terms.

(d) Includes amounts related to various letters of credit, deposits, escrows and other cash collateral requirements.

(e) Non-current restricted cash and marketable securities is recorded in Other assets.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (Continued)

Note 13. Short-Term and Long-Term Debt

The following table summarizes the components of short-term and long-term debt (dollars in millions):

	Successor			
	June	June 30, 2010		<u>ber 31, 2009</u>
Short–Term				
UST Loans (a)	\$		\$	5,712
Canadian Loan (a)				1,233
VEBA Notes		2,908		
Short-term debt — third parties		1,051		1,475
Short-term debt — related parties (b)		893		1,077
Current portion of long-term debt		672		724
Total short-term debt and current portion of long-term debt		5,524		10,221
		,		,
Long-Term				
VEBA Notes				2,825
Other long-term debt		2,637		2,737
		<i>,</i>		,
Total debt	\$	8,161	\$	15,783
	+	-,	+	,
Available under line of credit agreements (c)	\$	1,115	\$	618
	ψ	1,115	φ	010

(a) In April 2010 the UST Loans and Canadian Loan were paid in full.

(b) Dealer financing from Ally Financial for dealerships we own.

(c) Commitment fees are paid on credit facilities at rates negotiated in each agreement. Amounts paid and expensed for these commitment fees are insignificant.

UST Loans and VEBA Notes

As previously disclosed in our 2009 Form 10–K, Old GM received total proceeds of \$19.4 billion from the UST under the UST Loan Agreement entered into on December 31, 2008. In connection with the Chapter 11 Proceedings, Old GM obtained additional funding of \$33.3 billion from the UST and EDC under its DIP Facility. From these proceeds, there was no deposit remaining in escrow at June 30, 2010.

On July 10, 2009 we entered into the UST Credit Agreement and assumed debt of \$7.1 billion (UST Loans) maturing on July 10, 2015 which Old GM incurred under its DIP Facility. Immediately after entering into the UST Credit Agreement, we made a partial repayment due to the termination of the U.S. government sponsored warranty program, reducing the UST Loans principal balance to \$6.7 billion. In March 2010 and December 2009 we made quarterly payments of \$1.0 billion on the UST Loans. In April 2010 we repaid the full outstanding amount of \$4.7 billion using funds from our escrow account.

While we have repaid the UST Loans in full, certain of the covenants in the UST Credit Agreement and the executive compensation and corporate governance provisions of Section 111 of the Emergency Stabilization Act of 2008, as amended (the EESA), including the Interim Final Rule implementing Section 111 (the Interim Final Rule), remain in effect until the earlier to occur of the UST ceasing to own direct or indirect equity interests in us or our ceasing to be a recipient of Exceptional Financial Assistance, as determined pursuant to the Interim Final Rule, and impose obligations on us with respect to, among other things, certain expense policies, executive privileges and compensation requirements.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

In connection with the 363 Sale, we entered into the VEBA Note Agreement and issued VEBA Notes of \$2.5 billion to the UAW Retiree Medical Benefits Trust (New VEBA). The VEBA Notes have an implied interest rate of 9.0% per annum. The VEBA Notes and accrued interest are scheduled to be repaid in three equal installments of \$1.4 billion on July 15 of 2013, 2015 and 2017; however, we may prepay the VEBA Notes at any time prior to maturity.

We have entered into negotiations with financial institutions regarding a credit facility. If we successfully execute a credit facility, we expect to prepay the VEBA Notes with available cash. Accordingly, at June 30, 2010 we reclassified the VEBA Notes from long-term debt to short-term debt in the amount of \$2.9 billion (including unamortized premium of \$209 million).

The obligations under the VEBA Note Agreement are secured by substantially all of our U.S. assets, subject to certain exceptions, including our equity interests in certain of our foreign subsidiaries, limited in most cases to 65% of the equity interests of the pledged foreign subsidiaries due to tax considerations.

The following table summarizes interest expense and interest paid on the UST Loans and the loans under the UST Loan Agreement (UST Loan Facility) in the three and six months ended June 30, 2009 (dollars in millions):

	S	Successor	Prec	lecessor
	Three		Three	
	Months		Months	
	Ended	Six Months	Ended	Six Months
	June 30, 2010	Ended June 30, 2010	June 30, 2009	Ended June 30, 2009
Interest expense	\$ 18	\$ 117	\$ 2,859	\$ 3,336
Interest paid	\$ 91	\$ 206	\$ —	\$ 144

The following table summarizes interest expense on the VEBA Notes (dollars in millions):

		Succ	essor		
	Th	ree			
	Mor	nths	s	Six Moi Ende	
	Enc			June	
	June 3	<u>0, 2010</u>	-	30, 20	10
Interest expense	\$	51	\$	3	99

Canadian Loan Agreement and EDC Loan Facility

As previously disclosed in our 2009 Form 10–K, on July 10, 2009 we entered into the Canadian Loan Agreement and assumed a CAD \$1.5 billion (equivalent to \$1.3 billion when entered into) term loan (Canadian Loan) maturing on July 10, 2015. In March 2010 and December 2009 we made quarterly payments of \$194 million and \$192 million on the Canadian Loan. In April 2010 GMCL repaid in full the outstanding amount of the Canadian Loan of \$1.1 billion.

The following table summarizes interest expense and interest paid on the Canadian Loan in the three and six months ended June 30, 2010 and the EDC Loan Facility in the three and six months ended June 30, 2009 (dollars in millions):

	Su	iccessor	Predecessor			
	Three		Three			
	Months		Months			
	Ended	Six Months	Ended	Six Months		
	June 30, 2010	Ended June 30, 2010	June 30, 2009	Ended June 30, 2009		
Internet construction	¢ 4					
Interest expense	\$ 4	\$ 26	\$ 62	\$ 62		
Interest paid	\$ 4	\$ 26	\$ 6	\$ 6		

GM Daewoo Revolving Credit Facility

In April 2010 GM Daewoo repaid KRW 250 billion (equivalent to \$225 million at the time of payment) of its KRW 1.4 trillion (equivalent of \$1.2 billion at the time of payment) revolving credit facility.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (Continued)

German Revolving Bridge Facility

In May 2009 Old GM entered into a revolving bridge facility with the German federal government and certain German states (German Facility) with a total commitment of up to Euro 1.5 billion (equivalent to \$2.1 billion when entered into). In November 2009 the debt was paid in full and extinguished.

The following table summarizes interest expense and interest paid by Old GM on the German Facility during the three and six months ended June 30, 2009 including amortization of related discounts (dollars in millions):

	Prec	decessor
	Three	
	Months	
	Ended	Six Months
	June 30,	Ended
	2009	<u>June 30, 2009</u>
Interest expense	\$ 3	\$ 3
Interest paid	\$ —	\$ —

Other Debt

In March 2009 Old GM entered into an agreement to amend its \$1.5 billion U.S. term loan. Because the terms of the amended U.S. term loan were substantially different than the original terms, primarily due to the revised borrowing rate, Old GM accounted for the amendment as a debt extinguishment. As a result, Old GM recorded the amended U.S. term loan at fair value and recorded a gain on the extinguishment of the original loan facility of \$906 million in the six months ended June 30, 2009.

In connection with the Chapter 11 Proceedings, Old GM's \$4.5 billion secured revolving credit facility, \$1.5 billion U.S. term loan and \$125 million secured credit facility were paid in full on June 30, 2009. Old GM recorded a loss of \$958 million in Reorganization expenses, net related to the extinguishments of the debt primarily due to the face value of the U.S. term loan exceeding the carrying amount.

Technical Defaults and Covenant Violations

Several of our loan facilities include clauses that may be breached by a change in control, a bankruptcy or failure to maintain certain financial metric limits. The Chapter 11 Proceedings and the change in control as a result of the 363 Sale triggered technical defaults in certain loans for which we have assumed the obligations. The total amount of the two loan facilities in technical default for these reasons at June 30, 2010 was \$203 million. We have classified these loans as short–term debt at June 30, 2010. In July 2010 we executed an agreement with the lenders of the \$150 million loan facility, which resulted in early repayment of the loan on July 26, 2010. On July 27, 2010 we executed an amendment with the lender of the second loan facility of \$53 million which cured the defaults.

Two of our loan facilities had financial covenant violations at December 31, 2009 related to exceeding financial ratios limiting the amount of debt held by the subsidiaries. One of these violations was cured within the 30 day cure period through the combination of an equity injection and the capitalization of intercompany loans. In May 2010 we obtained a waiver and cured the remaining financial covenant violation on a loan facility of \$70 million related to our 50% owned powertrain subsidiary in Italy.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

Note 14. Product Warranty Liability

The following table summarizes activity for policy, product warranty, recall campaigns and certified used vehicle warranty liabilities (dollars in millions):

	SI	Successor		decessor
	Six	Six Months		Months
		Ended <u>e 30, 2010</u>		Ended e 30, 2009
Beginning balance	\$	7,030	\$	8,491
Warranties issued and assumed in period		1,534		1,077
Payments		(1,711)		(1,833)
Adjustments to pre–existing warranties		67		(138)
Effect of foreign currency translation		(160)		89
Liability adjustment, net due to the deconsolidation of Saab				(77)
Ending balance	\$	6,760	\$	7,609

Note 15. Pensions and Other Postretirement Benefits

The following tables summarize the components of pension and other postemployment benefits (OPEB) (income) expense (dollars in millions):

	U.S. Plans Pension Benefits							
	Su	ccessor	Predecessor					
	Three		Three					
	Months		Months					
	Ended June 30, 2010	Six Months Ended June 30, 2010	Ended June 30, 2009	Six Months Ended <u>June 30, 2009</u>				
Components of (income) expense								
Service cost	\$ 130	\$ 259	\$ 115	\$ 233				
Interest cost	1,338	2,676	1,467	2,934				
Expected return on plan assets	(1,637)	(3,275)	(1,817)	(3,641)				
Amortization of prior service cost (credit)	(1)	(1)	205	411				
Amortization of transition obligation								
Recognized net actuarial loss			338	676				
Curtailments, settlements and other	—	—	1,718	1,718				
Net periodic pension (income) expense	\$ (170)	\$ (341)	\$ 2,026	\$ 2,331				



NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

		Non–U. Pension	S. Plans Benefits		
	Suc	cessor	Predecessor		
	Three		Three		
	Months		Months		
	Ended June 30, 2010	Six Months Ended <u>June 30, 2010</u>	Ended June 30, 2009	Six Months Ended June 30, 2009	
Components of (income) expense		-			
Service cost	\$ 93	\$ 189	\$ 75	\$ 151	
Interest cost	295	596	289	566	
Expected return on plan assets	(246)	(491)	(182)	(342)	
Amortization of prior service credit	(1)	(1)	(14)	(7)	
Amortization of transition obligation			1	1	
Recognized net actuarial loss	3	5	99	182	
Curtailments, settlements and other	53	39	66	92	
Net periodic pension expense	\$ 197	\$ 337	\$ 334	\$ 643	

			U.S. Plans Other Benefits		
	Three Months Ended	Successor Six Months	Three Months Ended	edecessor Six Months Ended June 30, 2009	
Components of (income) expense	June 30, 2010	Ended <u>June 30, 2010</u>	June 30, 2009		
Service cost Interest cost	\$5 72	\$ 10 144	\$ 33 766	\$66 1,541	
Expected return on plan assets Amortization of prior service credit			(211) (498)	(423) (992)	
Amortization of transition obligation Recognized net actuarial loss			16	29	
Curtailments, settlements and other		ф. 154	49	19	
Net periodic OPEB expense	\$ //	\$ 154	\$ 155	\$ 240	

			S. Plans Benefits			
	Su	ccessor	Predecessor			
	Three		Three			
	Months		Months			
	Ended June 30, 2010	Six Months Ended June 30, 2010	Ended June 30, 2009	Six Months Ended June 30, 2009		
Components of (income) expense						
Service cost	\$ 8	\$ 16	\$5	\$ 11		
Interest cost	49	98	50	98		
Expected return on plan assets						
Amortization of prior service credit	(2)	(4)	(33)	(59)		
Amortization of transition obligation				<u> </u>		
Recognized net actuarial loss			12	21		
Curtailments, settlements and other	3	3	(123)	(123)		
Net periodic OPEB (income) expense	\$ 58	\$ 113	\$ (89)	\$ (52)		

GENERAL MOTORS COMPANY AND SUBSIDIARIES

Significant Plan Amendments, Benefit Modifications and Related Events

Three and Six Months Ended June 30, 2010

Remeasurement

In the three months ended June 30, 2010 certain pension plans in GME were remeasured as part of our Goodwill impairment analysis, resulting in an increase of \$388 million to Pensions and Other comprehensive loss.

Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act was signed into law in March 2010 and contains provisions that require all future reimbursement receipts under the Medicare Part D retiree drug subsidy program to be included in taxable income. This taxable income inclusion will not significantly affect us because effective January 1, 2010 we no longer provide prescription drug coverage to post–age 65 Medicare–eligible participants and we have a full valuation allowance against our net deferred tax assets in the U.S. We have assessed the other provisions of this new law, based on information known at this time, and we believe that the new law will not have a significant effect on our consolidated financial statements.

Three and Six Months Ended June 30, 2009

The following table summarizes the significant defined benefit plan interim remeasurements, the related changes in accumulated postretirement benefit obligations (APBO), projected benefit obligations (PBO) and the associated curtailments, settlements and termination benefits recorded in the earnings of Old GM in the three and six months ended June 30, 2009 (dollars in millions):

Predecessor									
			nge in nt Rate	Increase (Decrease) Since the Most Recent Remeasurement Date	Gain (Loss)		Term	ination	
Event and Remeasurement Date When Applicable	Affected Plans	From	То	PBO/APBO	<u>Curtailments</u> <u>Settlements</u>		Settlements	Benefits and Other	
2009 Special Attrition Programs — June 30	U.S. hourly defined benefit pension plan	6.15%	6.25%	\$ 7	\$	(1,390)	\$ —	\$	(12)
Global salaried workforce reductions — June 1	U.S. salaried defined benefit pension plan	_		24		(327)	_		
U.S. salaried benefits changes — February 1	U.S. salaried retiree life insurance plan	7.25%	7.15%	(420)					_
U.S. salaried benefits changes — June 1	U.S. salaried retiree health care program	_		(265)		_	_		_
2009 CAW Agreement — June 1	Canadian hourly defined benefit pension plan	6.75%	5.65%	340		_	_		(26)
2009 CAW Agreement — June 1	CAW hourly retiree healthcare plan and CAW retiree life plan	7.00%	5.80%	(143)		93	_		_
Total				\$ (457)	\$	(1,624)	\$ —	\$	(38)

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

2009 Special Attrition Programs

In February and June 2009 Old GM announced the 2009 Special Attrition Programs for eligible International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) represented employees, offering cash and other incentives for individuals who elected to retire or voluntarily terminate employment. In the six months ended June 2009 Old GM recorded postemployment benefit charges for 13,000 employees. Refer to Note 20 for additional information on the postemployment benefit charges.

Old GM remeasured the U.S. hourly defined benefit pension plan in June 2009 based on the 7,800 irrevocable acceptances through that date as these acceptances of the special attrition programs yielded a significant reduction in the expected future years of service of active participants.

Global Salaried Workforce Reductions

In February and June 2009 Old GM announced its intention to reduce global salaried headcount. In June 2009 Old GM remeasured the U.S. salaried defined benefit pension plan based upon an estimated significant reduction in the expected future years of service of active participants.

The U.S. salaried employee reductions related to this initiative were to be accomplished primarily through a salaried separation window program or through a severance program funded from operating cash flows. These programs were involuntary programs subject to management approval where employees were permitted to express interest in retirement or separation, for which the charges for the salaried separation window program were recorded as special termination benefits funded from the U.S. salaried defined benefit pension plan and other applicable retirement benefit plans. The costs associated with the total targeted headcount reductions expected to terminate under the programs was determined to be probable and estimable and severance charges of \$250 million were recorded in the six months ended June 30, 2009. Refer to Note 20 for additional information on the involuntary severance program.

U.S. Salaried Benefits Changes

In February 2009 Old GM reduced salaried retiree life insurance benefits for U.S. salaried employees and remeasured its U.S. salaried retiree life insurance plan. In June 2009 Old GM approved and communicated negative plan amendments associated with the U.S. salaried retiree health care program, including reduced coverage and increased cost sharing. The plan was remeasured in June 2009.

In June 2009 Old GM communicated additional changes in benefits for retired salaried employees including an acceleration and further reduction in retiree life insurance, elimination of the supplemental executive life insurance benefit, and reduction in the supplemental executive retirement plan. These plan changes were contingent on completion of the 363 Sale and the effects of these amendments were included in the fresh-start remeasurements in July 2009.

2009 Revised UAW Settlement Agreement

In May 2009 Old GM and the UAW agreed to a revised settlement agreement that was related to the UAW hourly retiree medical plan and a 2008 settlement agreement that permanently shifted responsibility for providing retiree health care from Old GM to a new healthcare plan funded by the New VEBA. We and the UAW executed the revised settlement agreement on July 10, 2009 in connection with the 363 Sale. The most significant changes to the agreement, which were not yet in effect at June 30, 2009, included:

- The implementation date changed from January 1, 2010 to the later of December 31, 2009 or the closing date of the 363 Sale, which occurred on July 10, 2009;
- The timing of payments to the new VEBA changed as subsequently discussed;
- The form of consideration changed as subsequently discussed;

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

- The contribution of employer securities changed such that they were to be contributed directly to the New VEBA in connection with the successful completion of the 363 Sale;
- Certain coverages will be eliminated and certain cost sharing provisions will increase; and
- The flat monthly special lifetime pension benefit that was scheduled to commence on January 1, 2010 was eliminated.

There was no change to the timing of our existing internal VEBA asset transfer to the New VEBA in that the internal VEBA asset transfer was to occur within 10 business days after December 31, 2009 under both the 2008 settlement agreement and the 2009 revised settlement agreements with the UAW.

The new payment terms to the New VEBA under the 2009 revised settlement agreement, which were subject to the successful completion of the 363 Sale that had not yet occurred at June 30, 2009, were:

- VEBA Notes of \$2.5 billion plus accrued interest, at an implied interest rate of 9.0% per annum, scheduled to be repaid in three equal installments of \$1.4 billion in July of 2013, 2015 and 2017;
- 260 million shares of our Series A Fixed Rate Cumulative Perpetual Preferred Stock (Series A Preferred Stock) that accrue cumulative dividends at 9.0% per annum;
- 88 million shares (17.5%) of our common stock;
- A warrant to acquire 15 million shares (2.5%) of our common stock at \$126.92 per share at any time prior to December 31, 2015;
- Two years funding of claims costs for individuals that elected the special attrition programs announced in 2009; and
- The existing internal VEBA assets.

Under the terms of the 2009 revised settlement agreement, we are released from UAW retiree health care claims incurred after December 31, 2009. All obligations of ours and any other entity or benefit plan of ours for retiree medical benefits for the class and the covered group arising from any agreement between us and the UAW were terminated at December 31, 2009. Our obligations to the new healthcare plan and the New VEBA are limited to the terms of the 2009 revised settlement agreement.

2009 CAW Agreement

In March 2009 Old GM announced that the members of the CAW had ratified an agreement intended to reduce manufacturing costs in Canada by closing the competitive gap with transplant automakers in the United States on active employee labor costs and reducing legacy costs through introducing co-payments for healthcare benefits, increasing employee healthcare cost sharing, freezing pension benefits, and eliminating cost of living adjustments to pensions for retired hourly workers. This agreement was conditioned on Old GM receiving longer term financial support from the Canadian and Ontario governments.

GMCL subsequently entered into additional negotiations with the CAW which resulted in a further addendum to the 2008 collective agreement which was ratified by the CAW members in May 2009. In June 2009 the governments of Ontario and Canada agreed to the terms of a loan agreement, approved the GMCL viability plan and provided funding to GMCL. The Canadian hourly defined benefit pension plan, the CAW hourly retiree healthcare plan and the CAW retiree life plan were remeasured in June 2009.

As a result of the termination of the employees from the former Oshawa, Ontario truck facility (Oshawa Facility), the CAW hourly retiree healthcare plan and the CAW retiree life plan were remeasured in June 2009 and a curtailment gain associated with the CAW hourly retiree healthcare plan was also recorded in the three months ended June 30, 2009.

In June 2009 GMCL and the CAW agreed to the terms of the HCT to provide retiree health care benefits to certain active and retired employees. The HCT will be implemented when certain preconditions are achieved, including certain changes to the Canadian Income Tax Act and the favorable completion of a class action process to bind existing retirees to the Trust. The latter is subject to the

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS ---- (Continued)

agreement of the representative retirees and the courts. The preconditions have not been achieved and the HCT is not yet implemented at June 30, 2010. Under the terms of the HCT agreement, GMCL is obligated to make a payment of CAD \$1.0 billion on the HCT implementation date which it will fund out of its CAD \$1.0 billion escrow funds, and the HCT is obligated to reimburse GMCL for the cost of benefits paid for claims incurred by plan participants during the period January 1, 2010 through the implementation date. GMCL will provide a CAD \$800 million note payable to the HCT on the HCT implementation date which will accrue interest at an annual rate of 7.0% with five equal annual installments of CAD \$256 million due December 2014 through 2018. Concurrent with the implementation of the HCT, GMCL will be legally released from all obligations associated with the cost of providing retiree health care benefits to current employees and retired plan participants, and we will account for the termination of our CAW hourly retiree healthcare plan as a settlement, based upon the difference between the fair value of the notes and cash contributed and the health care plan obligation at the settlement date. As a result of the conditions precedent to this agreement not having yet been achieved, there was no accounting recognition for the health care trust at June 30, 2010.

Note 16. Derivative Financial Instruments and Risk Management

Risk Management

We enter and Old GM entered into a variety of foreign currency exchange, interest rate and commodity forward contracts and options to manage exposures arising from market risks resulting from changes in foreign currency exchange rates, interest rates and certain commodity prices. We do not enter into derivative transactions for speculative purposes.

Our overall financial risk management program is under the responsibility of the Risk Management Committee, which reviews and, where appropriate, approves strategies to be pursued to mitigate these risks. A risk management control framework is utilized to monitor the strategies, risks and related hedge positions, in accordance with the policies and procedures approved by the Risk Management Committee. At June 30, 2010 and June 30, 2009 we and Old GM did not have any derivatives designated in a hedge accounting relationship.

In August 2010 we changed our risk management policy. Under our prior policy we intended to reduce volatility of forecasted cash flows primarily through the use of forward contracts and swaps. The intent of the new policy is primarily to protect against risk arising from extreme adverse market movements on our key exposures and involves a shift to greater use of purchased options.

Subsequent to the 363 Sale, our ability to manage risks using derivative financial instruments was limited as most derivative counterparties were unwilling to enter into forward or swap transactions with us. In December 2009 we began purchasing commodity and foreign currency exchange options to manage these exposures. These nondesignated derivatives have original expiration terms of up to 12 months. In August 2010 we executed new agreements with counterparties that enable us to enter into forward contracts and swaps.

Counterparty Credit Risk

Derivative financial instruments contain an element of credit risk attributable to the counterparties' ability to meet the terms of the agreements. The maximum amount of loss due to credit risk that we would incur if the counterparties to the derivative instruments failed completely to perform according to the terms of the contract was \$103 million at June 30, 2010. Agreements are entered into with counterparties that allow the set-off of certain exposures in order to manage the risk. The total net derivative asset position for all counterparties with which we were in a net asset position at June 30, 2010 was \$74 million.

Counterparty credit risk is managed and monitored by our Risk Management Committee, which establishes exposure limits by counterparty. At June 30, 2010 a majority of all counterparty exposures were with counterparties that were rated A or higher.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Credit Risk Related Contingent Features

At June 30, 2010 no collateral was posted related to derivative instruments and we did not have any agreements with counterparties to derivative instruments containing covenants requiring the maintenance of certain credit rating levels or credit risk ratios that would require the posting of collateral in the event that certain standards are violated or when a derivative instrument is in a liability position. In August 2010 we executed new agreements with counterparties that will require us to provide cash collateral for net liability positions or receive cash collateral for net asset positions that we would have with these counterparties.

Derivatives and Hedge Accounting

Our derivative instruments consist of nondesignated derivative contracts or economic hedges, including forward contracts and options that we acquired from Old GM or purchased directly from counterparties. At June 30, 2010 no outstanding derivative contracts were designated in hedging relationships. In the three and six months ended June 30, 2010 and 2009, we and Old GM accounted for changes in the fair value of all outstanding contracts by recording the gains and losses in earnings. Refer to Note 19 for additional information on the fair value measurements of our derivative instruments.

Cash Flow Hedges

We are and Old GM was exposed to certain foreign currency exchange risks associated with buying and selling automotive parts and vehicles and foreign currency exposure to long-term debt. We partially manage these risks through the use of nondesignated derivative instruments. At June 30, 2010 we did not have any financial instruments designated as cash flow hedges for accounting purposes.

Old GM previously designated certain financial instruments as cash flow hedges to manage its exposure to certain foreign currency exchange risks. For foreign currency transactions, Old GM typically hedged forecasted exposures for up to three years in the future. For foreign currency exposure on long-term debt, Old GM typically hedged exposures for the life of the debt.

For derivatives that were previously designated as qualifying cash flow hedges, the effective portion of the unrealized and realized gains and losses resulting from changes in fair value were recorded as a component of Accumulated other comprehensive income (loss). Subsequently, those cumulative gains and losses were reclassified to earnings contemporaneously with and to the same line item as the earnings effects of the hedged item. However, if it became probable that the forecasted transaction would not occur, the cumulative change in the fair value of the derivative recorded in Accumulated other comprehensive income (loss) was reclassified into earnings immediately.

The following table summarizes total activity in Accumulated other comprehensive income (loss) associated with cash flow hedges, primarily related to the release of previously deferred cash flow hedge gains and losses from Accumulated other comprehensive income (loss) into earnings (dollars in millions):

	Predecessor		
	Three		
	Months		
	Ended June 30, 2009	Six Months Ended June 30, 2009	
Foreign Currency Exchange Contracts			
Sales	\$ (88)	\$ (326)	
Cost of sales		20	
Reorganization expenses, net	247	247	
Total gains (losses) reclassified from accumulated other comprehensive income (loss)	\$ 159	\$ (59)	

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS ---- (Continued)

In connection with the Chapter 11 Proceedings, at June 1, 2009 Accumulated other comprehensive income (loss) balances of \$247 million associated with previously designated financial instruments were reclassified into Reorganization expenses, net because the underlying forecasted debt and interest payments were probable not to occur. At June 30, 2009 Old GM had deferred cash flow hedge gains and losses of \$409 million in Accumulated other comprehensive income (loss).

The following table summarizes gains and (losses) that were reclassified from Accumulated other comprehensive income (loss) for cash flow hedges associated with previously forecasted transactions that subsequently became probable not to occur (dollars in millions):

	Pred	ecessor
	Three	
	Months	
	Ended June 30, 2009	Six Months Ended June 30, 2009
Sales	\$ (29)	\$ (180)
Reorganization expenses, net	247	247
Total gains (losses) reclassified from accumulated other comprehensive income (loss)	\$ 218	\$ 67

In connection with our investment in New Delphi, which we account for using the equity method, we record our share of New Delphi's Other comprehensive income (loss) in Accumulated other comprehensive income (loss). In the three and six months ended June 30, 2010 we recorded cash flow hedge losses of \$30 million and \$15 million related to our share of New Delphi's hedging losses.

Fair Value Hedges

We are and Old GM was subject to market risk from exposures to changes in interest rates that affect the fair value of long-term, fixed rate debt. At June 30, 2010 we did not have any financial instruments designated as fair value hedges to manage this risk.

Old GM previously used interest rate swaps designated as fair value hedges to manage certain of its exposures associated with this debt. Old GM hedged its exposures to the maturity date of the underlying interest rate exposure.

Gains and losses on derivatives designated and qualifying as fair value hedges, as well as the offsetting gains and losses on the debt attributable to the hedged interest rate risk, were recorded in Interest expense to the extent the hedge was effective. The gains and losses related to the hedged interest rate risk were recorded as an adjustment to the carrying amount of the debt. Previously recorded adjustments to the carrying amount of the debt were amortized to Interest expense over the remaining debt term. In the three and six months ended June 30, 2009 Old GM amortized previously deferred fair value hedge gains and losses of \$1 million and \$3 million to Interest expense.

In connection with the Chapter 11 Proceedings, at June 1, 2009 Old GM recorded basis adjustments of \$18 million to the carrying amount of debt that ceased to be amortized to Interest expense. At June 1, 2009 the debt related to these basis adjustments was classified as Liabilities subject to compromise and no longer subject to interest accruals or amortization. We did not assume this debt from Old GM in connection with the 363 Sale.

Net Investment Hedges

We are and Old GM was subject to foreign currency exposure related to net investments in certain foreign operations. At June 30, 2010 we did not have any hedges of a net investment in a foreign operation.

Old GM previously used foreign currency denominated debt to hedge this foreign currency exposure. For nonderivative instruments that were designated as, and qualified as, a hedge of a net investment in a foreign operation, the effective portion of the unrealized and realized gains and losses were recorded as a Foreign currency translation adjustment in Accumulated other comprehensive income (loss). At June 30, 2009 Old GM had outstanding Euro denominated debt of \$2.1 billion that qualified as a hedge of a net investment in a foreign operation.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table summarizes the gains and (losses) related to hedges of net investments in foreign operations that were recorded as a Foreign currency translation adjustment in Accumulated other comprehensive income (loss) (dollars in millions):

	Pred	ecessor
	Three	
	Months	
	Ended June 30, 2009	Six Months Ended June 30, 2009
Effective portion of net investment hedge gains (losses)	\$ (133)	\$ (8)

Derivatives Not Designated for Hedge Accounting

Derivatives not designated in a hedging relationship, such as forward contracts, swaps, and options, are used to economically hedge certain risk exposures. Unrealized and realized gains and losses related to all of our nondesignated derivative hedges, regardless of type of exposure, are recorded in Interest income and other non-operating income, net. Derivative purchases and settlements are presented in Net cash provided by (used in) operating activities.

Old GM previously entered into a variety of foreign currency exchange, interest rate and commodity forward contracts and options to maintain a desired level of exposure arising from market risks resulting from changes in foreign currency exchange rates, interest rates and certain commodity prices. Unrealized and realized gains and losses related to Old GM's nondesignated derivative hedges were recorded in earnings based on the type of exposure, as subsequently discussed.

In May 2009 Old GM reached agreements with certain of the counterparties to its derivative contracts to terminate the derivative contracts prior to stated maturity. Commodity, foreign currency exchange, and interest rate forward contracts were settled for cash of \$631 million, resulting in a loss of \$537 million. The loss was recorded in Sales, Cost of sales and Interest expense in the amounts of \$22 million, \$457 million and \$58 million.

When an exposure economically hedged with a derivative contract is no longer forecasted to occur, in some cases a new derivative instrument is entered into to offset the exposure related to the existing derivative instrument. In some cases, counterparties are unwilling to enter into offsetting derivative instruments and, as such, there is exposure to future changes in the fair value of these derivatives with no underlying exposure to offset this risk.

The following table summarizes gains and (losses) recorded for nondesignated derivatives originally entered into to hedge exposures that subsequently became probable not to occur (dollars in millions):

	Su	ccessor	Pred	ecessor
	Three		Three	
	Months		Months	
	Ended	Six Months	Ended	Six Months
	June 30,	Ended	June 30,	Ended
	2010	<u>June 30, 2010</u>	2009	<u>June 30, 2009</u>
Interest income and other non-operating income, net	\$ —	\$ —	\$ 4	\$ 90

Commodity Derivatives

Certain raw materials, parts with significant commodity content, and energy are purchased for use in production. Exposure to commodity price risk may be managed by entering into commodity derivative instruments such as forward and option contracts. We currently manage this exposure using commodity options. At June 30, 2010, we had not entered into any commodity forward contracts.

Old GM hedged commodity price risk by entering into commodity forward and option contracts. Old GM recorded all commodity derivative gains and losses in Cost of sales.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS ---- (Continued)

The following table summarizes the notional amounts of nondesignated commodity derivative contracts (units in thousands):

		St	iccessor
		Contra	act Notional
<u>Commodity</u>	Units	June 30, 2010	December 31, 2009
Aluminum and aluminum alloy	Metric tons	205	39
Copper	Metric		
	tons	21	4
Lead	Metric		
	tons	36	7
Heating oil	Gallons	83,296	10,797
Natural gas	MMBTU	9,226	1,355
Natural gas	Gigajoules	1,185	150

Interest Rate Swap Derivatives

At June 30, 2010, we did not have any nondesignated interest rate swap derivatives.

Old GM previously used interest rate swap derivatives to economically hedge exposure to changes in the fair value of fixed rate debt. Gains and losses related to the changes in the fair value of these nondesignated derivatives were recorded in Interest expense.

Foreign Currency Exchange Derivatives

Foreign currency exchange derivatives are used to economically hedge exposure to foreign currency exchange risks associated with: (1) forecasted foreign currency denominated purchases and sales of vehicles and parts; and (2) variability in cash flows related to interest and principal payments on foreign currency denominated debt. At June 30, 2010 we managed foreign currency exchange risk through the use of foreign currency options and forward contracts.

The following table summarizes the total notional amounts of nondesignated foreign currency exchange derivatives (dollars in millions):

		Successor		
	Jun	<u>e 30, 2010</u>	Dece	<u>mber 31, 2009</u>
Nondesignated foreign currency exchange derivatives	\$	4,135	\$	6,333

Old GM recorded gains and losses related to these foreign currency exchange derivatives in: (1) Sales for derivatives that economically hedged sales of parts and vehicles; (2) Cost of sales for derivatives that economically hedged purchases of parts and vehicles; and (3) Cost of sales for derivatives that economically hedged foreign currency risk related to foreign currency denominated debt.

Other Derivatives

In September 2009 in connection with an agreement with American Axle, we received warrants to purchase 4 million shares of American Axle common stock exercisable at \$2.76 per share. The fair value of the warrants on the date of receipt was recorded as a Non-current asset. Gains and losses related to these warrants were recorded in Interest income and other non-operating income, net. At June 30, 2010 the fair value of these warrants was \$25 million.

On July 10, 2009 in connection with the 363 Sale, we issued warrants to MLC and the New VEBA to acquire shares of our common stock. These warrants are classified in equity and indexed to our common stock.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

In connection with the UST Loan Agreement, Old GM granted warrants to the UST for 122 million shares of its common stock exercisable at \$3.57 per share. Old GM recorded the warrants as a liability and recorded gains and losses related to this derivative in Interest income and other non-operating income, net. At June 30, 2009 Old GM determined that the fair value of the warrants issued to the UST was \$0 as a result of the Chapter 11 Proceedings. In connection with the 363 Sale, the UST returned the warrants and they were cancelled.

Fair Value of Nondesignated Derivatives

The following table summarizes the fair value of our nondesignated derivative instruments (dollars in millions):

	Successor									
	June 30, 2010				December 31, 2009					
		sset ives (a)(b)		ability <u>ives (c)(d)</u>		Asset tives (a)(b)		ability <u>tives (c)(d)</u>		
Current Portion										
Foreign currency exchange derivatives	\$	53	\$	355	\$	104	\$	568		
Commodity derivatives		24				11				
Total current portion	\$	77	\$	355	\$	115	\$	568		
Non–Current Portion										
Foreign currency exchange derivatives	\$	1	\$	15	\$	19	\$	146		
Other derivatives		25				25				
Total non-current portion	\$	26	\$	15	\$	44	\$	146		

(a) Recorded in Other current assets and deferred income taxes.

(b) Recorded in Other assets.

(c) Recorded in Accrued expenses.

(d) Recorded in Other liabilities and deferred income taxes.

Gains and (Losses) on Nondesignated Derivatives

The following schedule summarizes gains and (losses) recorded in earnings on nondesignated derivatives (dollars in millions):

	<u>Su</u> Three	ccessor	Predeo Three	cessor
	Months Ended June 30, 2010	Six Months Ended June 30. 2010	Months Ended June 30, 2009	Six Months Ended June 30, 2009
Foreign Currency Exchange Derivatives				
Sales	\$ —	\$ —	\$ (786)	\$ (726)
Cost of sales		_	(81)	(218)
Interest income and other non-operating income, net	(98)	30	4	90
Interest Rate Swap Derivatives	× /			
Interest expense			(52)	(38)
Commodity Derivative Contracts			~ /	× /
Cost of sales			(200)	(334)
Interest income and other non-operating income, net	(51)	(53)	`´	`´
Other Derivatives	. ,	~ /		
Interest income and other non-operating income, net	(8)	_	66	164
Total gains (losses) recorded in earnings	\$ (157)	\$ (23)	\$(1,049)	\$ (1,062)

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS ---- (Continued)

Net Change in Accumulated Other Comprehensive Income (Loss)

The following table summarizes the net change in Accumulated other comprehensive income (loss) related to cash flow hedging activities (dollars in millions):

	Pred	lecessor	
	Three		
	Months	~ ~ ~ ~	
	Ended June 30, 2009	Six Mo Ende <u>June 30,</u>	ed
Beginning net unrealized gain (loss) on derivatives Change in fair value	\$ (241)	\$	(490)
Reclassification to earnings	(168)		81
Ending net unrealized gain (loss) on derivatives	\$ (409)	\$	(409)

Note 17. Commitments and Contingencies

The following tables summarize information related to Commitments and contingencies (dollars in millions):

			Suc	cessor				
	 June 30, 2010		Dec			December 31, 2009		
	Maximum Liability Liability Recorded (a)		Liability <u>Recorded</u>				Lia	ximum ibility (a)
Guarantees								
Operating lease residual values (b)	\$ 	\$	71	\$		\$	79	
Supplier commitments and other related obligations	\$ 2	\$	190	\$	3	\$	43	
Ally Financial commercial loans (c)	\$ _	\$	29	\$	2	\$	167	
Other product-related claims	\$ 54	\$	553	\$	54	\$	553	

(a) Calculated as future undiscounted payments.

(b) Excludes residual support and risk sharing programs related to Ally Financial.

(c) At December 31, 2009 includes \$127 million related to a guarantee provided to Ally Financial in Brazil in connection with dealer floor plan financing. At December 31, 2009 this guarantee was collateralized by certificates of deposit of \$127 million purchased from Ally Financial to which we have title and which are recorded in Restricted cash and marketable securities. The purchase of the certificates of deposit was funded in part by contributions from dealers for which we have recorded a corresponding deposit liability of \$104 million, which was recorded in Other liabilities at December 31, 2009. In the three months ended June 30, 2010 this guarantee was terminated.

		Succ	cessor	
	June	30, 2010	Decemb	<u>per 31, 2009</u>
	<u>Liability</u>	<u>y Recorded</u>	<u>Liabilit</u>	<u>y Recorded</u>
Environmental liability (a)	\$	196	\$	190
Product liability	\$	280	\$	319
Liability related to contingently issuable shares	\$	162	\$	162
Other litigation–related liabilities (b)	\$	1,277	\$	1,192

(a) Of the amounts we recorded, \$29 million and \$28 million were recorded in Accrued expenses at June 30, 2010 and December 31, 2009, and the remainder was recorded in Other liabilities.

(b) Consists primarily of tax related litigation not recorded pursuant to ASC 740-10, "Income Taxes," (ASC 740-10) as well as various non-U.S. labor related items.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS --- (Continued)

Guarantees

We have provided guarantees related to the residual value of certain operating leases. These guarantees terminate in years ranging from 2011 to 2035. Certain leases contain renewal options.

We have agreements with third parties that guarantee the fulfilment of certain suppliers' commitments and other related obligations. These guarantees expire in years ranging from 2010 to 2013, or are ongoing or upon the occurrence of specific events.

In some instances, certain assets of the party whose debt or performance we have guaranteed may offset, to some degree, the cost of the guarantee. The offset of certain of our payables to guaranteed parties may also offset certain guarantees, if triggered.

We also provide payment guarantees on commercial loans made by Ally Financial and outstanding with certain third parties, such as dealers or rental car companies. These guarantees either expire in years ranging from 2010 to 2029 or are ongoing. We determined the value ascribed to the guarantees to be insignificant based on the credit worthiness of the third parties. Refer to Note 23 for additional information on guarantees that we provide to Ally Financial.

In connection with certain divestitures, we have provided guarantees with respect to benefits to be paid to former employees relating to pensions, postretirement health care and life insurance. Aside from indemnifications and guarantees related to Delphi, as subsequently discussed, it is not possible to estimate our maximum exposure under these indemnifications or guarantees due to the conditional nature of these obligations. No amounts have been recorded for such obligations as they are not probable or estimable at this time.

In addition to the guarantees and indemnifying agreements mentioned previously, we periodically enter into agreements that incorporate indemnification provisions in the normal course of business. Due to the nature of these agreements, the maximum potential amount of future undiscounted payments to which we may be exposed cannot be estimated. No amounts have been recorded for such indemnifies as our obligations under them are not probable or estimable at this time.

In addition to the guarantees and indemnifying agreements previously discussed, we indemnify dealers for certain product liability related claims as subsequently discussed.

With respect to other product–related claims involving products manufactured by certain joint ventures, we believe that costs incurred are adequately covered by recorded accruals. These guarantees expire in 2022.

Environmental

Automotive operations, like operations of other companies engaged in similar businesses, are subject to a wide range of environmental protection laws, including laws regulating air emissions, water discharges, waste management and environmental remediation. We are in various stages of investigation or remediation for sites where contamination has been alleged. We are involved in a number of actions to remediate hazardous wastes as required by federal and state laws. Such statutes require that responsible parties fund remediation actions regardless of fault, legality of original disposal or ownership of a disposal site.

The future effect of environmental matters, including potential liabilities, is often difficult to estimate. An environmental reserve is recorded when it is probable that a liability has been incurred and the amount of the liability can be reasonably estimated. This practice is followed whether the claims are asserted or unasserted. Liabilities have been recorded for the expected costs to be paid over the periods of remediation for the applicable sites, which typically range from five to 30 years.

For many sites, the remediation costs and other damages for which we ultimately may be responsible may vary because of uncertainties with respect to factors such as the connection to the site or to materials there, the involvement of other potentially responsible parties, the application of laws and other standards or regulations, site conditions, and the nature and scope of investigations, studies and remediation to be undertaken (including the technologies to be required and the extent, duration and success of remediation).

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The final outcome of environmental matters cannot be predicted with certainty at this time. Accordingly, it is possible that the resolution of one or more environmental matters could exceed the amounts accrued in an amount that could be material to our financial condition and results of operations. At June 30, 2010 we estimate that remediation losses could range from \$140 million to \$375 million.

Product Liability

With respect to product liability claims involving our and Old GM's products, it is believed that any judgment against us for actual damages will be adequately covered by our recorded accruals and, where applicable, excess insurance coverage. Although punitive damages are claimed in some of these lawsuits, and such claims are inherently unpredictable, accruals incorporate historic experience with these types of claims. Liabilities have been recorded for the expected cost of all known product liability claims plus an estimate of the expected cost for all product liability claims that have already been incurred and are expected to be filed in the future for which we are self-insured. These amounts were recorded within Accrued expenses and Other liabilities and deferred income taxes and exclude Old GM's asbestos claims, which are discussed separately.

In accordance with our assumption of dealer sales and service agreements, we indemnify dealers for certain product liability related claims. Our experience related to dealer indemnification obligations where we are not a party arising from incidents prior to July 10, 2009 is limited. We monitor actual claims experience for consistency with this estimate and make periodic adjustments as appropriate. Since July 10, 2009, the volume of product liability claims against us has been less than projected. In addition, as of this time due to the relatively short period for which we have been directly responsible for such claims, we have fewer pending matters than Old GM had in the past and than we expect in the future. Based on both management judgments concerning the projected number and value of both dealer indemnification obligations and product liability claims against us, we have estimated the associated liability. We have lowered our overall product liability estimate for dealer indemnifications and our exposure in the three months ended June 30, 2010 resulting in a \$132 million favorable adjustment driven primarily by a lower than expected volume of claims. We expect our product liability reserve to rise in future periods as new claims arise from incidents subsequent to July 9, 2009.

Liability Related to Contingently Issuable Shares

We are obligated to issue additional shares of our common stock to MLC (Adjustment Shares) in the event that allowed general unsecured claims against MLC, as estimated by the Bankruptcy Court, exceed \$35.0 billion. The maximum Adjustment Shares equate to 2% (or 10 million shares) of our common stock. The number of Adjustment Shares to be issued is calculated based on the extent to which estimated general unsecured claims exceed \$35.0 billion with the maximum number of Adjustment Shares issued if estimated general unsecured claims total \$42.0 billion or more. We determined that it is probable that general unsecured claims allowed against MLC will ultimately exceed \$35.0 billion by at least \$2.0 billion. In the circumstance where estimated general unsecured claims equal \$37.0 billion, under the terms of the Purchase Agreement, we would be required to issue 2.9 million Adjustment Shares to MLC.

Other Litigation-Related Liability

Various legal actions, governmental investigations, claims and proceedings are pending against us or MLC including a number of shareholder class actions, bondholder class actions and class actions under the Employee Retirement Income Security Act of 1974, as amended, and other matters arising out of alleged product defects, including asbestos-related claims; employment-related matters; governmental regulations relating to safety, emissions, and fuel economy; product warranties; financial services matters; dealer, supplier and other contractual relationships; tax-related matters not recorded pursuant to ASC 740–10 and environmental matters.

With regard to the litigation matters discussed in the previous paragraph, reserves have been established for matters in which it is believed that losses are probable and can be reasonably estimated, the majority of which are associated with tax-related matters not recorded pursuant to ASC 740–10 as well as various non–U.S. labor–related matters. Tax related matters not recorded pursuant to ASC 740–10 are items being litigated globally pertaining to value added taxes, customs, duties, sales, property taxes and other non–income tax related tax exposures. The various non–U.S. labor–related matters include claims from current and former employees related to

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

alleged unpaid wage, benefit, severance, and other compensation matters. Certain South American administrative and legal proceedings are tax-related and may require that we deposit funds in escrow, such escrow deposits may range from \$725 million to \$900 million. Some of the matters may involve compensatory, punitive, or other treble damage claims, environmental remediation programs, or sanctions, that if granted, could require us to pay damages or make other expenditures in amounts that could not be reasonably estimated at June 30, 2010. We believe that appropriate accruals have been established for such matters based on information currently available. Reserves for litigation losses are recorded in Accrued expenses and Other liabilities and deferred income taxes. These accrued reserves represent the best estimate of amounts believed to be our and Old GM's liability in a range of expected losses. Litigation is inherently unpredictable, however, and unfavorable resolutions could occur. Accordingly, it is possible that an adverse outcome from such proceedings could exceed the amounts accrued in an amount that could be material to our or Old GM's financial condition, results of operations and cash flows in any particular reporting period.

Asbestos-Related Liability

In connection with the 363 Sale, MLC retained substantially all of the asbestos-related claims outstanding. At June 30, 2009 Old GM's liability recorded for asbestos-related matters was \$636 million.

Like most automobile manufacturers, Old GM had been subject to asbestos-related claims in recent years. These claims primarily arose from three circumstances:

- A majority of these claims sought damages for illnesses alleged to have resulted from asbestos used in brake components;
- Limited numbers of claims have arisen from asbestos contained in the insulation and brakes used in the manufacturing of locomotives; and
- Claims brought by contractors who allege exposure to asbestos-containing products while working on premises Old GM owned.

Old GM had resolved many of the asbestos-related cases over the years for strategic litigation reasons such as avoiding defense costs and possible exposure to excessive verdicts. The amount expended on asbestos-related matters in any period depended on the number of claims filed, the amount of pre-trial proceedings and the number of trials and settlements in the period.

Old GM recorded the estimated liability associated with asbestos personal injury claims where the expected loss was both probable and could reasonably be estimated. Old GM retained a firm specializing in estimating asbestos claims to assist Old GM in determining the potential liability for pending and unasserted future asbestos personal injury claims. The analyses relied on and included the following information and factors:

- A third party forecast of the projected incidence of malignant asbestos-related disease likely to occur in the general population of individuals occupationally exposed to asbestos;
- Old GM's Asbestos Claims Experience, based on data concerning claims filed against Old GM and resolved, amounts paid, and the nature of the asbestos-related disease or condition asserted during approximately the four years prior;
- The estimated rate of asbestos-related claims likely to be asserted against MLC in the future based on Old GM's Asbestos Claims Experience and the projected incidence of asbestos-related disease in the general population of individuals occupationally exposed to asbestos;
- The estimated rate of dismissal of claims by disease type based on Old GM's Asbestos Claims Experience; and
- The estimated indemnity value of the projected claims based on Old GM's Asbestos Claims Experience, adjusted for inflation.

Old GM reviewed a number of factors, including the analyses provided by the firm specializing in estimating asbestos claims in order to determine a reasonable estimate of the probable liability for pending and future asbestos-related claims projected to be asserted over the next 10 years, including legal defense costs. Old GM monitored actual claims experience for consistency with this estimate and made periodic adjustments as appropriate.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

Old GM believed that the analyses were based on the most relevant information available combined with reasonable assumptions, and that Old GM may prudently rely on their conclusions to determine the estimated liability for asbestos-related claims. Old GM noted, however, that the analyses were inherently subject to significant uncertainties. The data sources and assumptions used in connection with the analyses may not prove to be reliable predictors with respect to claims asserted against Old GM. Old GM's experience in the past included substantial variation in relevant factors, and a change in any of these assumptions — which include the source of the claiming population, the filing rate and the value of claims — could significantly increase or decrease the estimate. In addition, other external factors such as legislation affecting the format or timing of litigation, the actions of other entities sued in asbestos personal injury actions, the distribution of assets from various trusts established to pay asbestos claims and the outcome of cases litigated to a final verdict could affect the estimate.

GME Planned Spending Guarantee

As part of our Opel/Vauxhall restructuring plan, agreed to with European labor representatives, we have committed in principle to achieve specified milestones associated with planned spending from 2011 to 2014 on certain product programs. If we fail to accomplish the requirements set out under the expected final agreement, we will be required to pay certain amounts up to Euro 265 million for each of those years, and/or interest on those amounts, to our employees. Management has the intent and believes it has the ability to meet the requirements under the agreement, which we expect to be finalized during the three months ended September 30, 2010.

Delphi Corporation

Benefit Guarantee

In 1999 Old GM spun-off Delphi Automotive Systems Corporation, which became Delphi. At the time of the spin-off, employees of Delphi Automotive Systems Corporation became employees of Delphi. As part of the separation agreements, Delphi assumed the pension and other postretirement benefit obligations for the transferred U.S. hourly employees who retired after October 1, 2000. Additionally at the time of the spin-off, Old GM entered into the Delphi Benefit Guarantee Agreements with the UAW, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers — Communication Workers of America (IUE-CWA) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW). The Delphi Benefit Guarantee Agreements provided that in the event that Delphi or its successor companies ceased doing business, terminated its pension plan or ceased to provide credited service or OPEB benefits at certain levels due to financial distress, Old GM to provide the corresponding benefits for certain covered employees at the required level and to the extent the pension benefits Delphi and the PBGC provided fall short of the guaranteed amount.

In October 2005 Old GM received notice from Delphi it would become obligated to provide benefits pursuant to the Delphi Benefit Guarantee Agreements in connection with Delphi's commencement in October 2005 of Chapter 11 proceedings under the Bankruptcy Code. In June 2007 Old GM entered into a memorandum of understanding with Delphi and the UAW (Delphi UAW MOU) that included terms relating to the consensual triggering, under certain circumstances, of the Delphi Benefit Guarantee Agreements as well as additional terms relating to Delphi's restructuring. Under the Delphi UAW MOU, Old GM also agreed to pay for certain health care costs of covered Delphi retirees and their beneficiaries in order to provide a level of benefits consistent with those provided to Old GM's retirees and their beneficiaries, if Delphi terminated OPEB benefits. In August 2007 Old GM also entered into memoranda of understanding with Delphi and the IUE–CWA and with Delphi and the USW containing terms consistent with the comprehensive Delphi UAW MOU.

Delphi-GM Settlement Agreements

In September 2007 and as amended at various times through September 2008, Old GM entered into agreements with Delphi. In September 2008 Old GM also entered into agreements with Delphi and the UAW, IUE–CWA and the USW. All of these agreements were intended to resolve, among other items, outstanding issues between Delphi and Old GM, govern certain aspects of Old GM's ongoing commercial relationship with Delphi, address a limited transfer of pension assets and liabilities, and address the triggering of the Delphi Benefit Guarantee Agreements. In September 2008 these agreements became effective.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Upon consummation of the DMDA, these agreements were terminated with limited exceptions.

Delphi Liquidity Support Agreements

Beginning in 2008 Old GM entered into various agreements and amendments to such agreements to advance a maximum of \$950 million to Delphi, subject to Delphi's continued satisfaction of certain conditions and milestones. Old GM also agreed to accelerate payment of North American payables to Delphi at various amounts up to a maximum of \$300 million. As of June 30, 2009 we had advanced \$700 million under these agreements. Upon consummation of the DMDA, we waived our rights to advanced amounts and accelerated payments of \$850 million that became consideration to Delphi and other parties under the DMDA.

Delphi Master Disposition Agreement

In October 2009 we consummated the transaction contemplated by the DMDA with Delphi, New Delphi, Old GM, and other parties to the DMDA, as described in Note 4. Upon consummation of the DMDA, the Delphi–GM Settlement Agreements and Delphi liquidity support agreements discussed previously were terminated with limited exceptions, and we and Delphi waived all claims against each other. We maintain certain obligations relating to Delphi hourly employees to provide the difference between pension benefits paid by the PBGC according to regulation and those originally guaranteed by Old GM under the Delphi Benefit Guarantee Agreements.

The DMDA established our ongoing commercial relationship with New Delphi. This included the continuation of all existing Delphi supply agreements and purchase orders for GMNA to the end of the related product program and New Delphi agreed to provide us with access rights designed to allow us to operate specific sites on defined triggering events to provide us with protection of supply. In addition, we and a class of New Delphi investors agreed to establish a secured delayed draw term loan facility for New Delphi, with each committing to provide loans of up to \$500 million.

Delphi Charges

In the three and six months ended June 30, 2009 Old GM recorded charges of \$9 million and \$284 million. These charges, which were recorded in Cost of sales and Other expenses, net, reflected the best estimate of obligations associated with the various Delphi agreements.

Note 18. Income Taxes

For interim income tax reporting we estimate our annual effective tax rate and apply it to year-to-date ordinary income/loss. The tax effect of unusual or infrequently occurring items, including changes in judgment about valuation allowances and effects of changes in tax laws or rates, are reported in the interim period in which they occur. Tax jurisdictions with a projected or year-to-date loss for which a tax benefit cannot be realized are excluded. The effective tax rate fluctuated in the six months ended June 30, 2010 primarily as a result of changes in the mix of earnings in valuation allowance and non-valuation allowance jurisdictions.

In the three months ended June 30, 2010 income tax expense of \$361 million primarily resulted from income tax provisions for profitable entities. In the six months ended June 30, 2010 income tax expense of \$870 million primarily resulted from income tax provisions for profitable entities and a taxable foreign currency gain in Venezuela. As a result of the official devaluation of the Venezuelan currency in the six months ended June 30, 2010, we recorded income tax expense related to the foreign currency exchange gain on the net monetary position of our foreign currency denominated assets.

In the three and six months ended June 30, 2009 income tax benefit of \$445 million and \$559 million primarily resulted from resolution of a U.S. and Canada transfer pricing matter and other discrete items offset by income tax provisions for profitable entities.

Most of the tax attributes generated by Old GM and its domestic and foreign subsidiaries (net operating loss carryforwards and various income tax credits) survived the Chapter 11 Proceedings and we expect to use these tax attributes to reduce future tax liabilities. The ability to utilize certain of the U.S. tax attributes in future tax periods could be limited by Section 382(a) of the Internal

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS ---- (Continued)

Revenue Code. In Germany, we have net operating loss carryforwards for corporate income tax and trade tax purposes. We have received a ruling from the German tax authorities confirming the availability of those losses under the prerequisite that an agreement with the unions as to employment costs will be achieved. This ruling is subject to the outcome of infringement proceedings initiated by the European Union with respect to the German law on which the ruling is based. If the European Union proceedings have a positive outcome we will be able to utilize those losses despite the reorganizations that have taken place in Germany in 2008 and 2009. In Australia, we have net operating loss carryforwards which are now subject to meeting an annual "Same Business Test" requirement. We will assess our ability to utilize these carryforward losses annually.

We file and Old GM filed income tax returns in multiple jurisdictions, which are subject to examination by taxing authorities throughout the world. We have open tax years from 1999 to 2009 with various significant tax jurisdictions. These open years contain matters that could be subject to differing interpretations of applicable tax laws and regulations as they relate to the amount, timing or inclusion of revenue and expenses or the sustainability of income tax credits for a given audit cycle. Given the global nature of our operations, there is a risk that transfer pricing disputes may arise. We have continuing responsibility for Old GM's open tax years. We record, and Old GM previously recorded, a tax benefit only for those positions that meet the more likely than not standard.

In May 2009 the U.S. and Canadian governments resolved a transfer pricing matter with Old GM, which covered the tax years 2001 through 2007. In the three months ended June 30, 2009 this resolution resulted in a tax benefit of \$692 million and interest income of \$229 million. Final administrative processing of the Canadian case closing occurred in late 2009, and final administrative processing of the U.S. case closing occurred in February 2010.

In June 2010, a Mexican income tax audit covering the 2002 and 2003 years was concluded and an assessment of \$159 million, including tax, interest and penalties was issued. We do not agree with the assessment and intend to appeal. We believe we have adequate reserves established and collection of the assessment will be suspended during the appeal period and any subsequent proceedings through U.S. and Mexican competent authorities.

At June 30, 2010, it is not possible to reasonably estimate the expected change to the total amount of unrecognized tax benefits over the next 12 months.

Note 19. Fair Value Measurements

Fair Value Measurements

A three-level valuation hierarchy is used for fair value measurements. The three-level valuation hierarchy is based upon observable and unobservable inputs. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect market assumptions based on the best evidence available. These two types of inputs create the following fair value hierarchy:

- Level 1 Quoted prices for *identical* instruments in active markets;
- Level 2 Quoted prices for *similar* instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations whose significant inputs are observable; and
- Level 3 Instruments whose significant inputs are *unobservable*.

Financial instruments are transferred in and/or out of Level 3 in the valuation hierarchy based upon the significance of the unobservable inputs to the overall fair value measurement. Level 3 financial instruments typically include, in addition to the unobservable inputs, observable components that are validated to external sources.

Securities are classified in Level 1 of the valuation hierarchy when quoted prices in an active market for identical securities are available. If quoted market prices are not available, fair values of securities are determined using prices from a pricing vendor, pricing models, quoted prices of securities with similar characteristics or discounted cash flow models and are generally classified in Level 2 of the valuation hierarchy. Our pricing vendor utilizes industry-standard pricing models that consider various inputs, including

GENERAL MOTORS COMPANY AND SUBSIDIARIES

benchmark yields, reported trades, broker/dealer quotes, issuer spreads and benchmark securities as well as other relevant economic measures. Securities are classified in Level 3 of the valuation hierarchy in certain cases where there are unobservable inputs to the valuation in the marketplace.

Annually, we conduct a review of our pricing vendor. This review includes discussion and analysis of the inputs used by the pricing vendor to provide prices for the types of securities we hold. These inputs included interest rate yields, bid/ask quotes, prepayment speeds and prices for comparable securities. Based on our review we believe the prices received from our pricing vendor are a reliable representation of exit prices.

All derivatives are recorded at fair value. Internal models are used to value a majority of derivatives. The models use, as their basis, readily observable market inputs, such as time value, forward interest rates, volatility factors, and current and forward market prices for commodities and foreign currency exchange rates. Level 2 of the valuation hierarchy includes certain foreign currency derivatives, commodity derivatives and warrants. Derivative contracts that are valued based upon models with significant unobservable market inputs, primarily estimated forward and prepayment rates, are classified in Level 3 of the valuation hierarchy. Level 3 of the valuation hierarchy includes warrants issued prior to July 10, 2009 to the UST, certain foreign currency derivatives, certain long–dated commodity derivatives and interest rate swaps with notional amounts that fluctuated over time.

The valuation of derivative liabilities takes into account our and Old GM's nonperformance risk. For the periods presented after June 1, 2009, our and Old GM's nonperformance risk was not observable through the credit default swap market as a result of the Chapter 11 Proceedings for Old GM and the lack of traded instruments for us. As a result, an analysis of comparable industrial companies was used to determine the appropriate credit spread which would be applied to us by market participants. In these periods, all derivatives whose fair values contained a significant credit adjustment based on our nonperformance risk were classified in Level 3 of the valuation hierarchy.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Fair Value Measurements on a Recurring Basis

The following tables summarize the financial instruments measured at fair value on a recurring basis (dollars in millions):

	Successor						
	Fair Value Measurements on a Recurring Basis June 30, 2010						at
	evel 1		Level 2		evel 3	11	otal
Assets							
Cash equivalents							
United States government and agency	\$ 	\$		\$			2,456
Certificates of deposit			3,719				3,719
Money market funds	2,699						2,699
Commercial paper	—		7,293				7,293
Marketable securities							
Trading securities							
Equity	16		14				30
United States government and agency	—		12				12
Mortgage and asset-backed			29				29
Foreign government	_		30		_		30
Corporate debt			29				29
Available–for–sale securities							
United States government and agency			939				939
Certificates of deposit	_		1,326		_		1,326
Corporate debt			2,366				2,366
Restricted cash and marketable securities							
United States government and Agency			160				160
Government of Canada bonds	_		956		_		956
Money market funds	389						389
Other assets							
Equity	8		—				8
Derivatives							
Commodity			24				24
Foreign currency	_		25		29		54
Other	—		25				25
Total assets	\$ 3,112	\$	19,403	\$	29	\$2	2,544
Liabilities							
Other liabilities							
Options	\$ —	\$		\$	24	\$	24
Derivatives							
Foreign currency			3		367		370
Total liabilities	\$ 	\$	3	\$	391	\$	394

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS ---- (Continued)

	Successor Fair Value Measurements on a Recurring Basis a December 31, 2009					
	Level 1	Level 2	Level 3	Total		
Assets						
Cash equivalents						
United States government and agency	\$ —	\$ 580	\$ —	\$ 580		
Certificates of deposit		2,140		2,140		
Money market funds	7,487			7,487		
Commercial paper		969		969		
Marketable securities						
Trading securities						
Equity	15	17		32		
United States government and agency		17		17		
Mortgage and asset-backed		22		22		
Foreign government		24		24		
Corporate debt	—	29		29		
Available–for–sale securities						
United States government and agency		2		2		
Certificates of deposit		8		8		
Restricted cash	10.000					
Money market funds	12,662			12,662		
Government of Canada bonds	—	955		955		
Other assets	10			10		
Equity	13			13		
Derivatives						
Commodity	—	11		11		
Foreign currency		90	33	123		
Other	_	25		25		
Total assets	\$ 20,177	\$ 4,889	\$ 33	\$25,099		
Liabilities						
Derivatives						
Foreign currency	\$ —	\$9	\$ 705	\$ 714		
Total liabilities	\$ —	\$ 9	\$ 705	\$ 714		

Fair Value Measurements on a Recurring Basis using Level 3 Inputs

In the three months ended June 30, 2009 Old GM's mortgage and asset-backed securities were transferred from Level 3 to Level 2 as the significant inputs used to measure fair value and quoted prices for similar instruments were determined to be observable in an active market.

For periods presented after June 1, 2009 our and Old GM's nonperformance risk was not observable through the credit default swap market as a result of the Chapter 11 Proceedings for Old GM and the lack of traded instruments for us. As a result, foreign currency derivatives with a fair market value of \$1.6 billion were transferred from Level 2 to Level 3 in the three months ended June 30, 2009.

In the six months ended June 30, 2009 Old GM determined the credit profile of certain foreign subsidiaries was equivalent to Old GM's nonperformance risk which was observable through the credit default swap market and bond market based on prices for recent trades. Accordingly, foreign currency derivatives with a fair value of \$2.1 billion were transferred from Level 3 into Level 2 in the six months ended June 30, 2009.

						Success	or					
					Level 3	Financial Asse		iabilities				
	ba Seci	rtgage– icked urities (a)	Deri	modity vatives, et (b)	F Cu	oreign Irrency vatives (c)		ons (d)	Secu	ther irities (a)		tal Net bilities
Balance at April 1, 2010	\$	(u)	\$	<u></u>	\$	(355)	\$	(21)	\$		\$	(376)
Total realized/unrealized gains (losses) Included in earnings Included in Accumulated other comprehensive income	Ψ		Ψ	_	Ψ	(82)	Ψ	(21)	ψ	_	Ψ	(85)
(loss)						20		_				20
Purchases, issuances, and settlements Transfer in and/or out of Level 3				_		79		_		_		79
Balance at June 30, 2010	\$		\$	_	\$	(338)	\$	(24)	\$		\$	(362)
Amount of total gains and (losses) in the period included in earnings attributable to the change in unrealized gains or (losses) relating to assets still held at the reporting date	\$	_	\$	_	\$	(82)	\$	(3)	\$	_	\$	(85)
						Success	or					
					Level 3 l	Financial Asse	ts and L	iabilities				
	ba Secu	tgage– cked irities (a)	Deriv	modity /atives, t (b)	Cu	oreign rrency zatives (c)	Onfi	ions (d)	Secu	ther irities (a)		tal Net bilities
Balance at January 1, 2010	\$	<u> </u>	\$	<u>. (v)</u>	\$	(672)	\$	<u></u>	\$	(u)	\$	(672)
Total realized/unrealized gains (losses)	φ		ψ		ψ		φ	(2)	ψ		φ	()
Included in earnings Included in Accumulated other comprehensive income				_		73		(3)				70
(loss)				_		3						3
Purchases, issuances, and settlements Transfer in and/or out of Level 3						258		(21)		_		237
Balance at June 30, 2010	\$	_	\$	_	\$	(338)	\$	(24)	\$	_	\$	(362)
Amount of total gains and (losses) in the period included in earnings attributable to the change in unrealized gains or (losses) relating to assets still held at the reporting date	\$	_	\$	_	\$	59	\$	(3)	\$		\$	56
						Predecess	sor					

	Predecessor											
	Level 3 Financial Assets and Liabilities											
	ba Secu	tgage– icked urities (a)	Deri	umodity vatives, et (b)	С	Foreign urrency ivatives (c)		JST <u>rant (a)</u>	Secu	ther rities (a)		al Net bilities
Balance at April 1, 2009	\$	44	\$	(13)	\$		\$	(66)	\$	14	\$	(21)
Total realized/unrealized gains (losses)												
Included in earnings		(1)		11				66		(3)		73
Included in Accumulated other comprehensive income (loss)		_		_		_				_		
Purchases, issuances, and settlements		(10)		2						(6)		(14)
Transfer in and/or out of Level 3		(33)		_		(1,559)				(5)	(1,597)
Balance at June 30, 2009	\$	_	\$	_	\$	(1,559)	\$	—	\$		\$ (1,559)
Amount of total gains and (losses) in the period included in earnings attributable to the change in unrealized gains or (losses) relating to assets still held at the reporting date	\$	_	\$	_	\$	_	\$		\$		\$	

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS ---- (Continued)

	Predecessor Level 3 Financial Assets and Liabilities											
	ba Secu	tgage– cked ırities (a)	Deriv	modity vatives, et (b)	I C	Foreign urrency ivatives (c)		UST rrant (a)	Secu	ther crities	Total Net Liabilities	
Balance at January 1, 2009	\$	49	\$	(17)	\$	(2,144)	\$	(164)	\$	17	\$ (2,259)	
Total realized/unrealized gains (losses)												
Included in earnings		(2)		13				164		(5)	170	
Included in Accumulated other comprehensive income (loss)		_				_		_			_	
Purchases, issuances, and settlements		(14)		4						(7)	(17)	
Transfer in and/or out of Level 3		(33)		—		585		—		(5)	<u>5</u> 47	
Balance at June 30, 2009	\$	_	\$	_	\$	(1,559)	\$	_	\$		\$ (1,559)	
Amount of total gains and (losses) in the period included in earnings attributable to the change in unrealized gains or (losses) relating to assets still held at the reporting date	\$	_	\$		\$		\$	_	\$	_	\$ —	

(a) Realized gains (losses) and other than temporary impairments on marketable securities (including the UST warrants outstanding until the closing of the 363 Sale) are recorded in Interest income and other non-operating income, net.

(b) Prior to July 10, 2009 realized and unrealized gains (losses) on commodity derivatives were recorded in Cost of sales. Changes in fair value are attributable to changes in base metal and precious metal prices. Beginning July 10, 2009 realized and unrealized gains (losses) on commodity derivatives are recorded in Interest income and other non-operating income, net.

(c) Prior to July 10, 2009 realized and unrealized gains (losses) on foreign currency derivatives were recorded in the line item associated with the economically hedged item. Beginning July 10, 2009 realized and unrealized gains (losses) on foreign currency derivatives are recorded in Interest income and other non-operating income, net and foreign currency translation gains (losses) are recorded in Accumulated other comprehensive income (loss).

(d) Realized and unrealized gains (losses) on options are recorded in Interest income and other non-operating income, net.

Short-Term and Long-Term Debt

We determined the fair value of debt based on a discounted cash flow model which used benchmark yield curves plus a spread that represented the yields on traded bonds of companies with comparable credit ratings.

The following table summarizes the carrying amount and estimated fair value of short-term and long-term debt, including capital leases, for which it is practicable to estimate fair value (dollars in millions):

		Successor				
	June	30, 2010	Decemb	ecember 31, 2009		
Carrying amount (a)	\$	8,161	\$	15,783		
Fair value (a)	\$	7,751	\$	16,024		

(a) Accounts and notes receivable, net and Accounts payable (principally trade) are not included because the carrying amount approximates fair value due to their short-term nature.

Ally Financial Common and Preferred Stock

At December 31, 2009 we estimated the fair value of our investment in Ally Financial common stock using a market approach based on the average price to tangible book value multiples of comparable companies to each of Ally Financial's Auto Finance, Commercial Finance, Mortgage, and Insurance operations to determine the fair value of the individual operations. These values were aggregated to estimate the fair value of Ally Financial common stock. At June 30, 2010 we estimated the fair value of Ally Financial

GENERAL MOTORS COMPANY AND SUBSIDIARIES

common stock using a market approach that applies the average price to tangible book value multiples of comparable companies to the consolidated Ally Financial tangible book value. This approach provides our best estimate of the fair value of our investment in Ally Financial common stock at June 30, 2010 due to Ally Financial's transition to a bank holding company and less readily available information with which to value Ally Financial's business operations individually.

We calculated the fair value of our investment in Ally Financial preferred stock using a discounted cash flow approach. The present value of the cash flows was determined using assumptions regarding the expected receipt of dividends on Ally Financial preferred stock and the expected call date.

The following table summarizes the carrying amount and estimated fair value of Ally Financial common and preferred stock (dollars in millions):

	Suc	Successor		
		Dec	ember	
	June 30, 2010	2	31, 2009	
Common stock				
Carrying amount	\$ 966	\$	970	
Fair value	\$ 1,138	\$	970	
Preferred stock				
Carrying amount	\$ 665	\$	665	
Fair value	\$ 1,035	\$	989	

Note 20. Restructuring and Other Initiatives

We have and Old GM had previously executed various restructuring and other initiatives, and we plan to execute additional initiatives in the future, if necessary, in order to preserve adequate liquidity, to align manufacturing capacity and other costs with prevailing global automotive sales and to improve the utilization of remaining facilities. Related charges are primarily recorded in Cost of sales and Selling, general and administrative expense.

Estimates of restructuring and other initiative charges are based on information available at the time such charges are recorded. Due to the inherent uncertainty involved, actual amounts paid for such activities may differ from amounts initially recorded. Accordingly, we may record revisions to previous estimates by adjusting previously established reserves.

Refer to Note 21 for asset impairment charges related to our restructuring initiatives.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (Continued)

GM

The following table summarizes restructuring reserves (excluding restructuring reserves related to dealer wind-down agreements) and charges by segment, including postemployment benefit reserves and charges in the three and six months ended June 30, 2010 (dollars in millions):

	Successor				
	GMNA	GMIO	GME	Total	
Balance at January 1, 2010	\$2,088	\$ 7	\$ 451	\$2,546	
Additions	7		273	280	
Interest accretion and other	10		32	42	
Payments	(243)	(3)	(37)	(283)	
Revisions to estimates	(104)			(104)	
Effect of foreign currency translation	24	—	(33)	(9)	
Balance at March 31, 2010	1,782	4	686	2,472	
Additions	21	_	207	228	
Interest accretion and other	10		28	38	
Payments	(178)	(2)	(257)	(437)	
Revisions to estimates	(1)	1	(8)	(8)	
Effect of foreign currency translation	(25)	—	(63)	(88)	
Balance at June 30, 2010 (a)	\$1,609	\$ 3	\$ 593	\$2,205	

(a) The remaining cash payments related to these restructuring reserves primarily relate to postemployment benefits to be paid.

GMNA

GMNA recorded charges, interest accretion and other and revisions to estimates that increased the restructuring reserves by \$30 million in the three months ended June 30, 2010 and decreased the restructuring reserves by \$57 million in the six months ended June 30, 2010. The increase was primarily related to a Canadian hourly separation program at the Oshawa Facility in the three months ended June 30, 2010 offset by increased production capacity utilization, which resulted in the recall of idled employees to fill added shifts at multiple production sites in the six months ended June 30, 2010.

GME

GME recorded charges, and interest accretion and other and revisions to estimates of \$227 million and \$532 million in the three and six months ended June 30, 2010 for separation programs primarily related to the following initiatives:

- Separation charges of \$169 million and \$353 million in the three and six months ended June 30, 2010 for a separation plan related to the closure of the Antwerp, Belgium facility which affected 1,300 employees in the three months ended June 30, 2010 and will affect 1,300 additional employees.
- Separation charges of \$72 million in the six months ended June 30, 2010 and revisions to estimates of \$8 million to decrease the reserve in the
 three months ended June 30, 2010 related to separation/layoff plans and an early retirement plan in Spain which will affect 1,200 employees.
- Separation charges of \$25 million in the three months ended June 30, 2010 related to a voluntary separation program in the United Kingdom.
- Separation charges of \$11 million and \$27 million and interest accretion and other of \$26 million and \$56 million in the three and six months ended June 30, 2010 related to previously announced programs in Germany.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (Continued)

Dealer Wind-downs

We market vehicles worldwide through a network of independent retail dealers and distributors. As part of achieving and sustaining long-term viability and the viability of our dealer network, we determined that a reduction in the number of GMNA dealerships was necessary. At June 30, 2010 there were approximately 5,900 dealers in GMNA compared to approximately 6,500 at December 31, 2009. Certain dealers in the U.S. that had signed wind-down agreements with us elected to file for reinstatement through a binding arbitration process. In response to the arbitration filings we offered certain dealers reinstatement contingent upon compliance with our core business criteria for operation of a dealership. At June 30, 2010 the arbitration process had been fundamentally resolved.

The following table summarizes GMNA's restructuring reserves related to dealer wind-down agreements in the three and six months ended June 30, 2010 (dollars in millions):

		Successor					
	<u>U.S.</u>	<u>Canada</u>	<u>Total</u>				
Balance at January 1, 2010	\$ 460	\$	41	\$ 501			
Additions	9		9	18			
Payments	(44)		(28)	(72)			
Effect of foreign currency translation			2	2			
Balance at March 31, 2010	425		24	449			
Revisions to estimates	(6)		_	(6)			
Payments	(140)		(4)	$(1\dot{4}\dot{4})$			
Effect of foreign currency translation			_	`_´			
Balance at June 30, 2010	\$ 279	\$	20	\$ 299			

Old GM

The following table summarizes Old GM's restructuring reserves (excluding restructuring reserves related to dealer wind-down agreements) and charges by segment, including postemployment benefit reserves and charges in the three and six months ended June 30, 2009 (dollars in millions):

	Predecessor				
	<u>GMNA</u>	<u>GMIO</u>	<u>GME</u>	<u>Total</u>	
Balance at January 1, 2009	\$2,456	\$ 58	\$468	\$2,982	
Additions	411	32	10	453	
Interest accretion and other	10		(3)	7	
Payments	(398)	(32)	(33)	(463)	
Revisions to estimates	(297)	9	_	(288)	
Effect of foreign currency translation	(28)	(2)	(28)	(58)	
Balance at March 31, 2009	2,154	65	414	2,633	
Additions	1,424	29	9	1,462	
Interest accretion and other	5		13	18	
Payments	(571)	(55)	(30)	(656)	
Revisions to estimates	(98)		_	(98)	
Effect of foreign currency translation	79	10	29	118	
Balance at June 30, 2009	\$2,993	\$ 49	\$435	\$3,477	

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

GMNA recorded charges, interest accretion and other and revisions to estimates that increased the restructuring reserves by \$1.3 billion and \$1.5 billion for the three and six months ended June 30, 2009 for separation programs related to the following initiatives:

- Supplemental Unemployment Benefit (SUB) and Transitional Support Program (TSP) related charges in the U.S. of \$707 million for the three
 months ended June 30, 2009 recorded as an additional liability determined by an actuarial analysis at the implementation of the SUB and TSP and
 related suspension of the JOBS Program, Old GM's job security provision in the collective bargaining agreement with the UAW to continue
 paying idled employees certain wages and benefits.
- Postemployment benefit charges in the U.S. of \$529 million and \$825 million for the three and six months ended June 30, 2009 related to 13,000 hourly employees who participated in the 2009 Special Attrition Programs.
- Separation charges of \$135 million and \$250 million for the three and six months ended June 30, 2009 for a U.S. salaried severance program to allow terminated employees to receive ongoing wages and benefits for up to 12 months.
- Revisions to estimates to decrease the reserve by \$98 million and \$395 million for the three and six months ended June 30, 2009 primarily related to \$335 million for the six months ended June 30, 2009 for the suspension of the JOBS Program and \$79 million and \$136 million for the three and six months ended June 30, 2009 for estimated future wages and benefits due to employees who participated in the 2009 Special Attrition Programs; offset by a net increase of \$86 million for the six months ended June 30, 2009 related to Canadian salaried workforce reductions and other restructuring initiatives in Canada.
- Postemployment benefit charges in Canada of \$38 million for the three months ended June 30, 2009 related to 380 hourly employees who
 participated in a special attrition program at the Oshawa Facility.

GMIO recorded charges and revisions to estimates of \$29 million and \$70 million in the three and six months ended June 30, 2009 primarily related to separation programs in South America and Australia.

GME recorded charges, interest accretion and other and revisions to estimates of \$22 million and \$29 million in the three and six months ended June 30, 2009 for separation programs primarily related to early retirement programs in Germany and previously announced programs in Germany and Belgium.

Dealer Wind-downs

The following table summarizes Old GM's restructuring reserves related to dealer wind-down agreements in the three months ended June 30, 2009 (dollars in millions):

	<u>Canada</u>
Balance at April 1, 2009	\$ —
Additions	120
Payments	_
Effect of foreign currency translation	—
Balance at June 30, 2009	\$ 120

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (Continued)

Note 21. Impairments

The following table summarizes impairment charges (dollars in millions):

	S	uccessor	Pr	Predecessor			
	Three Months Ended June 30, 2010	Six Months Ended June 30, 2010	Three Months Ended June 30, 2009	Six Months Ended June 30, 2009			
GMNA							
Product-specific tooling assets	\$ —	\$	\$ —	\$ 278			
Cancelled powertrain programs Equity and cost method investments (other than Ally Financial)				42 28			
Vehicles leased to rental car companies	—			11			
Total GMNA impairment charges	_			359			
GMIO							
Product-specific tooling assets		_	_	7			
Other long-lived assets	—	_	2	2			
Total GMIO impairment charges GME			2	9			
Product-specific tooling assets	_	_	237	237			
Vehicles leased to rental car companies	6	15	17	34			
Total GME impairment charges	6	15	254	271			
Corporate			2	11			
Other than temporary impairment charges on debt and equity securities (a) Automotive retail leases	_	_	3	11 16			
Total Corporate impairment charges	—	_	3	27			
Total impairment charges	\$6	\$ 15	\$ 259	\$ 666			

(a) Refer to Note 5 and Note 19 for additional information on marketable securities and financial instruments measured at fair value on a recurring basis. Other than temporary impairment charges on debt and equity securities were recorded in Interest income and other non-operating income, net.

The following tables summarize assets measured at fair value (all of which utilized Level 3 inputs) on a nonrecurring basis subsequent to initial recognition (dollars in millions):

GM

GME

		Successor								
		Fair V:	Fair Value Measurements Using							
	Three	Ouoted Prices in	Significant		Three Months					
	Months	Active Markets for Identical	Other	Significant	Ended					
	Ended		Observable	Unobservable	June 30,					
	June 30,	Assets	Inputs	Inputs	2010					
	<u>2010 (a)</u>	(Level 1)	(Level 2)	(Level 3)	Total Losses					
Vehicles leased to rental car companies	\$ 563	—		\$ 563	\$ (6)					

(a) Amounts represent the fair value measure during the period.

			Successor				
		Fair Value Measurements Using					
		0 ()	Significant		Six Months		
	Six Months	Quoted Prices in Active Markets	Other	Significant	Ended		
	Ended	for Identical	Observable	Unobservable	June 30,		
	June 30,	Assets	Inputs	Inputs	2010		
	<u>2010 (a)</u>	(Level 1)	(Level 2)	(Level 3)	Total Losses		
Vehicles leased to rental car companies	\$ 537-563			\$ 537-563	\$ (15)		

(a) Amounts represent the fair value range of measures during the period.

Vehicles leased to rental car companies were adjusted to their fair value at the time of impairment, resulting in impairment charges of \$6 million and \$15 million in the three and six months ended June 30, 2010. Fair value measurements utilized projected cash flows which primarily consist of vehicle sales at auction.

Old GM

		Predecessor Fair Value Measurements Using									
	Three Months Ended		Active Markets		Active Markets Observable		Three Months Active Markets Other Significant Ended for Identical Observable Unobservable			E	e Months Inded ne 30,
		e 30, 9 (a)	Assets (Level 1)	Inputs (Level 2)		puts evel 3)		2009 11 Losses			
Product-specific tooling assets	\$				\$		\$	(237)			
Other long-lived assets	\$				\$			(2)			
Vehicles leased to rental car companies	\$	543			\$	543		(17)			
Total							\$	(256)			

Total

Amounts represent the fair value measure during the period. (a)

	Predecessor											
		Fair Value Measurements Using						Months				
	Six Months Ended June 30, 2009 (a)						Quoted Prices in Active Markets for Identical	Significant Other Observable		nificant bservable	E	nded ne 30,
			Assets (Level 1)	Inputs (Level 2)		nputs Level 3)		2009 I <u>Losses</u>				
Product-specific tooling assets	\$	0-85	· · · · · ·	· · · · ·	\$	0-85	\$	(522)				
Cancelled powertrain programs	\$				\$			(42)				
Other long-lived assets	\$				\$			(2)				
Equity and cost method investments (other than Ally Financial)	\$				\$			(28)				
Vehicles leased to rental car companies	\$ 543	-2,057	_		\$54	3-2,057		(45)				
Automotive retail leases	\$	1,519	—	—	\$	1,519		(16)				
Total							\$	(655)				

Total

Amounts represent the fair value measure (or range of measures) during the period. (a)

GMNA

Product-specific tooling assets were adjusted to their fair value at the time of impairment, resulting in impairment charges of \$278 million in the six months ended June 30, 2009. Fair value measurements utilized projected cash flows, discounted at a rate commensurate with the perceived business risks related to the assets involved.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Cancelled powertrain programs were adjusted to their fair value at the time of impairment, resulting in impairment charges of \$42 million in the six months ended June 30, 2009. Fair value measurements utilized projected cash flows, discounted at a rate commensurate with the perceived business risks related to the assets involved.

CAMI Automotive, Inc. (CAMI), at the time an equity method investee, was adjusted to its fair value, resulting in an impairment charge of \$28 million in the six months ended June 30, 2009. The fair value measurement utilized projected cash flows discounted at a rate commensurate with the perceived business risks related to the investment. In March 2009 Old GM determined that due to changes in contractual arrangements, CAMI became a VIE and Old GM was the primary beneficiary, and therefore CAMI was consolidated. In December 2009 we acquired the remaining noncontrolling interest of CAMI from Suzuki for \$100 million increasing our ownership interest from 50% to 100%. As a result of this acquisition, CAMI became a wholly–owned subsidiary.

Vehicles leased to rental car companies were adjusted to their fair value at the time of impairment, resulting in impairment charges of \$11 million in the six months ended June 30, 2009. Fair value measurements utilized projected cash flows which primarily consist of vehicle sales at auction.

GMIO

Product-specific tooling assets were adjusted to their fair value at the time of impairment, resulting in impairment charges of \$7 million in the six months ended June 30, 2009. Fair value measurements utilized projected cash flows, discounted at a rate commensurate with the perceived business risks related to the assets involved.

Other long-lived assets were adjusted to their fair value at the time of impairment, resulting in impairment charges of \$2 million in the three months ended June 30, 2009. Fair value measurements utilized projected cash flows, discounted at a rate commensurate with the perceived business risks related to the assets involved.

GME

Product-specific tooling assets were adjusted to their fair value at the time of impairment, resulting in impairment charges of \$237 million in the three months ended June 30, 2009. Fair value measurements utilized projected cash flows, discounted at a rate commensurate with the perceived business risks related to the assets involved.

Vehicles leased to rental car companies were adjusted to their fair value at the time of impairment, resulting in impairment charges of \$17 million and \$34 million in the three and six months ended June 30, 2009. Fair value measurements utilized projected cash flows which primarily consist of vehicle sales at auction.

Corporate

Automotive retail leases were adjusted to their fair value at the time of impairment, resulting in impairment charges of \$16 million in the six months ended June 30, 2009. Fair value measurements utilized discounted projected cash flows from lease payments and anticipated future auction proceeds.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Contract Cancellations

The following table summarizes contract cancellation charges primarily related to the cancellation of product programs (dollars in millions):

	Successor			_	redecessor	decessor		
	Th	ree				Three		
	Mo	nths			I	Ionths		
	En		Six N	Ionths		Ended	Six	Months
	Jun 20			ded 0, 2010		une 30, 2009		Ended e <u>30, 2009</u>
GMNA	\$	5	\$	36	\$	29	\$	157
GMIO		_						8
GME						4		12
Total contract cancellation charges	\$	5	\$	36	\$	33	\$	177

Note 22. Earnings (Loss) Per Share

Basic and diluted earnings (loss) per share have been computed by dividing Net income (loss) attributable to common stockholders by the weighted average number of shares outstanding in the period.

The following table summarizes basic and diluted earnings (loss) per share (in millions, except per share amounts):

	Successor				Predecessor			
	Three Months Er Ended Ju			Months nded une , 2010	ded Three Months ne Ended			x Months Ended June 80, 2009
Basic								
Net income (loss) attributable to common stockholders (a)	\$	2.67	\$	4.40	\$	(21.12)	\$	(30.91)
Weighted-average common shares outstanding		500		500		611		611
Diluted								
Net income (loss) attributable to common stockholders (a)	\$	2.55	\$	4.21	\$	(21.12)	\$	(30.91)
Weighted-average common shares outstanding		522		522		611		611

(a) The three and six months ended June 30, 2010 includes accumulated but undeclared dividends of \$34 million on our Series A Preferred Stock, which decreases Net income attributable to common stockholders.

GM

In the three and six months ended June 30, 2010 diluted earnings per share included the potential effect of the assumed exercise of certain warrants to acquire shares of our common stock. The number of shares of common stock, assuming the exercise of the warrants, that were excluded in the computation of diluted earnings per share under the treasury stock method was 68 million in the three and six months ended June 30, 2010. The number of shares of common stock, assuming the exercise of the warrants, that were excluded in the computation of shares of a stock, assuming the exercise of the warrants, that were excluded in the computation of diluted earnings per share under the treasury stock method was 22 million in the three and six months ended June 30, 2010. The number of shares of common stock that were excluded in the computation of diluted earnings per share under the treasury stock method was 15 million in the three and six months ended June 30, 2010.

At June 30, 2010 the Adjustment Shares were excluded from the computation of basic and diluted earnings per share as the condition that would result in the issuance of the Adjustment Shares was not satisfied. At June 30, 2010 we believe it is probable that these claims will exceed \$35.0 billion, but it is still possible they will not. The Adjustment Shares may, however, be dilutive in the future. Refer to Note 17 for additional information on the Adjustment Shares.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

We have granted restricted stock units and salary stock to certain global executives. As these awards will be payable in cash if settled prior to six months after a completion of a successful initial public offering, the restricted stock and salary stock awards are excluded from the computation of diluted earnings per share. At June 30, 2010 6 million restricted stock units were outstanding.

Old GM

Due to Old GM's net losses in the three and six months ended June 30, 2009, the assumed exercise of stock options and warrants had an antidilutive effect and therefore was excluded from the computation of diluted loss per share. The number of such options and warrants not included in the computation of diluted loss per share was 208 million in the three and six months ended June 30, 2009.

No shares potentially issuable to satisfy the in-the-money amount of Old GM's convertible debentures have been included in the computation of diluted income (loss) per share in the three and six months ended June 30, 2009 as the conversion options in various series of convertible debentures were not in-the-money.

Note 23. Transactions with Ally Financial

Old GM entered into various operating and financing arrangements with Ally Financial. In connection with the 363 Sale, we assumed the terms and conditions of these agreements as more fully discussed in our 2009 Form 10–K. The following tables describe the financial statement effects of and maximum obligations under these agreements (dollars in millions):

	Su	cessor	
	June 30, 2010	December 31, 2009	
Operating lease residuals			
Residual support (a)			
Liabilities (receivables) recorded	\$ (18)	\$ 369	
Maximum obligation	\$ (18) \$ 881	\$ 1,159	
Risk sharing (a)			
Liabilities recorded	\$ 401	\$ 366	
Maximum obligation	\$ 1,080	\$ 1,392	
Note payable to Ally Financial (b)	\$ 35	\$ 35	
Vehicle repurchase obligations (c)			
Maximum obligations	\$15,881	\$ 14,058	
Fair value of guarantee	\$ 34	\$ 46	
0			

(a) Represents liabilities (receivables) recorded and maximum obligations for agreements entered into prior to December 31, 2008. Agreements entered into in 2010 and 2009 do not include residual support or risk sharing programs. During the six months ended June 30, 2010 favorable adjustments of \$0.4 billion were recorded in the U.S. due to increases in estimated residual values.

(b) Ally Financial retained an investment in a note, which is secured by certain automotive retail leases.

(c) In May 2009 Old GM and Ally Financial agreed to expand Old GM's repurchase obligations for Ally Financial financed inventory at certain dealers in Europe, Asia, Brazil and Mexico. In November 2008 Old GM and Ally Financial agreed to expand Old GM's repurchase obligations for Ally Financial financed inventory at certain dealers in the United States and Canada. The maximum potential amount of future payments required to be made under this guarantee would be based on the repurchase value of total eligible vehicles financed by Ally Financial in dealer stock. The total exposure of repurchased vehicles would be reduced to the extent vehicles are able to be resold to another dealer. The fair value of the guarantee considers the likelihood of dealers terminating and the estimated loss exposure for the ultimate disposition of vehicles.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (Continued)

	Su	ccessor	Pred	ecessor
	Three		Three	
	Months		Months	
	Ended	Six Months	Ended	Six Months
	June 30,	Ended	June 30,	Ended
	2010	<u>June 30, 2010</u>		<u>June 30, 2009</u>
Marketing incentives and operating lease residual payments (a)	\$ 204	\$ 511	\$ 435	\$ 601
Exclusivity fee revenue	\$ 25	\$ 50	\$ 25	\$ 50
Royalty income	\$ 3	\$ 7	\$ 6	\$ 8

(a) Payments to Ally Financial related to U.S. marketing incentive and operating lease residual programs. Excludes payments to Ally Financial related to the contractual exposure limit.

Balance Sheet

The following table summarizes the balance sheet effects of transactions with Ally Financial (dollars in millions):

	 	Successor	
	ie 30,		ember 31,
Assets	 <u>010</u>		2009
	\$ 698	\$	404
Accounts and notes receivable, net (a) Restricted cash and marketable securities (b)	\$ 	\$	127
Other assets (c)	\$ 27	\$	27
Liabilities			
Accounts payable (d)	\$ 100	\$	131
Short-term debt and current portion of long-term debt (e)	\$ 893	\$	1,077
Accrued expenses and other liabilities (f)	\$ 712	\$	817
Long-term debt (g)	\$ 50	\$	59
Other non-current liabilities (h)	\$ 154	\$	383

(a) Represents wholesale settlements due from Ally Financial, amounts owed by Ally Financial with respect to automotive retail leases and receivables for exclusivity fees and royalties.

(b) Represents certificates of deposit purchased from Ally Financial that are pledged as collateral for certain guarantees provided to Ally Financial in Brazil in connection with dealer floor plan financing.

(c) Primarily represents distributions due from Ally Financial on our investments in Ally Financial preferred stock.

(d) Primarily represents amounts billed to us and payable related to incentive programs.

- (e) Represents wholesale financing, sales of receivable transactions and the short-term portion of term loans provided to certain dealerships which we own or in which we have an equity interest. In addition, it includes borrowing arrangements with various foreign locations and arrangements related to Ally Financial's funding of company-owned vehicles, rental car vehicles awaiting sale at auction and funding of the sale of vehicles to which title is retained while the vehicles are consigned to Ally Financial or dealers, primarily in the United Kingdom. Financing remains outstanding until the title is transferred to the dealers. This amount also includes the short-term portion of a note payable related to automotive retail leases.
- (f) Primarily represents accruals for marketing incentives on vehicles which are sold, or anticipated to be sold, to customers or dealers and financed by Ally Financial in North America. This includes the estimated amount of residual support accrued under the residual support and risk sharing programs, rate support under the interest rate support programs, operating lease and finance receivable capitalized cost reduction incentives paid to Ally Financial to reduce the capitalized cost in automotive lease contracts and retail automotive contracts, and amounts owed under lease pull–ahead programs. In addition it includes interest accrued on the transactions in (e) above.

(g) Primarily represents the long-term portion of term loans from Ally Financial to certain consolidated dealerships.

(h) Primarily represents long-term portion of liabilities for marketing incentives on vehicles financed by Ally Financial.

Statement of Operations

The following table summarizes the income statement effects of transactions with Ally Financial (dollars in millions):

	Suc	ccessor	Pred	ecessor	
	Three		Three		
	Months	Months Months			
	Ended Six Months		Ended	Six Months	
	June 30, 2010	Ended June 30, 2010	June 30, 2009	Ended June 30, 2009	
Net sales and revenue (reduction) (a)	\$ (68)	\$ (211)	\$ (5)	\$ 177	
Cost of sales and other expenses (b)	\$ 5	\$ 29	\$ 103	\$ 179	
Interest income and other non-operating income, net (c)	\$ 58	\$ 116	\$ 85	\$ 159	
Interest expense (d)	\$ 58	\$ 118	\$ 50	\$ 95	
Servicing expense (e)	\$ 1	\$ 2	\$ 7	\$ 16	
Derivative gains (losses) (f)	\$ —	\$ —	\$ (1)	\$ (2)	

(a) Primarily represents the increase (reduction) in net sales and revenues for marketing incentives on vehicles which are sold, or anticipated to be sold, to customers or dealers and financed by Ally Financial. This includes the estimated amount of residual support accrued under residual support and risk sharing programs, rate support under the interest rate support programs, operating lease and finance receivable capitalized cost reduction incentives paid to Ally Financial to reduce the capitalized cost in automotive lease contracts and retail automotive contracts, and costs under lease pull–ahead programs. This amount is offset by net sales for vehicles sold to Ally Financial for employee and governmental lease programs and third party resale purposes.

(b) Primarily represents cost of sales on the sale of vehicles to Ally Financial for employee and governmental lease programs and third party resale purposes. Also includes miscellaneous expenses on services performed by Ally Financial.

- (c) Represents income on investments in Ally Financial preferred stock and Preferred Membership Interests, exclusivity and royalty fee income and reimbursements by Ally Financial for certain services provided to Ally Financial. Included in this amount is rental income related to Ally Financial's primary executive and administrative offices located in the Renaissance Center in Detroit, Michigan. The lease agreement expires in November 2016.
- (d) Represents interest incurred on term loans, notes payable and wholesale settlements.
- (e) Represents servicing fees paid to Ally Financial on certain automotive retail leases.
- (f) Represents amounts recorded in connection with a derivative transaction entered into with Ally Financial as the counterparty.

Note 24. Transactions with MLC

We and MLC entered into a Transition Services Agreement (TSA), as more fully discussed in our 2009 Form 10–K. The following tables describe the financial statement effects of the transactions with MLC.

Statement of Operations

The following table summarizes the income statement effects of transactions with MLC (dollars in millions):

		Successor
	Three	
	Months	Six Months
	Ended June 30, 2010	Ended June 30, 2010
Cost of sales (a)	\$ 8	\$ 14

(a) Primarily related to royalty income from MLC.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (Continued)

Balance Sheet

The following table summarizes the balance sheet effects of transactions with MLC (dollars in millions):

	<u>Su</u>	iccessor
	June 30,	December 31,
	2010	2009
Accounts and notes receivable, net (a)	\$ 11	\$ 16
Other assets	\$ 1	\$ 1
Accounts payable (b)	\$ 24	\$ 59
Accrued expenses and other liabilities	\$ —	\$ (1)

(a) Primarily related to royalty income from MLC and services provided under the TSA.

(b) Primarily related to the purchase of component parts.

Cash Flow

The following table summarizes the cash flow effects of transactions with MLC (dollars in millions):

		Successor
	Sin	x Months
	Jur	Ended ne 30, 2010
Operating (a)	\$	(112)
Operating (a) Financing (b)	\$	4

(a) Primarily includes payments to and from MLC related to the purchase and sale of component parts.

(b) Payments received from (funding provided to) a facility in Strasbourg, France, that MLC retained. The terms do not permit additional funding after July 31, 2010. At June 30, 2010 we reserved \$12 million against the advanced amounts.

Note 25. Segment Reporting

We develop, produce and market cars, trucks and parts worldwide. We do so through our three segments: GMNA, GMIO and GME.

In the three months ended June 30, 2010 we changed our managerial reporting structure so that certain entities geographically located within Russia and Uzbekistan were transferred from our GME segment to our GMIO segment. We have revised the segment presentation for all periods presented.

Substantially all of the cars, trucks and parts produced are marketed through retail dealers in North America, and through distributors and dealers outside of North America, the substantial majority of which are independently owned.

In addition to the products sold to dealers for consumer retail sales, cars and trucks are also sold to fleet customers, including daily rental car companies, commercial fleet customers, leasing companies and governments. Sales to fleet customers are completed through the network of dealers and in some cases sold directly to fleet customers. Retail and fleet customers can obtain a wide range of after sale vehicle services and products through the dealer network, such as maintenance, light repairs, collision repairs, vehicle accessories and extended service warranties.

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS ---- (Continued)

GMNA primarily meets the demands of customers in North America with vehicles developed, manufactured and/or marketed under the following brands:

Buick
 Cadillac
 Chevrolet
 GMC

The demands of customers outside of North America are primarily met with vehicles developed, manufactured and/or marketed under the following brands:

•	Buick	•	Daewoo	•	Holden	•	Opel
•	Cadillac	•	GMC	•	Isuzu	•	Vauxhall

Chevrolet

At June 30, 2010 we also had equity ownership stakes directly or indirectly through various regional subsidiaries, including GM Daewoo, SGM, SGMW, FAW-GM Light Duty Commercial Vehicle Co., Ltd. (FAW-GM) and HKJV. These companies design, manufacture and market vehicles under the following brands:

•	Buick	•	Daewoo	•	GMC	•	Jiefang
•	Cadillac	•	FAW	•	Holden	•	Wuling

Chevrolet

Nonsegment operations are classified as Corporate. Corporate includes investments in Ally Financial, certain centrally recorded income and costs, such as interest, income taxes and corporate expenditures, certain nonsegment specific revenues and expenses, including costs related to the Delphi Benefit Guarantee Agreements and a portfolio of automotive retail leases.

All intersegment balances and transactions have been eliminated in consolidation.

	Successor							
	GMNA	GMIO	GME	Eliminations	<u>Corporate</u>	Total		
At and For the Three Months Ended June 30, 2010								
Sales								
External customers	\$19,457	\$ 7,891	\$ 5,783	\$ —	\$ —	\$ 33,131		
Intersegment	809	721	261	(1,791)	_			
Other revenue					43	43		
Total net sales and revenue	\$20,266	\$ 8,612	\$ 6,044	\$ (1,791)	\$ 43	\$ 33,174		
Earnings (loss) attributable to stockholders before interest and income taxes	\$ 1,592	\$ 672	\$ (160)	\$ (42)	\$ (29)	\$ 2,033		
Interest income					114	114		
Interest expense					250	250		
Income tax expense (benefit)					361	361		
Net income (loss) attributable to stockholders					\$ (526)	\$ 1,536		
						. ,		
Equity in net assets of nonconsolidated affiliates	\$ 1.991	\$ 6,270	\$ 7	s —	\$ 28	\$ 8,296		
Total assets	\$79,258	\$27,549	\$17,640	\$ (32,427)	\$ 39,879	\$131,899		
Depreciation, amortization and impairment	\$ 1,082	\$ 220	\$ 359	\$	\$ 15	\$ 1,676		
Equity income, net of tax	\$ 41	\$ 365	\$ 4	\$ —	\$ 1	\$ 411		

GENERAL MOTORS COMPANY AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

		Successor						
	GMNA	GMIO	GME		minations	Co	rporate	Total
For the Six Months Ended June 30, 2010								
Sales								
External customers	\$37,965		\$11,157	\$		\$		\$64,553
Intersegment	1,587	1,233	348		(3,168)		_	
Other revenue							97	97
Total net sales and revenue	\$39,552	\$16,664	\$11,505	\$	(3,168)	\$	97	\$64,650
Earnings (loss) attributable to stockholders before interest and income taxes	\$ 2,810	\$ 1,838	\$ (637)	\$	(30)	\$	(124)	\$ 3,857
Interest income							204	204
Interest expense							587	587
Income tax expense (benefit)							870	870
Net income (loss) attributable to stockholders						\$	(1,377)	\$ 2,604
Depreciation, amortization and impairment	\$ 2,223	\$ 420	\$ 744	\$		\$	66	\$ 3,453
Equity income, net of tax	\$ 2,223		\$ 11	\$		\$	1	\$ 3,433
1. 5	• • • •	• • •	Pre	edecess	or	÷		•
	GMNA	GMIO	GME		nations	Corpo	rate	Total
For the Three Months Ended June 30, 2009								
Sales								
External customers	\$11,177	\$5,166	\$6,582	\$		\$		\$ 22,925
Intersegment	268	238	63		(569)			
Other revenue							122	122
Total net sales and revenue	\$11,445	\$5,404	\$6,645	\$	(569)	\$	122	\$ 23,047
Earnings (loss) attributable to stockholders before interest and income taxes	\$(7,026)	\$ (660)	\$ (757)	\$	38	\$ (1,	657)	\$(10,062)
Interest income							87	87
Interest expense						- ,	375	3,375
Income tax expense (benefit)						(445)	(445)
Net income (loss) attributable to stockholders						\$ (4,	500)	\$(12,905)
Depreciation, amortization and impairment	\$ 2,620	\$ 295	\$ 834	\$		\$	15	\$ 3,764
Equity income (loss), net of tax	\$ (225)	\$ 218	\$ 4	\$	1	\$		\$ (2)
Equity in income of and disposition of interest in Ally Financial	\$ —	\$	\$	\$	_		880	\$ 1,880
Significant noncash charges (gains)	·	•	•	-		,		,
Gain on conversion of UST Ally Financial Loan	\$ —	\$ —	\$ —	\$	_	\$ (2,	477)	\$ (2,477)
Loss on extinguishment of UST Ally Financial Loan	_		_		_	1,	994´	1,994
Impairment charges related to long-lived assets		2	237				_	239
Total significant noncash charges	\$ —	\$ 2	\$ 237	\$		\$ (483)	\$ (244)
						```	,	. ,

# GENERAL MOTORS COMPANY AND SUBSIDIARIES

# NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (Continued)

	Predecessor							
	GMNA		GMIO	GME	Eli	<u>minations</u>	<u>Corporate</u>	Total
For the Six Months Ended June 30, 2009								
Sales								
External customers	\$ 22,989		10,359	\$11,80			\$ —	\$ 45,157
Intersegment	77	5	796	13	7	(1,708)		
Other revenue	_	-	—		_		321	321
Total net sales and revenue	\$ 23,764	1 \$	11,155	\$11,94	6 \$	(1,708)	\$ 321	\$ 45,478
Earnings (loss) attributable to stockholders before interest and income								
taxes	\$(10,452	2) \$	(699)	\$(2,71	1) \$	64	\$ (1,209)	\$(15,007)
Interest income							173	173
Interest expense							4,605	4,605
Income tax expense (benefit)							(559)	(559)
							× /	× /
Net income (loss) attributable to stockholders							\$ (5,082)	\$(18,880)
							,	
Depreciation, amortization and impairment	\$ 4,322	2 \$	469	\$ 1,37	7 \$		\$ 136	\$ 6,304
Equity income (loss), net of tax	\$ (284		326		4 \$		\$	\$ 46
Equity in income of and disposition of interest in Ally Financial	\$ _	- \$		Ś –	– Š		\$ 1,380	\$ 1,380
Significant noncash charges (gains)								
Gain on conversion of UST Ally Financial Loan	\$ -	- \$	_	\$ -	- \$		\$ (2,477)	\$ (2,477)
Loss on extinguishment of UST Ally Financial Loan	_	-	_	_	_		1,994	1,994
Gain on extinguishment of debt		-	_		_		(906)	(906)
Impairment charges related to equipment on operating leases	1	l		34			16	61
Impairment charges related to long-lived assets	320	)	9	23	7			566
Impairment charges related to investment in CAMI	28	3	_	_	_	_		28
Total significant noncash charges	\$ 359	) \$	9	\$ 27	1 \$	—	\$ (1,373)	\$ (734)

### Note 26. Subsequent Events

#### Sale of Nexteer

On July 7, 2010 we entered into a definitive agreement to sell Nexteer to an unaffiliated party. The transaction is subject to customary closing conditions, regulatory approvals and review by government agencies in the U.S. and China. At June 30, 2010 Nexteer had total assets of \$906 million, total liabilities of \$458 million, and recorded revenue of \$1.0 billion in the six months ended June 30, 2010, of which \$543 million were sales to us and our affiliates. Nexteer did not qualify for held for sale classification at June 30, 2010. Once consummated, we do not expect the sale of Nexteer to have a material effect on the condensed consolidated financial statements.

#### Acquisition of AmeriCredit Corp.

On July 21, 2010 we entered into a definitive agreement to acquire AmeriCredit Corp. (AmeriCredit), an independent automobile finance company, for cash of approximately \$3.5 billion. This acquisition will allow us to provide a more complete range of financing options to our customers including additional capabilities in leasing and non-prime financing options. At June 30, 2010 AmeriCredit had total assets of \$9.9 billion, total liabilities of \$7.5 billion, and recorded revenue of \$1.5 billion in the year ended June 30, 2010. The transaction is expected to close in the fourth quarter of 2010.

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

# Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

This Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) should be read in conjunction with the accompanying condensed consolidated financial statements and our Annual Report on Form 10–K for the year ended December 31, 2009 (2009 Form 10–K), as filed with the Securities and Exchange Commission (SEC).

#### **Presentation and Estimates**

#### **Basis of Presentation**

We analyze the results of our business through our three segments, namely General Motors North America (GMNA), General Motors International Operations (GMIO), and General Motors Europe (GME).

In the three months ended June 30, 2010 we changed our managerial reporting structure so that certain entities geographically located within Russia and Uzbekistan were transferred from our GME segment to our GMIO segment. We have revised the segment presentation for all periods presented.

Consistent with industry practice, market share information includes estimates of industry sales in certain countries where public reporting is not legally required or otherwise available on a consistent basis.

#### Use of Estimates in the Preparation of the Financial Statements

Our condensed consolidated financial statements are prepared in conformity with U.S. GAAP, which requires the use of estimates, judgments, and assumptions that affect the reported amounts of assets and liabilities at the date of the unaudited condensed consolidated financial statements and the reported amounts of revenue and expenses in the periods presented. We believe that the accounting estimates employed are appropriate and the resulting balances are reasonable; however, due to the inherent uncertainties in making estimates actual results could differ from the original estimates, requiring adjustments to these balances in future periods.

#### **OVERVIEW**

#### **Our Company**

General Motors Company was formed by The United States Department of the Treasury (UST) in 2009 originally as a Delaware limited liability company, Vehicle Acquisition Holdings LLC, and subsequently converted to a Delaware corporation, NGMCO, Inc. This company acquired substantially all of the assets and assumed certain liabilities of General Motors Corporation (363 Sale) on July 10, 2009 and changed its name to General Motors Company, is sometimes referred to in this Quarterly Report on Form 10–Q for the periods on or subsequent to July 10, 2009 as "we," "our," "us," "ourselves," the "Company," "General Motors," or "GM," and is the successor entity solely for accounting and financial reporting purposes (Successor). General Motors Corporation is sometimes referred to in this Quarterly Report on Form 10–Q, for the periods on or before July 9, 2009, as "Old GM." Prior to July 10, 2009 Old GM operated the business of the Company, and pursuant to the agreement with the SEC Staff, the accompanying unaudited condensed consolidated interim financial reporting purposes (Predecessor). On July 10, 2009 in connection with the 363 Sale, General Motors Corporation changed its name to Motors Liquidation Corporation (MLC). MLC continues to exist as a distinct legal entity for the sole purpose of liquidating its remaining assets and liabilities.

We are a leading global automotive company. Our vision is to design, build and sell the world's best vehicles. Our business is diversified across products and geographic markets, with operations and sales in over 120 countries. We assemble our passenger cars, crossover vehicles, light trucks, sport utility vehicles, vans and other vehicles in 71 assembly facilities worldwide and have 87 additional global manufacturing facilities. With a global network of over 21,700 independent dealers we meet the local sales and service needs of our retail and fleet customers. In 2009, we and Old GM sold 7.5 million vehicles, representing 11.6% of total vehicle

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

sales worldwide. Approximately 72% of our and Old GM's vehicle sales volume was generated outside the United States, including 38.7% from emerging markets, such as Brazil, Russia, India and China (collectively BRIC), which have recently experienced the industry's highest volume growth.

Our business is organized into three geographically-based segments:

- GMNA, with manufacturing and distribution operations in the U.S., Canada and Mexico and distribution operations in Central America and the Caribbean, represented 33.2% of our and Old GM's total 2009 vehicle sales volume. In North America, we sell our vehicles through four brands Chevrolet, GMC, Buick and Cadillac which are manufactured at plants across the U.S., Canada and Mexico and imported from other GM regions. In 2009, GMNA had the largest market share of any competitor in this market at 19.0%.
- GMIO, with manufacturing and distribution operations in Asia–Pacific, South America, Russia, the Commonwealth of Independent States, Eastern Europe, Africa and the Middle East, is our largest segment by vehicle sales volume, and represented 44.5% of our and Old GM's total 2009 vehicle sales volume including sales through our joint ventures. In these regions, we sell our vehicles under the Buick, Cadillac, Chevrolet, Daewoo, FAW, GMC, Holden, Isuzu, Jiefang, Opel and Wuling brands, and we plan to commence sales under the Baojun brand in 2011. In 2009, GMIO had the second largest market share for this market at 10.2% and the number one market share across the BRIC markets. Approximately 54.9% of GMIO's volume is from China, where, primarily through our joint ventures, we had the number one market share at 13.3% in 2009. Our Chinese operations are primarily comprised of three joint ventures: Shanghai General Motors Co., Ltd. (SGM; of which we own 49%), SAIC–GM–Wuling Automobile Co., Ltd. (SGMW; of which we own 34%) and FAW–GM Light Duty Commercial Vehicle Co., Ltd. (FAW–GM; of which we own 50%).
- GME, with manufacturing and distribution operations across Western and Central Europe, represented 22.3% of our and Old GM's total 2009 vehicle sales volume. In Western and Central Europe, we sell our vehicles under the Opel and Vauxhall (U.K. only) brands, which are manufactured in Europe, and under the Chevrolet brand, which is imported from South Korea where it is manufactured by GM Daewoo Auto & Technology, Inc. (GM Daewoo) of which we own 70.1%. In 2009, GME had the number five market share in this market, at 8.9%.

We offer a global vehicle portfolio of cars, crossovers and trucks. We are committed to leadership in vehicle design, quality, reliability, telematics (wireless voice and data) and infotainment and safety, as well as to developing key energy efficiency, energy diversity and advanced propulsion technologies, including electric vehicles with range extending capabilities such as the new Chevrolet Volt.

Our company commenced operations on July 10, 2009 when we completed the acquisition of substantially all of the assets and assumption of certain liabilities of Old GM through a 363 Sale under the U.S. Bankruptcy Code (Bankruptcy Code). As a result of the 363 Sale and other recent restructuring and cost savings initiatives, we have improved our financial position and level of operational flexibility as compared to Old GM when it operated the business. We commenced operations upon completion of the 363 Sale with a total amount of debt and other liabilities at July 10, 2009 that was \$92.7 billion less than Old GM's total amount of debt and other liabilities at July 10, 2009 that was \$92.7 billion less than Old GM's total amount of debt and other liabilities at July 9, 2009. We reached a competitive labor agreement with our unions, began restructuring our dealer network and reduced and refocused our brand strategy in the U.S. to our four brands. Although our U.S. and non–U.S. pension plans were underfunded by \$17.1 billion and \$10.3 billion at December 31, 2009, we have a strong balance sheet, with available liquidity (cash, cash equivalents and marketable securities) of \$31.5 billion and outstanding debt balance of \$8.2 billion at June 30, 2010.

In recent quarters, we achieved profitability. Our results for the three months ended March 31 and June 30, 2010 included net income of \$1.2 billion and \$1.6 billion. We had a net loss of \$3.8 billion, which included a settlement loss of \$2.6 billion related to the 2009 revised UAW settlement agreement, for the period from July 10, 2009 to December 31, 2009. We reported revenue of \$31.5 billion and \$33.2 billion in the three months ended March 31 and June 30, 2010, representing 40.3% and 43.9% year–over–year increases as compared to Old GM's revenue for the corresponding periods. For the period from July 10, 2009 to December 31, 2009, our revenue was \$57.5 billion.

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

#### **Our Competitive Strengths**

We believe the following strengths provide us with a foundation for profitability, growth and execution on our strategic vision to design, build and sell the world's best vehicles:

- Global presence, scale and dealer network. We are currently the world's second largest automaker based on vehicle sales volume and, as a result
  of our relative market positions in GMNA and GMIO, are positioned to benefit from future growth resulting from economic recovery in developed
  markets and continued secular growth in emerging markets. In 2009, we and Old GM sold 7.5 million vehicles in over 120 countries and generated
  \$104.6 billion in revenue. We operate a global distribution network with over 21,700 independent dealers, and we maintain 10 design centers, 30
  engineering centers, and eight science labs around the world. Our presence and scale enable us to deploy our purchasing, research and
  development, design, engineering, marketing and distribution resources and capabilities globally across our vehicle production base. For example,
  we have budgeted approximately \$13.0 billion for engineering and capital expenditures in 2010, which will fund the development and production
  of our products globally.
- Market share in emerging markets, such as China and Brazil. Across the BRIC markets, we and Old GM had the industry-leading market share of 12.7% in 2009 based on vehicle sales volume, which has grown from a 9.8% share in 2004. In China, the fastest growing global market by volume of vehicles sold, through our joint ventures we had the number one market position with a share of 13.3% based on vehicle sales volume in 2009. We also held the third largest market share in Brazil at 19.0% in 2009. We established a presence in Brazil in 1925 and in China in 1997 and have substantial operating experience in these markets.
- Portfolio of high-quality vehicles. Our global portfolio includes vehicles in most key segments, with 31 nameplates in the U.S. and another 179 nameplates internationally. Our and Old GM's long-term investment over the last decade in our product portfolio has resulted in successful recent vehicle launches such as the Chevrolet Equinox, GMC Terrain, Buick LaCrosse and Cadillac SRX. Sales of these vehicles have had higher transaction prices than the products they replaced and have increased vehicle segment market shares. These vehicles also have had higher residual values. The design, quality, reliability and safety of our vehicles has been recognized worldwide by a number of third parties, including the following:
  - In the U.S., we have three of the top five most dependable models in the industry according to the 2010 J.D. Power Vehicle Dependability Study as well as leading the industry with the most segment leading models in both the 2010 J.D. Power Initial Quality Survey and the 2010 J.D. Power Vehicle Dependability Study;
  - All of our recently introduced U.S. models are Consumers Digest Best Buys;
  - In Europe, the Car of the Year Organizing Committee named the Opel Insignia the 2009 European Car of the Year;
  - In China, the Chinese Automotive Media Association named the new Buick LaCrosse the 2009 Car of the Year; and
  - In Brazil, AutoEsporte Magazine named the Chevrolet Agile the 2010 Car of the Year.
- Commitment to new technologies. We have invested in a diverse set of new technologies designed to meet customer needs around the world. Our
  research and product development efforts in the areas of energy efficiency and energy diversity have been focused on advanced and alternative
  propulsion and fuel efficiency. For example, the Chevrolet Volt will use lithium-ion battery technology to achieve a 40 mile range on plug-in
  battery power only, and when the Volt's battery runs low, an onboard gasoline-powered engine/generator will extend its driving range another 300
  miles on a full tank of gas. Our investment in telematics and infotainment technology enables us to provide through OnStar a service offering that
  creates a connection to the customer and a platform for future infotainment initiatives.
- Competitive cost structure in GMNA. We have substantially completed the restructuring of our North American operations, which has reduced our cost base and improved our capacity utilization and product line profitability. We accomplished this through brand rationalization, ongoing dealer network optimization, salaried and hourly headcount reductions, labor agreement restructuring, transfer of hourly retiree healthcare obligations to the UAW Retiree Medical Benefits Trust (New VEBA) and manufacturing footprint reduction from 71 North American manufacturing facilities for Old GM at December 31, 2008 to 59 at June 30, 2010, and an expected 53 at December 31, 2010. The reduced costs resulting from these actions, along with our

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

improved price realization and lower incentives, have reduced our profitability breakeven point in North America. For the six months ended June 30, 2010 and based on GMNA's current market share, GMNA's earnings before interest and income taxes (EBIT) (EBIT is not an operating measure under U.S. GAAP — refer to "Management's Discussion and Analysis of Financial Condition and Results of Operations — Reconciliation of Segment Results" for additional discussion) would have achieved breakeven with annual U.S. industry sales of approximately 10.5 to 11.0 million vehicles.

- Competitive global cost structure. Global architectures (that is, vehicle characteristics and dimensions supporting common sets of major vehicle underbody components and subsystems) allow us to streamline our product development and manufacturing processes, which has resulted in reduced material and engineering costs. We have consolidated our product development activities under one global development leadership team with a centralized budget. This allows us to design and engineer our vehicles globally while balancing cost efficient production locations and proximity to the end customer. Approximately 43% of our vehicles are manufactured in regions we believe to be low-cost manufacturing locations, such as China, Mexico, Eastern Europe, India and Russia, with all-in active labor costs of less than \$15 per hour and approximately 17% are manufactured in medium-cost countries, such as South Korea and Brazil, with all-in labor costs between \$15 and \$30 per hour.
- Strong balance sheet and liquidity. As of June 30, 2010, we had available liquidity (cash, cash equivalents and marketable securities) of \$31.5 billion and outstanding debt of \$8.2 billion. In addition, we have no significant contractual debt maturities until 2015. Although our U.S. and non-U.S. pension plans were underfunded by \$17.1 billion and \$10.3 billion on a U.S. GAAP basis at December 31, 2009, we have no material mandatory pension contributions until 2014. We believe that our combination of cash and cash equivalents plus cash flow from operations should provide sufficient cash to fund our new product and technology development efforts, European restructuring program, growth initiatives and further cost-reduction initiatives in the medium term.
- Strong leadership team with focused direction. Our new executive management team combines years of experience at GM and new perspectives on growth, innovation and strategy deployment. Our management team operates in a streamlined organizational structure that allows for:
  - More direct lines of communication;
  - · Quicker decision-making; and
  - Direct responsibility for individuals in various areas of our business.

As an example, we have eliminated multiple internal strategy boards and committees and instituted a single, smaller executive committee to focus our management functions and shorten our decision-making processes. The members of our Board of Directors, a majority of whom were not directors of Old GM, are directly involved in strategy formation and review.

#### **Our Strategy**

Our vision is to design, build and sell the world's best vehicles. The primary elements of our strategy to achieve this vision are to:

- Deliver a product portfolio of the world's best vehicles, allowing us to maximize sales under any market conditions;
- Sell our vehicles globally by targeting developed markets, which are projected to have increases in vehicle demand as the global economy recovers, and further strengthening our position in high growth emerging markets;
- Improve revenue realization and maintain a competitive cost structure to allow us to remain profitable at lower industry volumes and across the lifecycle of our product portfolio; and
- Maintain a strong balance sheet by reducing financial leverage given the high operating leverage of our business model.

Our management team is focused on hiring new and promoting current talented employees in order to execute on our strategy as follows:

*Deliver quality products.* We intend to maintain a broad portfolio of vehicles so that we are positioned to meet global consumer preferences. We plan to do this in several ways, including:

• Concentrate our design, engineering and marketing resources on fewer brands and architectures. We plan to increase the volume of vehicles produced from common global architectures to more than 50% in 2014 from less than 17% today. We

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

expect that this initiative will result in greater investment per architecture and brand and will increase our product development and manufacturing flexibility, allowing us to maintain a steady schedule of important new product launches in the future. We believe our four-brand strategy in the U.S. will continue to enable higher marketing expenditures per brand.

- Develop products across vehicle segments in our global markets. We plan to develop vehicles in each of the key segments of the global markets in
  which we compete. For example, in September 2010 we plan to introduce the Chevrolet Cruze in the U.S. small car segment, an important and
  growing segment where we have historically been under-represented.
- Continued investment in a portfolio of technologies. We will continue to invest in technologies that support energy diversity and energy efficiency as well as in safety, telematics and infotainment technology. We are committed to advanced propulsion technologies and intend to offer a portfolio of fuel efficient alternatives that use energy sources such as petroleum, bio-fuels, hydrogen and electricity, including the new Chevrolet Volt. We are committed to increasing the fuel efficiency of our vehicles with internal combustion engines through features such as cylinder deactivation, direct injection, variable valve timing, turbo-charging with engine downsizing and six speed transmissions. For example, we expect the Chevrolet Cruze Eco to be capable of achieving an estimated 40 miles per gallon on the highway with a traditional internal combustion engine. Additionally, we are expanding our telematics and infotainment offerings and, as a result of our OnStar service and our partnerships with companies such as Google, are in a position to deliver safety, security, navigation and connectivity systems and features.

Sell our vehicles globally. We will continue to compete in the largest and fastest growing markets globally.

- Broaden GMNA product portfolio. We plan to launch 19 new vehicles in GMNA across our four brands between 2010 and 2012, primarily in the growing car and crossover segments, where, in some cases, we are under-represented, and an additional 27 new vehicles between 2013 and 2014. These near-term launches include the new Chevrolet Volt, Cruze, Spark, Aveo and Malibu and Buick entries in the compact and mid-size segments. We believe that we have achieved a more balanced portfolio in the U.S. market, where we and Old GM maintained a sales volume mix of 42% from cars, 37% from trucks and 21% from crossovers in 2009 compared to 51% from trucks in 2006.
- Increase sales in GMIO, particularly China and Brazil. We plan to continue to execute our growth strategies in countries where we already hold
  strong positions, such as China and Brazil, and to improve share in other important markets, including South Korea, South Africa, Russia, India
  and the ASEAN region. We aim to launch 77 new vehicles throughout GMIO through 2012. We plan to enhance and strengthen our GMIO
  product portfolio through three strategies: leveraging our global architectures, pursuing local and regional solutions to meet specific market
  requirements and expanding our joint venture partner collaboration opportunities.
- Refresh GME's vehicle portfolio. To improve our product quality and product perception in Europe, by the start of 2012, we plan to have 80% of
  our Opel/Vauxhall carlines volume refreshed such that the model stylings are less than three years old. We have three product launches scheduled
  in 2010 and another four product launches scheduled in 2011. As part of our planned rejuvenation of Chevrolet's portfolio, which increasingly
  supplements our Opel/Vauxhall brands throughout Europe, we are moving the entire Chevrolet lineup to the new GM global architectures.
- Ensure competitive financing is available to our dealers and customers. We currently maintain multiple financing programs and arrangements with third parties for our wholesale and retail customers to utilize when purchasing or leasing our vehicles. Through our long-standing arrangements with Ally Financial Inc., formerly GMAC, Inc. (Ally Financial), and a variety of other worldwide, regional and local lenders, we provide our customers and dealers with access to financing alternatives. We plan to further expand the range of financing options available to our customers and dealers to help grow our vehicle sales. In particular, we have agreed to acquire AmeriCredit Corp. (AmeriCredit), which we expect will, when the acquisition is completed, will enable us to offer increased availability of leasing and non-prime financing for our customers throughout economic cycles. We also plan to use AmeriCredit to initiate targeted customer marketing initiatives to expand our vehicle sales.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

Reduce breakeven levels through improved revenue realization and a competitive cost structure. In developed markets, we are improving our cost structure to become profitable at lower industry volumes.

- Capitalize on cost structure improvement and maintain reduced incentive levels in GMNA. We plan to sustain the cost reduction and operating
  flexibility progress we have made as a result of our North American restructuring. In addition to becoming more cost competitive, our current U.S.
  and Canadian hourly labor agreements provide the flexibility to utilize a lower tiered wage and benefit structure for new hires, part-time
  employees and temporary employees. We aim to increase our vehicle profitability by maintaining competitive incentive levels with our
  strengthened product portfolio and by actively managing our production levels through monitoring of our dealer inventory levels.
- Execute on our Opel/Vauxhall restructuring plan. We expect our Opel/Vauxhall restructuring plan to lower our vehicle manufacturing costs. The
  plan includes manufacturing rationalization, headcount reduction, labor cost concessions from the remaining workforce and selling, general and
  administrative efficiency initiatives. Specifically, we have reached an agreement to reduce our European manufacturing capacity by 20% through,
  among other things, the closing of our Antwerp facility in Belgium and the rationalization of our powertrain operations in our Bochum and
  Kaiserslautern facilities in Germany. Additionally, we have reached an agreement with the labor unions in Europe to reduce labor costs by \$323
  million per year. The objective of our restructuring, along with the refreshed product portfolio pipeline, is to restore the profitability of the GME
  business.
- Enhance manufacturing flexibility. We primarily produce vehicles in locations where we sell them and we have significant manufacturing capacity in medium- and low-cost countries. We intend to maximize capacity utilization across our production footprint to meet demand without requiring significant additional capital investment. For example, we were able to leverage the benefit of a global architecture and start initial production for the U.S. of the Buick Regal 11 months ahead of schedule by temporarily shifting production from North America to Rüsselsheim, Germany.

*Maintain a strong balance sheet.* Given our business's high operating leverage and the cyclical nature of our industry, we intend to minimize our financial leverage. We plan to use excess cash to repay debt and to make discretionary contributions to our U.S. pension plan. Based on this planned reduction in financial leverage and the anticipated benefits resulting from our operating strategy described above, we will aim to attain an investment grade credit rating over the long term.

#### Old GM Bankruptcy and 363 Sale

#### Background

As a result of historical unfavorable economic conditions and a rapid decline in sales in the three months ended December 31, 2008 Old GM determined that, despite the previous actions it had then taken to restructure its U.S. business, it would be unable to pay its obligations in the normal course of business in 2009 or service its debt in a timely fashion, which required the development of a new plan that depended on financial assistance from the U.S. government.

In December 2008 Old GM requested and received financial assistance from the U.S. government and entered into a loan and security agreement with the UST, which was subsequently amended (UST Loan Agreement). In early 2009 Old GM's business results and liquidity continued to deteriorate, and, as a result, Old GM obtained additional funding from the UST under the UST Loan Agreement. Old GM, through its wholly owned subsidiary General Motors of Canada Limited (GMCL), also received funding from Export Development Canada (EDC), a corporation wholly–owned by the Government of Canada, under a loan and security agreement entered into in April 2009 (EDC Loan Facility).

As a condition to obtaining the loans (UST Loan Facility) under the UST Loan Agreement, Old GM was required to submit a plan in February 2009 that included specific actions intended to demonstrate that it was a viable entity and to use its best efforts to achieve certain debt reduction, labor modification and VEBA modification targets.

On March 30, 2009 the Auto Task Force (as defined in Note 2) determined that the plan was not viable and required substantial revisions. In conjunction with the March 30, 2009 announcement, the administration announced that it would offer Old GM adequate working capital financing for a period of 60 days while it worked with Old GM to develop and implement a more accelerated and aggressive restructuring that would provide a sound long-term foundation.

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

Old GM made further modifications to its plan in an attempt to satisfy the Auto Task Force requirement that it undertake a substantially more accelerated and aggressive restructuring plan. The additional significant cost reduction and restructuring actions included reducing Old GM's indebtedness and VEBA obligations, in addition to other cost reduction and restructuring actions.

Our 2009 Form 10-K provides additional detail on Old GM's liquidity constraints, the terms and conditions of its various funding arrangements with U.S. and Canadian governmental entities, and its various cost reduction and restructuring activities.

#### Chapter 11 Proceedings

Old GM was not able to complete the cost reduction and restructuring actions, including the debt reductions and VEBA modifications, which resulted in extreme liquidity constraints. As a result, on June 1, 2009 Old GM and certain of its direct and indirect subsidiaries filed voluntary petitions for relief under Chapter 11 (Chapter 11 Proceedings) of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York (Bankruptcy Court).

In connection with the Chapter 11 Proceedings, Old GM entered into a secured superpriority debtor-in-possession credit agreement with the UST and EDC (DIP Facility) and received additional funding commitments from EDC to support Old GM's Canadian operations.

#### 363 Sale

On July 10, 2009 we completed the acquisition of substantially all of the assets and assumed certain liabilities of Old GM and certain of its direct and indirect subsidiaries (collectively, the Sellers). The 363 Sale was consummated in accordance with the Amended and Restated Master Sale and Purchase Agreement, dated June 26, 2009, as amended (Purchase Agreement), between us and the Sellers, and pursuant to the Bankruptcy Court's sale order dated July 5, 2009.

#### Accounting for the Effects of the Chapter 11 Proceedings and the 363 Sale

#### Chapter 11 Proceedings

Accounting Standards Codification (ASC) 852, "Reorganizations," (ASC 852) is applicable to entities operating under Chapter 11 of the Bankruptcy Code. ASC 852 generally does not affect the application of U.S. GAAP that we and Old GM followed to prepare the consolidated financial statements, but it does require specific disclosures for transactions and events that were directly related to the Chapter 11 Proceedings and transactions and events that resulted from ongoing operations.

Old GM prepared its consolidated financial statements in accordance with the guidance in ASC 852 in the period June 1, 2009 through June 30, 2009. Revenues, expenses, realized gains and losses, and provisions for losses directly related to the Chapter 11 Proceedings were recorded in Reorganization expenses, net. Reorganization expenses, net do not constitute an element of operating loss due to their nature and due to the requirement of ASC 852 that they be reported separately. Old GM's balance sheet prior to the 363 Sale distinguished prepetition liabilities subject to compromise from prepetition liabilities not subject to compromise and from postpetition liabilities.

#### Application of Fresh-Start Reporting

The Bankruptcy Court did not determine a reorganization value in connection with the 363 Sale. Reorganization value is defined as the value of our assets without liabilities. In order to apply fresh-start reporting, ASC 852 requires that total postpetition liabilities and allowed claims be in excess of reorganization value and prepetition stockholders receive less than 50.0% of our common stock. Based on our estimated reorganization value, we determined that on July 10, 2009 both the criteria of ASC 852 were met and, as a result, we applied fresh-start reporting. In applying fresh-start reporting at July 10, 2009, which generally follows the provisions of ASC 805, "Business Combinations," (ASC 805) we recorded the assets acquired and the liabilities assumed from Old GM at fair value except for deferred income taxes and certain liabilities associated with employee benefits. Our consolidated balance sheet at July 10, 2009,

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

which includes the adjustments to Old GM's consolidated balance sheet as a result of the 363 Sale and the application of fresh-start reporting, and related disclosures are discussed in Note 2 to our consolidated financial statements in our 2009 Form 10-K. These adjustments are final and no determinations of fair value are considered provisional.

#### **Specific Management Initiatives**

The execution of certain management initiatives is critical in achieving our goal of sustained future profitability. The following provides a summary of these management initiatives and significant results and events.

#### Streamline U.S. Operations

#### Increased Production Volume

We continue to consolidate our U.S. manufacturing operations while maintaining the flexibility to meet increasing 2010 production levels. At December 31, 2009 we had reduced the number of U.S. manufacturing plants to 41 from 47 in 2008, excluding Nexteer and four domestic facilities recently acquired from Delphi.

The moderate improvement in the U.S. economy, resulting increase in U.S. industry vehicle sales and increase in demand for our products has resulted in increased production volumes for GMNA. In the three and six months ended June 30, 2010 GMNA produced 731,000 vehicles and 1.4 million vehicles. This represents an increase of 85.1% and 82.4% compared to 395,000 vehicles and 767,000 vehicles in the three and six months ended June 30, 2010 as compared to the three months ended March 31, 2010.

#### Improve Vehicle Sales

In the six months ended June 30, 2010 U.S. industry vehicle sales were 5.7 million vehicles, of which our market share was 18.9%. This represents an increase in U.S. industry vehicle sales from 4.9 million vehicles (or 16.6%), of which Old GM's market share was 19.5% in the six months ended June 30, 2009. This increase is consistent with the gradual U.S. vehicle sales recovery from the negative economic effects of the U.S. recession first experienced in the second half of 2008.

GMNA dealers in the U.S. sold 603,000 vehicles and 1.1 million vehicles in the three and six months ended June 30, 2010. This represents an increase from Old GM's U.S. vehicle sales of 541,000 vehicles and 1.0 million vehicles (or 11.4% and 13.2%) in the three and six months ended June 30, 2009. This increase reflects our brand rationalization strategy to focus our product engineering and design and marketing on four brands: Buick, Cadillac, Chevrolet and GMC. This strategy has resulted in increased consumer demand for certain products such as the Chevrolet Equinox, GMC Terrain, Buick LaCrosse and Cadillac SRX. These four brands accounted for 600,000 vehicles and 1.1 million vehicles (or 99.5% and 99.0%) of our U.S. vehicle sales in the three and six months ended June 30, 2010. In addition, the moderate improvement in the U.S. economy has contributed to a slow but steady improvement in U.S. industry vehicle sales and increased consumer confidence.

The continued increase in U.S. industry vehicle sales and the vehicle sales of our four brands is critical for us to achieve our worldwide profitability.

#### U.S. Dealer Reduction

We market vehicles worldwide through a network of independent retail dealers and distributors. As part of achieving and sustaining long-term viability and the viability of our dealer network, we determined that a reduction in the number of U.S. dealerships was necessary. Certain dealers that had signed wind-down agreements with us elected to file for reinstatement through a binding arbitration process. In response to the arbitration filings we offered certain dealers reinstatement contingent upon compliance with our core business criteria for operation of a dealership. At June 30, 2010 the arbitration process had been fundamentally resolved. At June 30, 2010 there were approximately 5,200 vehicle dealers in the U.S. compared to approximately 5,600 at December 31, 2009.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

#### Repayment of Debt

Proceeds from the DIP Facility were necessary in order to provide sufficient capital for Old GM to operate pending the closing of the 363 Sale. On July 10, 2009 we entered into the UST Credit Agreement and assumed debt of \$7.1 billion (UST Loans), which Old GM incurred under the DIP Facility. On July 10, 2009 we also entered into the Canadian Loan Agreement and assumed a CAD \$1.5 billion (equivalent to \$1.3 billion when entered into) term loan (Canadian Loan). One of our key priorities was to repay the outstanding balances from these loans prior to maturity.

In April 2010 we used funds from our escrow account to repay in full the outstanding amount of the UST Loans of \$4.7 billion. In addition, GMCL repaid in full the outstanding amount of the Canadian Loan of \$1.1 billion. Both loans were repaid prior to maturity.

Following the repayment of the UST Loans and the Canadian Loan, the remaining funds in an amount of \$6.6 billion that were held in escrow became unrestricted. The availability of those funds is no longer subject to the conditions set forth in the UST Credit Agreement.

#### **Brand Rationalization**

We completed the sale of Saab Automobile AB (Saab) in February 2010 and the sale of Saab Automobile GB (Saab GB) in May 2010 and have ceased production of our Pontiac, Saturn and HUMMER brands and continue the wind-down process of the related dealers.

#### **Opel/Vauxhall Restructuring Activities**

In February 2010 we presented our plan for the long-term viability of our Opel/Vauxhall operations to the German federal government. Our plan included funding requirement estimates of Euro 3.7 billion (equivalent to \$5.1 billion) of which we planned to fund Euro 1.9 billion (equivalent to \$2.6 billion) with the remaining funding from European governments.

In June 2010 the German federal government notified us of its decision not to provide loan guarantees to Opel/Vauxhall. As a result we have decided to fund the requirements of Opel/Vauxhall internally. Opel/Vauxhall has subsequently withdrawn all applications for government loan guarantees from European governments.

We plan to continue to invest in capital, engineering and innovative fuel efficient powertrain technologies including an extended-range electric vehicle and battery electric vehicles. Our plan also includes aggressive capacity reductions including headcount reductions and the closing of our Antwerp, Belgium facility.

The following provides an update of our restructuring activities related to our Opel/Vauxhall operations.

In the three months ended June 30, 2010 GME recorded charges of \$25 million related to a voluntary separation program in the United Kingdom. In the six months ended June 30, 2010 GME recorded charges of \$64 million related to separation/layoff plans and an early retirement plan in Spain which will affect 1,200 employees.

In the three and six months ended June 30, 2010 GME recorded charges of \$169 million and \$353 million related to a separation plan associated with the closure of the Antwerp, Belgium facility. Negotiations for the final termination benefits were concluded in April 2010, and the total separation costs are estimated to be Euro 0.4 billion (equivalent to \$0.5 billion). There were 2,600 employees affected, of which 1,300 separated in June 2010. In addition, GME and employee representatives entered into a Memorandum of Understanding whereby both parties will cooperate in a working group, led by the Flemish government, in order to find an outside investor to acquire the facility. The search will conclude at the end of September 2010. If an investor is found, the investor will determine the number of employees that it will hire. If an investor is not found, termination benefits will be offered to the remaining employees and the facility will close by December 31, 2010.

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

## Pursue Section 136 Loans

Section 136 of the Energy Independence and Security Act of 2007 establishes an incentive program consisting of both grants and direct loans to support the development of advanced technology vehicles and associated components in the U.S. The U.S. Congress provided the U.S. Department of Energy (DOE) with \$25.0 billion in funding to make direct loans to eligible applicants for the costs of re–equipping, expanding, and establishing manufacturing facilities in the United States to produce advanced technology vehicles and components for these vehicles. In October 2009 we submitted a consolidated application with respect to an aggregate amount of \$14.4 billion of Section 136 Loans. Ongoing product portfolio updates and project modifications requested from the DOE have the potential to reduce the maximum loan amount. To date, the DOE has announced that it would provide approximately \$8.4 billion in Section 136 Loans to Ford Motor Company, Nissan Motor Company, Tesla Motors, Inc., Fisker Automotive, Inc., and Tenneco Inc. There can be no assurance that we will qualify for any remaining loans or receive any such loans even if we qualify.

#### Development of Multiple Financing Sources and Acquisition of AmeriCredit Corp.

A significant percentage of our customers and dealers require financing to purchase our vehicles. Historically, Ally Financial has provided most of the financing for our dealers and a significant amount of financing for our customers in the U.S., Canada and various other markets around the world. Additionally, we maintain other financing relationships, such as with U.S. Bank for U.S. leasing, AmeriCredit for non-prime lending and a variety of local and regional financing sources around the world.

In July 2010 we entered into a definitive agreement to acquire AmeriCredit, an independent automobile finance company for cash of approximately \$3.5 billion. AmeriCredit, which we expect will, when the acquisition is completed, will allow us to complement our existing relationship with Ally Financial in order to provide a more complete range of financing options to our customers, including additional capabilities in leasing and non-prime financing options. We also plan to use AmeriCredit for targeted customer marketing initiatives to expand our vehicle sales. The transaction is expected to close during the fourth quarter of 2010, pending certain closing conditions, including the approval of AmeriCredit shareholders.

#### Focus on Chinese Market

Our Chinese operations, which we established beginning in 1997, are primarily composed of three joint ventures: SGM, SGMW and FAW–GM. We view the Chinese market, the fastest growing global market by volume of vehicles sold, as important to our global growth strategy and are employing a multi–brand strategy, led by our Buick division, which we believe is a strong brand in China. In the coming years, we plan to increasingly leverage our global architectures to increase the number of nameplates under the Chevrolet brand in China.

SGM, of which we own 49% and the Shanghai Automotive Industry Corporation (SAIC) owns 51%, produces passenger cars utilizing GM global architectures under the Buick, Chevrolet and Cadillac brands. SGMW, of which we own 34%, SAIC owns 50% and Liuzhou Wuling Motors Co., Ltd. (Wuling) owns 16%, produces mini-commercial vehicles and passenger cars utilizing local architectures under the Wuling and Chevrolet brands. FAW-GM, of which we own 50% and China FAW Group Corporation (FAW) owns 50%, produces light commercial vehicles under the Jiefang brand and medium vans under the FAW brand. Our joint venture agreements allow for significant rights as a member as well as the contractual right to report SGMW and FAW-GM production volume in China. SAIC, one of our joint venture partners, currently produces vehicles under its own name for sale in the Chinese market. At present, vehicles that SAIC produces primarily serve markets that are different from markets served by our joint ventures.

During the three and six months ended June 30, 2010, SGM, SGMW and FAW–GM sold 586,000 and 1.2 million vehicles in China. In the three and six months ended June 30, 2010, SGM and SGMW, the largest of these three joint ventures, combined to provide equity income, net of tax, to us of \$378 million and \$734 million.

#### **GM South America**

In June 2010 we announced that, beginning in the fourth quarter of 2010, we are creating a new regional organization in South America. The new organization, GM South America, will be headquartered in Sao Paulo, Brazil, and its president will report to our chairman and chief executive officer. GM South America will include existing sales and manufacturing operations in Brazil,

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

Argentina, Colombia, Ecuador and Venezuela, as well as sales activities in those countries and Bolivia, Chile, Paraguay, Peru and Uruguay. As part of our global product operations organization, GM South America will have product design and engineering capabilities, which will allow it to continue creating local cars and trucks that complement our global product architectures. GM South America will initially have approximately 29,000 employees.

#### Sale of Nexteer

On July 7, 2010 we entered into a definitive agreement to sell Nexteer to an unaffiliated party. The transaction is subject to customary closing conditions, regulatory approvals and review by government agencies in the U.S. and China. At June 30, 2010 Nexteer had total assets of \$906 million, total liabilities of \$458 million, and recorded revenue of \$1.0 billion in the six months ended June 30, 2010, of which \$543 million were sales to us and our affiliates. Nexteer did not qualify for held for sale classification at June 30, 2010. Once consummated, we do not expect the sale of Nexteer to have a material effect on the unaudited condensed consolidated financial statements.

#### Benefit Plan Changes

#### Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act was signed into law in March 2010 and contains provisions that require all future reimbursement receipts under the Medicare Part D retiree drug subsidy program to be included in taxable income. This taxable income inclusion will not significantly affect us because effective January 1, 2010 we no longer provide prescription drug coverage to post–age 65 Medicare–eligible participants and we have a full valuation allowance against our net deferred tax assets in the U.S. We have assessed the other provisions of this new law, based on information known at this time, and we believe that the new law will not have a significant effect on our consolidated financial statements.

#### Venezuelan Exchange Regulations

Our Venezuelan subsidiaries changed their functional currency from Bolivar Fuerte (BsF), the local currency, to the U.S. dollar, our reporting currency, on January 1, 2010 because of the hyperinflationary status of the Venezuelan economy. Further, pursuant to the official devaluation of the Venezuelan currency and establishment of the dual fixed exchange rates in January 2010, we remeasured the BsF denominated monetary assets and liabilities held by our Venezuelan subsidiaries at the nonessential rate of 4.30 BsF to \$1.00. The remeasurement resulted in a charge of \$25 million recorded in Cost of sales in the three months ended March 31, 2010. During the six months ended June 30, 2010 all BsF denominated transactions have been remeasured at the nonessential rate of 4.30 BsF to \$1.00.

In June 2010, the Venezuelan government introduced additional foreign currency exchange control regulations, which imposed restrictions on the use of the parallel foreign currency exchange market, thereby making it more difficult to convert BsF to U.S. Dollars. We, like most Venezuelan importers, periodically accessed the parallel exchange market, which historically enabled entities to obtain foreign currency for transactions that could not be processed by the Commission for the Administration of Currency Exchange (CADIVI). The restrictions on the foreign currency exchange market could affect our Venezuelan subsidiaries' ability to pay its non–BsF denominated obligations that do not qualify to be processed by CADIVI at the official exchange rates as well as our ability to benefit from those operations.

#### Effect of Fresh-Start Reporting

The application of fresh-start reporting significantly affected certain assets, liabilities, and expenses. As a result, certain financial information at and in the three and six months ended June 30, 2010 is not comparable to Old GM's financial information. Total net sales and revenue was not significantly affected by fresh-start reporting and facilitates a comparison to combined vehicle sales data. Refer to Note 2 to the unaudited condensed consolidated financial statements for additional information on fresh-start reporting.

Because our and Old GM's financial information is not comparable, we are providing additional financial metrics for the periods presented in addition to disclosures concerning significant transactions and trends at June 30, 2010 and in the periods presented.

# GENERAL MOTORS COMPANY AND SUBSIDIARIES

Total net sales and revenue is primarily comprised of revenue generated from the sales of vehicles, in addition to revenue from OnStar, our customer subscription service, vehicle sales accounted for as operating leases and sales of parts and accessories.

Cost of sales is primarily comprised of material, labor, manufacturing overhead, freight, foreign currency transaction and translation gains and losses, product engineering, design and development expenses, depreciation and amortization, policy and warranty costs, postemployment benefit gains and losses, and separation and impairment charges. Prior to our application of fresh-start reporting on July 10, 2009, Cost of sales also included gains and losses on derivative instruments. Effective July 10, 2009 gains and losses related to all nondesignated derivatives are recorded in Interest income and other non-operating income, net.

Selling, general and administrative expense is primarily comprised of costs related to the advertising, selling and promotion of products, support services, including central office expenses, labor and benefit expenses for employees not considered part of the manufacturing process, consulting costs, rental expense for offices, bad debt expense and state and local taxes.

# **Consolidated Results of Operations**

(Dollars in millions)

	 Succe		Predecessor				
	ee Months Ended <u>e 30, 2010</u>	E	Months Ended <u>2 30, 2010</u>		ee Months Ended le 30, 2009		x Months Ended <u>1e 30, 2009</u>
Net sales and revenue	\$ 33,174	\$	64,650	\$	23,047	\$	45,478
Costs and expenses							
Cost of sales	28,759		56,350		29,384		53,995
Selling, general and administrative expense	2,623		5,307		2,936		5,433
Other expenses, net	39		85		169		1,154
Total costs and expenses	31,421		61,742		32,489		60,582
Operating income (loss)	1,753		2,908		(9,442)		(15,104)
Equity in income of and disposition of interest in Ally Financial	·		·		1,880		1,380
Interest expense	(250)		(587)		(3,375)		(4,605)
Interest income and other non-operating income, net	59		544		408		833
Loss on extinguishment of debt			(1)		(1,994)		(1,088)
Reorganization expenses, net			—		(1,157)		(1,157)
Income (loss) before income taxes and equity income	1.562		2,864		(13,680)		(19,741)
Income tax expense (benefit)	361		870		(445)		(559)
Equity income (loss), net of tax	411		814		(2)		46
Net income (loss)	1,612		2,808		(13,237)		(19,136)
Less: Net income (loss) attributable to noncontrolling interests	76		2,808		(332)		(19,150) (256)
Less. Net income (loss) attributable to noncontrolling interests	/0		204		(332)		(230)
Net income (loss) attributable to stockholders	1,536		2,604		(12,905)		(18, 880)
Less: Cumulative dividends on preferred stock	202		405				
ľ							
Net income (loss) attributable to common stockholders	\$ 1,334	\$	2,199	\$	(12,905)	\$	(18,880)

# GENERAL MOTORS COMPANY AND SUBSIDIARIES

# Vehicle Sales and Production Volume

The following tables summarize total production volume and industry sales of new motor vehicles and competitive position (in thousands):

	Succe	ssor	Predecessor			
	Three Months Ended	Six Months Ended	Three Months Ended	Six Months Ended		
Production Volume (a)(b)(c)	<u>June 30, 2010</u>	June 30, 2010	<u>June 30, 2009</u>	June 30, 2009		
GMNA GMIO	731 1,195	1,399 2,307	395 828	767 1,523		
GME	331	636	315	579		
Worldwide	2,257	4,342	1,538	2,869		

(a) Production volume represents the number of vehicles manufactured by our and Old GM's assembly facilities and also includes vehicles produced by certain joint ventures.

(b) Includes SGM, SGMW, FAW-GM joint venture production in China and SAIC GM Investment Ltd. (HKJV) joint venture production in India.

(c) The joint venture agreements with SGMW (34%) and FAW-GM (50%) allows for significant rights as a member as well as the contractual right to report SGMW and FAW-GM production volume in China.

		Successor							Prede	cessor			
	Th	ree Mo	nths	5	Six Mon	ths	Th	ree Mor	ths	S	ix Mont	hs	
	Ju	Ended June 30, 2010			Ended June 30, 2010			Ended June 30, 2009			Ended June 30, 2009		
			GM			GM			Old GM			Old GM	
	Industry	GM	as a % of Industry	Industry	GM	as a % of Industry	<u>Industry</u>	Old GM	as a % of <u>Industry</u>	Industry	Old GM	as a % of <u>Industry</u>	
Vehicle Sales (a)(b)(c)(d)													
GMNA (d)	3,825	716	18.7%	6,998	1,280	18.3%	3,303	657	19.9%	6,091	1,157	19.0%	
GMIO(e)(f)(g)	9,647	995	10.3%	19,742	2,026	10.3%	7,786	807	10.4%	14,934	1,517	10.2%	
GME (e)	5,013	442	8.8%	9,782	846	8.6%	5,131	474	9.2%	9,647	881	9.1%	
Worldwide (e)	18,485	2,153	11.6%	36,522	4,152	11.4%	16,220	1,938	11.9%	30,672	3,555	11.6%	

(a) Includes HUMMER, Saturn and Pontiac vehicle sales data.

(b) Includes Saab vehicle sales data through February 2010.

(c) Vehicle sales data may include rounding differences.

(d) Vehicle sales represent sales to the ultimate customer.

(e) Vehicle sales primarily represent estimated sales to the ultimate customer.

(f) Includes SGM, SGMW and FAW-GM joint venture sales in China and HKJV joint venture sales in India.

(g) The joint venture agreements with SGMW (34%) and FAW-GM (50%) allows for significant rights as a member as well as the contractual right to report SGMW and FAW-GM vehicle sales in China as a part of global market share.

# GENERAL MOTORS COMPANY AND SUBSIDIARIES

# **Reconciliation of Segment Results**

Management believes EBIT provides meaningful supplemental information regarding our operating results because it excludes amounts that management does not consider part of operating results when assessing and measuring the operational and financial performance of the organization. Management believes these measures allow it to readily view operating trends, perform analytical comparisons, benchmark performance among geographic regions and assess whether our plan to return to profitability is on target. Accordingly, we believe EBIT is useful in allowing for greater transparency of our core operations and it is therefore used by management in its financial and operational decision–making.

While management believes that EBIT provides useful information, it is not an operating measure under U.S. GAAP and there are limitations associated with its use. Our calculation of EBIT may not be completely comparable to similarly titled measures of other companies due to potential differences between companies in the method of calculation. As a result, the use of EBIT has limitations and should not be considered in isolation from, or as a substitute for, other measures such as Net income (loss) or Net income (loss) attributable to common stockholders. Due to these limitations, EBIT is used as a supplement to U.S. GAAP measures.

The following table summarizes the reconciliation of EBIT to Net income (loss) attributable to stockholders for each of our operating segments (dollars in millions):

	Successor				Predecessor			
	I	e Months Ended e 30, 2010	1	Months Ended e 30, 2010		ee Months Ended e 30, 2009_		x Months Ended ne 30, 2009
Operating segments								
GMNA (a)	\$	1,592	\$	2,810	\$	(7,026)	\$	(10, 452)
GMIO (a)		672		1,838		(660)		(699)
GME (a)		(160)		(637)		(757)		(2,711)
Total operating segments		2,104		4,011		(8,443)		(13, 862)
Corporate and eliminations		(71)		(154)		(1,619)		(1,145)
Earnings (loss) before interest and taxes		2,033		3,857		(10,062)		(15,007)
Interest income		114		204		87		173
Interest expense		250		587		3,375		4,605
Income tax expense (benefit)		361		870		(445)		(559)
Net income (loss) attributable to stockholders	\$	1,536	\$	2,604	\$	(12,905)	\$	(18,880)

(a) Interest and income taxes are recorded centrally in Corporate; therefore, there are no reconciling items for our operating segments between Earnings (loss) attributable to stockholders before interest and taxes and Net income (loss) attributable to stockholders.

Three and Six Months Ended June 30, 2010 and 2009 (Dollars in millions)

Total Net Sales and Revenue

	Succe	ssor	Predec	essor		
	Three Months	Six Months	Three Months	Six Months	Three Months	Six Months
	Ended	Ended	Ended	Ended	Ended 2010 vs. 2009	Ended 2010 vs. 2009
	June 30,	June 30,	June 30,	June 30,	Change	Change
	2010	2010	2009	2009	Amount %	Amount %
Total net sales and revenue	\$ 33,174	\$ 64,650	\$ 23,047	\$ 45,478	\$10,127 43.9%	\$19,172 42.2%



#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

In the three months ended June 30, 2010 Total net sales and revenue increased compared to the corresponding period in 2009 by \$10.1 billion (or 43.9%), primarily due to: (1) higher wholesale volumes of \$6.9 billion, which primarily resulted from increased volumes in GMNA of \$6.6 billion; (2) favorable mix of \$1.7 billion, which primarily resulted from GMNA of \$1.5 billion; (3) favorable price effects of \$0.8 billion; (4) derivative losses of \$0.8 billion, which primarily resulted from derivative losses of \$0.7 billion that GMIO recorded in the three months ended June 30, 2009; and (5) net favorable foreign currency translation and transaction gains of \$0.2 billion.

In the six months ended June 30, 2010 Total net sales and revenue increased compared to the corresponding period in 2009 by \$19.2 billion (or 42.2%), primarily due to: (1) higher wholesale volumes of \$13.3 billion, which primarily resulted from increased volumes in GMNA of \$12.1 billion; (2) favorable pricing of \$2.8 billion partially offset by less favorable adjustments to the accrual for U.S. residual support programs for leased vehicles in GMNA of \$0.6 billion; (3) favorable mix of \$1.7 billion; (4) Net foreign currency translation and transaction gains of \$1.4 billion; and (5) derivative losses of \$1.0 billion that GMIO recorded in the six months ended June 30, 2009.

#### Cost of Sales

	Successor							Predecessor							
	Three Months Ended					Percentage of Total			ee Months Ended	Percentage of Total	Si	x Months Ended	Percentage of Total		
	J	une 30, 2010	net sales and revenue	June 30, 2010		net sales and revenue		J	une 30, 2009	net sales and revenue	J	lune 30, 2009	net sales and revenue		
Cost of sales	\$	28,759	86.7%	\$	56,350	87.2%		\$	29,384	127.5%	\$	53,995	118.7%		
Gross margin	\$	4,415	13.3%	\$	8,300	12.8%		\$	(6,337)	(27.5)%	\$	(8,517)	(18.7)%		

GM

In the three months ended June 30, 2010 Cost of sales included: (1) restructuring charges of \$0.2 billion; (2) charges of \$0.2 billion for a recall campaign on windshield fluid heaters; partially offset by (3) foreign currency translation and transaction gains of \$0.3 billion.

In the six months ended June 30, 2010 Cost of sales included: (1) net restructuring charges of \$0.4 billion; (2) charges of \$0.2 billion for a recall campaign on windshield fluid heaters; partially offset by (3) net foreign currency translation and transaction gains of \$0.2 billion.

#### Old GM

In the three months ended June 30, 2009 Cost of sales included: (1) a curtailment loss of \$1.4 billion upon the interim remeasurement of the U.S. Hourly and U.S. Salaried Defined Benefit Pension Plans and a charge of \$1.1 billion related to the Supplemental Unemployment Benefit (SUB) and Transitional Support Program (TSP), partially offset by a favorable adjustment of \$0.4 billion primarily related to the suspension of the JOBS Program (as defined in Note 20 to the condensed consolidated financial statements); (2) incremental depreciation charges of \$1.8 billion; (3) foreign currency translation losses of \$1.0 billion; (4) separation program charges and Canadian restructuring activities of \$0.7 billion; and (5) impairment charges of \$0.3 billion.

In the six months ended June 30, 2009 Cost of sales included: (1) incremental depreciation charges of \$2.3 billion; (2) a curtailment loss of \$1.4 billion upon the interim remeasurement of the U.S. Hourly and U.S. Salaried Defined Benefit Pension Plans and a charge of \$1.1 billion related to the SUB and TSP, partially offset by a favorable adjustment of \$0.7 billion primarily related to the suspension of the JOBS Program; (3) separation program charges and Canadian restructuring activities of \$1.1 billion; (4) foreign currency translation losses of \$1.0 billion; (5) impairment charges of \$0.7 billion; and (6) charges of \$0.3 billion related to obligations associated with various Delphi agreements.

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

Selling, General and Administrative Expense

		Successor						Predecessor					
			Percentage			Percentage			Percentage			Percentage	
			of Total	~.		of Total			of Total	~.		of Total	
	Three Months Ended		net sales		Six Months Ended and		s Three Months Ended		net sales		Months Ended	net sales and	
	Jun	e 30, 2010	revenue	Jun	e 30, 2010	revenue	Jun	e 30, 2009	revenue	Jun	e 30, 2009	revenue	
Selling, general and administrative expense	\$	2,623	7.9%	\$	5,307	8.2%	\$	2,936	12.7%	\$	5,433	11.9%	

# GM

In the three months ended June 30, 2010 Selling, general and administrative expense included advertising expenses of \$0.9 billion primarily in GMNA of \$0.6 billion for promotional campaigns and GME of \$0.2 billion for promotional campaigns to support the launch of new vehicles.

In the six months ended June 30, 2010 Selling, general and administrative expense included advertising expenses of \$1.9 billion primarily in GMNA of \$1.3 billion and GME of \$0.3 billion for promotional campaigns to support the launch of new vehicles.

#### Old GM

In the three and six months ended June 30, 2009 Selling, general and administrative expense included curtailment loss of \$0.3 billion upon the interim remeasurement of the U.S. Salary Defined Benefit Pension Plan as a result of global salaried workforce reductions and reserves related to the wind-down of dealerships of \$0.1 billion.

#### Other Expenses, net

		Successor					Predecessor				
			Percentage			Percentage	Three	Percentage			Percentage
	Th	ree	of Total			of Total	Months	of Total			of Total
	Mo	nths	net sales	Six 1	Months	net sales	Ended	net sales	Six	Months	net sales
		ded 0, 2010	and revenue		nded 30, 2010	and revenue	June 30, 2009	and revenue		Ended e <u>30, 2009</u>	and revenue
Other expenses, net	\$	39	0.1%	\$	85	0.1%	\$ 169	0.7%	\$	1,154	2.5%

GM

In the three and six months ended June 30, 2010 Other expenses, net included ongoing expenses related to our portfolio of automotive retail leases.

## Old GM

In the three months ended June 30, 2009 Other expenses, net included charges of \$0.1 billion for Old GM's obligations related to Delphi and charges related to adjustments to contingencies associated with the deconsolidation of Saab of \$0.1 billion.

In the six months ended June 30, 2009 Other expenses, net included: (1) charges of \$0.8 billion related to the deconsolidation of Saab. Saab filed for reorganization protection under the laws of Sweden in February 2009; (2) charges of \$0.1 billion for Old GM's obligations related to Delphi; and (3) expenses of \$0.1 billion primarily related to ongoing expenses related to Old GM's portfolio of automotive retail leases, including depreciation and realized losses.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

Interest Expense

		Suc	cessor		Predecessor					
	Three Months Ended	Percentage of Total	Six Months	Percentage of Total	Three Months	Percentage of Total	Six Months	Percentage of Total		
	June 30, 2010	net sales and revenue	Ended <u>June 30, 2010</u>	net sales and revenue	Ended <u>June 30, 2009</u>	net sales and revenue	Ended <u>June 30, 2009</u>	net sales and revenue		
Interest expense	\$ (250)	(0.8)%	\$ (587)	(0.9)%	\$ (3,375)	(14.6)%	\$ (4,605)	(10.1)%		

GM

In the three months ended June 30, 2010 Interest expense included interest expense on GMIO debt of \$0.1 billion and VEBA Note interest expense and premium amortization of \$0.1 billion.

In the six months ended June 30, 2010 Interest expense included interest expense on GMIO debt of \$0.2 billion, VEBA Note interest expense and premium amortization of \$0.1 billion and interest expense on the UST Loan of \$0.1 billion.

#### Old GM

In the three months ended June 30, 2009 Interest expense included amortization of discounts related to the UST Loan Facility of \$2.6 billion and interest expense on the UST Loan Facility of \$0.3 billion.

In the six months ended June 30, 2009 Interest expense included: (1) amortization of discounts related to the UST Loan Facility of \$2.9 billion; (2) interest expense on unsecured debt of \$0.9 billion; and (3) interest expense on the UST Loan Facility of \$0.4 billion.

Interest Income and Other Non-Operating Income, net

			Succe	essor			 Predecessor						
	Three M End	led	Percentage of Total net sales and <u>revenue</u>	1	Months Ended <u>e 30, 2010</u>	Percentage of Total net sales and <u>revenue</u>	ee Months Ended le 30, 2009	Percentage of Total net sales and <u>revenue</u>	F	Months Ended 230, 2009	Percentage of Total net sales and <u>revenue</u>		
Interest income and other non-operating income, net	\$	59	0.2%	\$	544	0.8%	\$ 408	1.8%	\$	833	1.8%		

GM

In the three months ended June 30, 2010 Interest income and other non-operating income, net included: (1) interest income of \$0.1 billion on cash deposits and marketable securities and (2) rental and royalty income of \$0.1 billion; offset by (3) foreign currency and other derivative losses of \$0.2 billion.

In the six months ended June 30, 2010 Interest income and other non-operating income, net included interest income of \$0.2 billion on cash deposits and marketable securities and gain on the sale of \$aab of \$0.1 billion.

## $Old \; GM$

In the three months ended June 30, 2009 Interest income and other non-operating income, net included interest income of \$0.1 billion and foreign currency and other derivative gains of \$0.1 billion.

In the six months ended June 30, 2009 Interest income and other non-operating income, net included foreign currency and other derivative gains of \$0.3 billion, interest income of \$0.2 billion and a gain of \$0.1 billion on a warrant that Old GM issued to the UST in connection with the UST Loan Agreement.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

Loss on Extinguishment of Debt

	Su	ccessor	Pred	ecessor
	Three		Three	
	Months		Months	
	Ended	Six Months	Ended	Six Months
	June 30, 2010	Ended <u>June 30, 2010</u>	June 30, 2009	Ended <u>June 30, 2009</u>
Loss on extinguishment of debt	\$ —	\$ (1)	\$(1,994)	\$ (1,088)

Old GM

In the three months ended June 30, 2009 Loss on the extinguishment of debt included a loss of \$2.0 billion related to the UST exercising its option to convert outstanding amounts of the UST Ally Financial Loan (as defined in Note 7 to the condensed consolidated financial statements) into shares of Ally Financial's Class B Common Membership Interests.

In the six months ended June 30, 2009 Loss on the extinguishment of debt included a loss of \$2.0 billion related to the UST exercising its option to convert outstanding amounts of the UST Ally Financial Loan into shares of Ally Financial's Class B Common Membership Interests. This loss was partially offset by a gain on extinguishment of debt of \$0.9 billion related to an amendment to Old GM's U.S. term loan.

#### Reorganization Expenses, net

	Su	iccessor	Predecessor		
	Three		Three		
	Months		Months		
	Ended	Six Months	Ended	Six Months	
	June 30,	Ended	June 30,	Ended	
	2010	<u>June 30, 2010</u>	2009	<u>June 30, 2009</u>	
Reorganization expenses, net	\$ —	\$ —	\$(1,157)	\$ (1,157)	

#### Old GM

In the three and six months ended June 30, 2009 Reorganization expenses, net included: (1) Old GM's loss on the extinguishment of debt resulting from repayment of its secured revolving credit facility, U.S. term loan, and secured credit facility due to the fair value of the U.S. term loan exceeding its carrying amount by \$1.0 billion; (2) a loss on contract rejections, settlements of claims and other lease terminations of \$0.4 billion; partially offset by (3) gains related to release of Accumulated other comprehensive income (loss) associated with derivatives of \$0.2 billion.

Income Tax Expense (Benefit)

	Su	iccessor	Predecessor			
	Three		Three			
	Months		Months			
	Ended	Six Months	Ended	Six Months		
	June 30, 2010	Ended June 30, 2010	June 30, 2009	Ended <u>June 30, 2009</u>		
Income tax expense (benefit)	\$ 361	\$ 870	\$ (445)	\$ (559)		

#### GM

In the three months ended June 30, 2010 Income tax expense primarily related to income tax provisions for profitable entities.

In the six months ended June 30, 2010 Income tax expense primarily related to income tax provisions for profitable entities and a taxable foreign exchange gain in Venezuela.

The effective tax rate fluctuated in the six months ended June 30, 2010 primarily as a result of changes in the mix of earnings in valuation allowance and non-valuation allowance jurisdictions.

#### $Old \; GM$

In the three and six months ended June 30, 2009 Income tax benefit primarily related to a resolution of a U.S. and Canada transfer pricing matter and other discrete items offset by income tax provisions for profitable entities.

# GENERAL MOTORS COMPANY AND SUBSIDIARIES

Equity Income, net of tax

			Succ	essor			_		Predec	essor		
	Т	hree	Percentage			Percentage		Three	Percentage			Percentage
	Μ	onths	of Total	Six	Months	of Total		Months	of Total	Six	Months	of Total
		nded <u>30, 2010</u>	net sales and <u>revenue</u>		Ended 20, 2010	net sales and revenue	J	Ended une 30, 2009	net sales and revenue		Inded 30, 2009	net sales and <u>revenue</u>
SGM and SGMW	\$	378	1.1%	\$	734	1.1%	\$	183	0.8%	\$	289	0.6%
Other equity interests		33	0.1%		80	0.1%		(185)	(0.8)%		(243)	(0.5)%
Total equity income, net												
of tax	\$	411	1.2%	\$	814	1.3%	\$	(2)	%	\$	46	0.1%

#### GM

In the three months ended June 30, 2010 Equity income, net of tax included equity income of \$0.4 billion related to our China joint ventures primarily SGM and SGMW.

In the six months ended June 30, 2010 Equity income, net of tax included equity income of \$0.7 billion related to our China joint ventures primarily SGM and SGMW and \$0.1 billion of equity income related to New Delphi (as defined in Note 4 to the condensed consolidated financial statements).

Old GM

In the three months ended June 30, 2009 Equity income, net of tax included equity income of \$0.2 billion related to our China joint ventures, SGM and SGMW, offset by a loss related to our investment in New United Motor Manufacturing, Inc. (NUMMI) of \$0.2 billion.

In the six months ended June 30, 2009 Equity income, net of tax included equity income of \$0.3 billion related to our China joint ventures, SGM and SGMW, offset by losses related to our investments in NUMMI and CAMI Automotive, Inc. (CAMI) of \$0.3 billion.

# GENERAL MOTORS COMPANY AND SUBSIDIARIES

# Changes in Consolidated Financial Condition (Dollars in millions, except share amounts)

			Successor	
	Ju	ne 30, 2010		nber 31, 2009
ASSETS				
Current Assets Cash and cash equivalents	\$	26,773	\$	22,679
Marketable securities	¢	4,761	ф	134
Warkeable seed nes		4,701		154
Total cash, cash equivalents and marketable securities		31,534		22,813
Restricted cash and marketable securities		1,393		13,917
Accounts and notes receivable (net of allowance of \$272 and \$250)		8,662		7,518
Inventories		11,533		10,107
Assets held for sale				388
Equipment on operating leases, net		3,008		2,727
Other current assets and deferred income taxes		1,677		1,777
Total current assets		57,807		59,247
Non-Current Assets		57,007		57,217
Equity in net assets of nonconsolidated affiliates		8,296		7,936
Assets held for sale		0,290		530
Property, net		18,106		18,687
Goodwill		30,186		30,672
Intangible assets, net		12,820		14,547
Other assets		4,684		4,676
		,		,
Total non-current assets		74,092		77,048
Total Assets	\$	131,899	\$	136,295
LIABILITIES AND EQUITY (DEFICIT)				
Current Liabilities				
Accounts payable (principally trade)	\$	20,755	\$	18,725
Short-term debt and current portion of long-term debt (including debt at GM Daewoo of \$1,021 at		<i>,</i>		
June 30, 2010)		5,524		10,221
Liabilities held for sale				355
Accrued expenses (including derivative liabilities at GM Daewoo of \$352 at June 30, 2010)		24,068		23,134
		50 0 45		
Total current liabilities		50,347		52,435
Non-Current Liabilities		0.605		
Long-term debt (including debt at GM Daewoo of \$722 at June 30, 2010)		2,637		5,562
Liabilities held for sale		9 ( 40		270
Postretirement benefits other than pensions		8,649		8,708
Pensions Other liabilities and deferred income taxes		25,990		27,086
Other haddings and deferred income taxes		13,377		13,279
Total non-current liabilities		50,653		54,905
Total Liabilities		101,000		107,340
Commitments and contingencies				
Preferred stock, \$0.01 par value, (1,000,000,000 shares authorized, 360,000,000 shares issued and outstanding				6 0 0 0
(each with a \$25.00 liquidation preference) at June 30, 2010 and December 31, 2009)		6,998		6,998
Equity				
Common stock, \$0.01 par value, (2,500,000,000 shares authorized, 500,000,000 shares issued and		5		5
outstanding at June 30, 2010 and December 31, 2009)		5 24.052		24.050
Capital surplus (principally additional paid-in capital) Accumulated deficit				(4,394)
Accumulated deficit		(2,195) 1,153		1,588
		,		-
Total stockholders' equity		23,015		21,249
Noncontrolling interests		886		708
-				
Total equity		23,901		21,957
		, í		
Total Liabilities and Equity	\$	131,899	\$	136,295

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

## **Current** Assets

At June 30, 2010 Marketable securities of \$4.8 billion increased by \$4.6 billion reflecting investments in securities with maturities exceeding 90 days.

At June 30, 2010 Restricted cash and marketable securities of \$1.4 billion decreased by \$12.5 billion (or 90.0%), primarily due to: (1) our payments of \$1.2 billion on the UST Loans and Canadian Loan in March 2010; and (2) our repayment of the full outstanding amount of \$4.7 billion on the UST Loans in April 2010. Following the repayment of the UST Loans and our repayment of the Canadian Loan of \$1.1 billion in April 2010, the remaining UST escrow funds of \$6.6 billion became unrestricted.

At June 30, 2010 Accounts and notes receivable of \$8.7 billion increased by \$1.1 billion (or 15.2%), primarily due to higher sales in GMNA.

At June 30, 2010 Inventories of \$11.5 billion increased by \$1.4 billion (or 14.1%), primarily due to: (1) increased production resulting from higher demand for our products and new product launches; (2) higher finished goods inventory of \$6.3 billion compared to low levels at December 31, 2009 of \$5.9 billion, resulting from the year-end shut-down in some locations; primarily offset by (3) a decrease of \$0.5 billion due to the effect of foreign currency translation.

At June 30, 2010 Assets held for sale were reduced to \$0 from \$0.4 billion at December 31, 2009 due to the sale of Saab in February 2010 and the sale of Saab GB in May 2010 to Spyker Cars NV.

At June 30, 2010 Equipment on operating leases, net of \$3.0 billion increased by \$0.3 billion (or 10.3%) due to: (1) an increase of \$0.6 billion in GMNA, primarily related to vehicles leased to daily rental car companies (vehicles leased to U.S. daily rental car companies increased from 97,000 vehicles at December 31, 2009 to 129,000 vehicles at June 30, 2010); partially offset by (2) a decrease of \$0.3 billion due to the continued liquidation of our portfolio of automotive retail leases.

#### Non-Current Assets

At June 30, 2010 Equity in net assets of nonconsolidated affiliates of \$8.3 billion increased by \$0.4 billion (or 4.5%) due to: (1) equity income of \$0.8 billion in the six months ended June 30, 2010, primarily related to our China joint ventures; and (2) an investment of \$0.2 billion in the HKJV joint venture; partially offset by (3) a decrease of \$0.3 billion for dividends received; (4) a decrease of \$0.2 billion related to the sale of our 50% interest in a joint venture; and (5) a decrease of \$0.1 billion related to the sale of a 1% ownership interest in SGM to SAIC.

At June 30, 2010 Assets held for sale were reduced to \$0 from \$0.5 billion at December 31, 2009 due to the sale of certain of our India operations (India Operations) in February 2010. We classified these Assets held for sale as long-term at December 31, 2009 because we received a promissory note in exchange for the India Operations that does not convert to cash within one year.

At June 30, 2010 Property, net of \$18.1 billion decreased by \$0.6 billion (or 3.1%), primarily due to depreciation of \$1.8 billion and foreign currency translation, partially offset by capital expenditures of \$1.9 billion.

At June 30, 2010 Intangible assets, net of \$12.8 billion decreased by \$1.7 billion (or 11.9%), primarily due to amortization of \$1.4 billion and foreign currency translation of \$0.3 billion.

#### **Current Liabilities**

At June 30, 2010 Accounts payable of \$20.8 billion increased by \$2.0 billion (or 10.8%), primarily due to: (1) higher payables for materials due to increased production volumes; and (2) increased payables of \$0.2 billion related to the consolidation of GM Egypt upon our adoption of amendments to ASC 810–10, "Consolidation" (ASC 810–10) in January 2010.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

At June 30, 2010 Short-term debt and current portion of long-term debt of \$5.5 billion decreased by \$4.7 billion (or 46.0%), primarily due to our full repayments of the UST Loans and Canadian Loan of \$5.7 billion and \$1.3 billion and paydowns on other obligations of \$0.6 billion. This was partially offset by an increase of \$2.9 billion due to the reclassification of our VEBA Notes from long-term to short-term.

At June 30, 2010 Liabilities held for sale were reduced to \$0 from \$0.4 billion at December 31, 2009 due to the sale of Saab and Saab GB.

At June 30, 2010 Accrued expenses of \$24.1 billion increased by \$0.9 billion (or 4.0%). The change in Accrued expenses was primarily driven by GMNA due to higher customer deposits related to the increased number of vehicles leased to daily rental car companies of \$1.2 billion and timing of other miscellaneous accruals of \$0.4 billion. This was partially offset by the favorable effect of foreign currency translation of \$0.7 billion.

#### Non-Current Liabilities

At June 30, 2010 Long-term debt of \$2.6 billion decreased by \$2.9 billion (or 52.6%) primarily due to the reclassification of our VEBA Notes from long-term to short-term.

At June 30, 2010 Liabilities held for sale were reduced to \$0 from \$0.3 billion at December 31, 2009 due to the sale of our India Operations in February 2010. We classified these Liabilities held for sale as long-term at December 31, 2009 because we received a promissory note in exchange for the India Operations that does not convert to cash within one year.

At June 30, 2010 our Pensions obligation of \$26.0 billion decreased by \$1.1 billion (or 4.0%) due to the favorable effect of foreign currency translation of \$1.1 billion and an increase in net contributions of \$0.4 billion partially offset by the effects of interim pension remeasurements of \$0.4 billion.

Further information on each of our businesses and geographic segments is subsequently discussed.

#### Segment Results of Operations

#### GM North America (Dollars in millions)

	Su	ccessor	Prec	lecessor
	Three		Three	
	Months		Months	
	Ended	Six Months	Ended	Six Months
	June 30, 2010	Ended June 30, 2010	June 30, 2009	Ended June 30, 2009
Total not color and meaning				
Total net sales and revenue	\$20,266	\$ 39,552	\$11,445	\$ 23,764
Earnings (loss) before interest and income taxes	\$ 1,592	\$ 2,810	\$(7,026)	\$ (10,452)

#### Vehicle Sales and Production Volume

The following tables summarize total production volume and industry sales of new motor vehicles and competitive position (in thousands):

	Su	ccessor	Predecessor		
	Three		Three		
	Months Ended June 30, 2010	Six Months Ended June 30, 2010	Months Ended June 30, _2009	Six Months Ended June 30, 2009	
Production Volume (a)					
Cars	279	523	170	287	
Trucks	452	876	225	480	
Total	731	1,399	395	767	

(a) Production volume represents the number of vehicles manufactured by our and Old GM's assembly facilities and also includes vehicles produced by certain joint ventures.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

			Suc	cessor			Predecessor						
	Th	ree Mo	nths	:	Six Mont	hs		Three Mont	hs		Six Months	\$	
	Ju	Ended ne 30, 2		J	Ended une 30, 20			Ended June 30, 2009			Ended June 30, 200		
			GM			GM			Old GM			Old GM	
	<u>Industry</u>	GM	as a % of Industry	Industry	GM	as a % of Industry	Industry	Old GM	as a % of <u>Industry</u>	Industry	<u>Old GM</u>	as a % of <u>Industry</u>	
Vehicle Sales (a)(b)(c)(d)													
Total GMNA	3,825	716	18.7%	6,998	1,280	18.3%	3,303	657	19.9%	6,091	1,157	19.0%	
Total U.S.	3,117	603	19.4%	5,708	1,081	18.9%	2,647	541	20.5%	4,893	954	19.5%	
U.S. — Cars	1,527	234	15.4%	2,811	425	15.1%	1,349	236	17.5%	2,440	403	16.5%	
U.S. Trucks	1,590	369	23.2%	2,896	656	22.6%	1,298	306	23.5%	2,453	552	22.5%	
Canada	466	75	16.2%	798	123	15.5%	442	84	19.0%	732	135	18.4%	
Mexico	189	36	19.2%	382	72	19.0%	165	29	17.8%	365	65	17.7%	

(a) Vehicle sales represent sales to the ultimate customer.

(b) Includes HUMMER, Saturn and Pontiac vehicle sales data.

(c) Includes Saab vehicle sales data through February 2010.

(d) Vehicle sales data may include rounding differences.

# Three and Six Months Ended June 30, 2010 and 2009 (Dollars in millions)

Total Net Sales and Revenue

		Succo	essor		Predecessor										
	Three	Months				Three Months Ended		Six Months Ended		Three Months			Six Months		
		nded								Ended 2010 vs. 2009 Change			Ended 2010 vs. 2009 Chang		
	June	30, 2010	Jun	e 30, 2010		June	e 30, 2009	Jun	e 30, 2009		mount	<u>%</u>		mount	<u>%</u>
Total net sales and revenue	\$	20,266	\$	39,552		\$	11,445	\$	23,764	\$	8,821	77.1%	\$	15,788	66.4%

In the three months ended June 30, 2010 our vehicle sales in the United States increased compared to the corresponding period in 2009 by 62,000 vehicles (or 11.4%), our United States market share was 19.4%, our vehicle sales in Canada decreased by 9,000 vehicles (or 10.3%) and our vehicle sales in Mexico increased by 7,000 vehicles (or 23.4%).

In the three months ended June 30, 2010 Total net sales and revenue increased compared to the corresponding period in 2009 by \$8.8 billion (or 77.1%), primarily due to: (1) higher volumes of \$5.8 billion due to an improving economy and successful recent vehicle launches such as the Chevrolet Equinox, GMC Terrain, Buick LaCrosse and Cadillac SRX and increased U.S. daily rental auction volume of \$0.8 billion; (2) favorable mix of \$1.5 billion due to increased crossover and truck sales; and (3) favorable price of \$0.5 billion due to lower sales allowances.

In the six months ended June 30, 2010 our vehicle sales in the United States increased compared to the corresponding period in 2009 by 126,000 vehicles (or 13.2%), our United States market share was 18.9%, our vehicle sales in Canada decreased by 11,000 vehicles (or 8.3%) and our vehicle sales in Mexico increased by 8,000 vehicles (or 12.3%).

In the six months ended June 30, 2010 Total net sales and revenue increased compared to the corresponding period in 2009 by \$15.8 billion (or 66.4%), primarily due to: (1) higher volumes of \$11.3 billion due to an improving economy and successful recent vehicle launches such as the Chevrolet Equinox, GMC Terrain, Buick LaCrosse and Cadillac SRX and increased U.S. daily rental auction volume of \$0.8 billion; (2) favorable pricing of \$2.3 billion due to lower sales allowances partially offset by less favorable adjustments in the U.S. (favorable of \$1.0 billion in 2009 compared to favorable of \$0.4 billion in 2010) to the accrual for U.S. residual support programs for leased vehicles of \$0.6 billion; and (3) favorable mix of \$1.7 billion due to increased crossover and truck sales.

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

#### Earnings (Loss) Before Interest and Income Taxes

In the three and six months ended June 30, 2010 EBIT was income of \$1.6 billion and \$2.8 billion driven by higher revenues. In the three and six months ended June 30, 2009 EBIT was a loss of \$7.0 billion and \$10.5 billion.

Cost and expenses includes both fixed costs as well as costs which generally vary with production levels. In the three and six months ended June 30, 2010 certain fixed costs, primarily labor related, have continued to decrease in relation to historical levels primarily due to various separation and other programs implemented in 2009 in order to reduce labor costs as subsequently discussed. In the three and six months ended June 30, 2009, Old GM's sales volumes were at historically low levels and Cost of sales exceeded Total net sales and revenue by \$5.4 billion and \$7.4 billion.

In the three months ended June 30, 2010 results included foreign currency translation gains of \$0.2 billion driven by the weakening of the Canadian Dollar versus the U.S. Dollar which were offset by charges of \$0.2 billion for a recall campaign on windshield fluid heaters.

In the six months ended June 30, 2010 results included: (1) charges of \$0.2 billion for a recall campaign on windshield fluid heaters; (2) foreign currency translation losses of \$0.2 billion driven by the strengthening of the Canadian Dollar versus the U.S. Dollar; partially offset by (3) favorable adjustments of \$0.1 billion to restructuring reserves due to increased production capacity utilization, which resulted in the recall of idled employees to fill added shifts at multiple U.S. production sites.

In the three months ended June 30, 2009 results included: (1) a curtailment loss of \$1.7 billion upon the interim remeasurement of the U.S. Hourly and U.S. Salaried Defined Benefit Pension Plan as a result of the 2009 Special Attrition Programs and salaried workforce reductions; (2) incremental depreciation charges of \$1.5 billion recorded by Old GM prior to the 363 Sale for facilities included in GMNA's restructuring activities and for certain facilities that MLC retained; (3) a charge of \$1.1 billion related to the SUB and TSP, partially offset by a favorable adjustment of \$0.4 billion primarily related to the suspension of the JOBS Program; (4) foreign currency translation losses of \$0.8 billion driven by the strengthening of the Canadian Dollar versus the U.S. Dollar; (5) U.S. Hourly and Salary separation program charges and Canadian restructuring activities of \$0.7 billion; and (6) equity losses of \$0.2 billion related to impairment charges at NUMMI, which was retained by MLC.

In the six months ended June 30, 2009 results included: (1) incremental depreciation charges of \$1.8 billion recorded by Old GM prior to the 363 Sale for facilities included in GMNA's restructuring activities and for certain facilities that MLC retained; (2) curtailment loss of \$1.7 billion upon the interim remeasurement of the U.S. Hourly and U.S. Salaried Defined Benefit Pension Plan as a result of the 2009 Special Attrition Programs and salaried workforce reductions; (3) a charge of \$1.1 billion related to the SUB and TSP, partially offset by a favorable adjustment of \$0.7 billion primarily related to the suspension of the JOBS Program; (4) U.S. Hourly and Salary separation program charges and Canadian restructuring activities of \$1.1 billion; (5) foreign currency translation losses of \$0.6 billion driven by the strengthening of the Canadian Dollar versus the U.S. Dollar; (6) charges of \$0.4 billion primarily for impairments for special tooling and product related nachinery and equipment; (7) charges of \$0.3 billion related to obligations associated with various Delphi agreements; and (8) equity losses of \$0.3 billion related to impairment charges at NUMMI and our proportionate share of losses at CAMI. MLC retained the investment in NUMMI and CAMI has been consolidated since March 1, 2009.

# GM International Operations (Dollars in millions)

	Su	ccessor	Predecessor			
	Three		Three			
	Months	Months Ended Six Months				
	Ended			Six Months		
	June 30, 2010	Ended June 30, 2010	June 30, 2009	Ended June 30, 2009		
Total net sales and revenue	\$ 8,612	\$ 16,664	\$ 5,404	\$ 11,155		
Earnings (loss) before interest and income taxes	\$ 672	\$ 1,838	\$ (660)	\$ (699)		

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

Vehicle Sales and Production Volume

The following tables summarize total production volume and industry sales of new motor vehicles and competitive position (in thousands):

	St	uccessor	Prec	lecessor
	Three		Three	
	Months		Months	
	Ended	Six Months	Ended	Six Months
	June 30,	Ended	June 30,	Ended
	2010	<u>June 30, 2010</u>		<u>June 30, 2009</u>
Production Volume (a)(b)(c)	1,195	2,307	828	1,523

(a) Production volume represents the number of vehicles manufactured by our and Old GM's assembly facilities and also includes vehicles produced by certain joint ventures.

(b) Includes SGM, SGMW, FAW-GM joint venture production in China and HKJV joint venture production in India.

(c) The joint venture agreements with SGMW (34%) and FAW-GM (50%) allows for significant rights as a member as well as the contractual right to report SGMW and FAW-GM production volume in China.

	Successor						Predecessor						
		Three Months Ended June 30, 2010			Six Months Ended June 30, 2010			Three Months Ended June 30, 2009			Six Months Ended June 30, 2009		
	GM as					GM as			Old GM as		Old		
	<u>Industry</u>	<u>GM</u>	a % of <u>Industry</u>	Industry	GM	a % of <u>Industry</u>	<u>Industry</u>	<u>Old GM</u>	a % of <u>Industry</u>	Industry	<u>Old GM</u>	a % of Industry	
Vehicle Sales (a)(b)(c)													
Total GMIO	9,647	995	10.3%	19,742	2,026	10.3%	7,786	807	10.4%	14,934	1,517	10.2%	
China (d)(e)	4,466	586	13.1%		1,209	13.2%	3,421	451	13.2%	6,110	814	13.3%	
Brazil	792	146	18.4%	1,580	302	19.1%	782	147	18.8%	1,450	271	18.7%	
Australia	279	35	12.6%	531	69	12.9%	242	29	12.2%	455	57	12.5%	
India (f)	703	28	4.0%	1,461	60	4.1%	513	14	2.8%	1,056	28	2.7%	
Argentina	157	25	15.8%	338	56	16.5%	125	19	15.3%	280	42	15.1%	
South Korea (g)	383	31	8.2%	752	58	7.7%	379	27	7.0%	649	45	7.0%	
Middle-East Operations	289	30	10.2%	565	55	9.8%	269	30	11.3%	522	57	10.8%	
Colombia	57	19	33.2%	107	36	33.6%	41	15	37.6%	86	33	38.9%	
Egypt	65	17	26.0%	122	32	26.3%	51	11	22.4%	90	23	25.3%	
Venezuela	31	12	37.7%	59	24	41.4%	32	12	38.7%	81	35	43.4%	

(a) Vehicle sales primarily represent estimated sales to the ultimate customer.

(b) Vehicle sales data may include rounding differences.

(c) Includes Saab vehicle sales data through February 2010.

(d) Includes SGM, SGMW and FAW-GM joint venture sales in China.

(e) The joint venture agreements with SGMW (34%) and FAW-GM (50%) allows for significant rights as a member as well as the contractual right to report SGMW and FAW-GM vehicle sales in China as part of global market share. SGMW and FAW-GM sales in China included in our vehicle sales and market share data was 324,000 vehicles and 686,000 vehicles in the three and six months ended June 30, 2010 and 262,000 vehicles and 493,000 vehicles in the three and six months ended June 30, 2010.

(f) Includes HKJV joint venture sales in India.

(g) Vehicle sales and market share data from sales of GM Daewoo produced Chevrolet brand products in Europe are reported as part of GME. Sales of GM Daewoo produced Chevrolet brand products in Europe was 91,000 vehicles and 166,000 vehicles in the three and six months ended June 30, 2010 and 102,000 vehicles and 185,000 vehicles in the three and six months ended June 30, 2010

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

#### Three and Six Months Ended June 30, 2010 and 2009 (Dollars in millions)

Total Net Sales and Revenue

		Succe	ssor			Predec	essor					
	Three	Months	Six	x Months	Thre	e Months	Six	Months	Three Mo Ended		Six Mon Ended	
		nded 30, 2010		Ended <u>1e 30, 2010</u>		Ended e 30, 2009		Ended e 30, 2009	0 vs. 2009 mount		0 vs. 2009 mount	
Total net sales and revenue	\$	8,612	\$	16,664	\$	5,404	\$	11,155	\$ 3,208	59.4%	\$ 5,509	49.4%

In the three months ended June 30, 2010 Total net sales and revenue increased compared to the corresponding period in 2009 by \$3.2 billion (or 59.4%) primarily due to: (1) higher wholesale volumes of \$1.9 billion (or 139,000 vehicles) resulting primarily from the market recovery in three key businesses, GM Daewoo (57,000 vehicles), Brazil (14,000 vehicles) and Australia (10,000 vehicles). The primary driver was the global economic recovery as well as the continuing effect of government incentive programs, lower interest rates and availability of consumer credit to customers; (2) derivative losses of \$0.7 billion that Old GM recorded in the three months ended June 30, 2009, primarily driven by the depreciation of the Korean Won against the U.S. Dollar in that period. Subsequent to July 10, 2009, all gains and losses on non–designated derivatives were recorded in Interest income and other non–operating income, net; (3) net foreign currency translation and transaction gains of \$0.3 billion, primarily driven by the strengthening of major currencies against the U.S. Dollar such as the Korean Won, Australian Dollar and Brazilian Real, partially offset by devaluation of the Venezuelan Bolivar; (4) favorable vehicle mix of \$0.1 billion driven by the use of new vehicles; and (5) favorable pricing effect of \$0.2 billion primarily in Venezuela of \$0.1 billion driven by the hyperinflationary economy.

In the six months ended June 30, 2010 Total net sales and revenue increased compared to the corresponding period in 2009 by \$5.5 billion (or 49.4%) primarily due to: (1) higher wholesale volumes of \$3.4 billion (or 225,000 vehicles) resulting primarily from the market recovery in three key businesses, GM Daewoo (77,000 vehicles), Brazil (60,000 vehicles) and Australia (24,000 vehicles); (2) derivative losses of \$1.0 billion that Old GM recorded in the six months ended June 30, 2009, primarily driven by the depreciation of the Korean Won against the U.S. Dollar in that period. Subsequent to July 10, 2009, all gains and losses on non-designated derivatives were recorded in Interest income and other non-operating income, net; (3) net foreign currency translation and transaction gains of \$0.8 billion, primarily driven by the strengthening of major currencies against the U.S. Dollar such as the Korean Won, Australian Dollar and Brazilian Real, partially offset by devaluation of the Venezuelan Bolivar; and (4) the favorable pricing effect of \$0.3 billion primarily in Venezuela of \$0.2 billion driven by the hyperinflationary economy.

The increase in vehicle sales related to our joint venture operations in China and India is not reflected in Total net sales and revenue as their revenue is not consolidated in our financial results.

#### Earnings (Loss) Before Interest and Income Taxes

In the three and six months ended June 30, 2010 EBIT was income of \$0.7 billion and \$1.8 billion. In the three and six months ended June 30, 2009 EBIT was a loss of \$0.7 billion in each period presented.

In the three months ended June 30, 2010 results included: (1) Equity income, net of tax of \$0.4 billion from the operating results of our China joint ventures; (2) net income of \$0.1 billion attributable to non-controlling interests of GM Daewoo; partially offset by (3) an unfavorable fair value adjustment of \$0.1 billion on derivative instruments primarily resulting from the depreciation of the Korean Won against the U.S. Dollar.

In the six months ended June 30, 2010 results included Equity income, net of tax, of \$0.7 billion from the operating results of our China joint ventures and net income of \$0.2 billion attributable to non-controlling interests of GM Daewoo.

# GENERAL MOTORS COMPANY AND SUBSIDIARIES

In the three months ended June 30, 2009 results included: (1) an unfavorable fair value adjustment of \$0.7 billion on derivative instruments primarily resulting from the depreciation of the Korean Won against the U.S. Dollar and release of Accumulated other comprehensive loss; (2) foreign currency translation loss of \$0.4 billion primarily resulting from the purchase of U.S dollars on the parallel market in Venezuela; (3) Net loss of \$0.3 billion attributable to non-controlling interests in GM Daewoo; partially offset by (4) Equity income, net of tax, of \$0.2 billion from the operating results of our China joint ventures.

In the six months ended June 30, 2009 results included: (1) an unfavorable fair value adjustment of \$1.0 billion on derivative instruments primarily resulting from the depreciation of Korean Won against the U.S. Dollar and release of Accumulated other comprehensive loss; (2) foreign currency translation loss of \$0.5 billion primarily resulting from the purchase of U.S Dollars on the parallel market in Venezuela; (3) a Net loss of \$0.3 billion attributable to non-controlling interests in GM Daewoo; partially offset by (4) Equity income, net of tax, of \$0.3 billion from the operating results of our China joint ventures, which benefited from China's increasing vehicle industry during the global financial crises.

#### GM Europe (Dollars in millions)

		Succes	sor			Predecessor				
	Three Months Ended			Months	Thre	e Months	Six Mont			
				Ended	Ended			Ended		
	<u>June 30, 2010</u>		<u>June 30, 2010</u>		June	30, 2009	<u>Jun</u>	<u>e 30, 2009</u>		
Total net sales and revenue	\$	6,044	\$	11,505	\$	6,645	\$	11,946		
Loss before interest and income taxes	\$	(160)	\$	(637)	\$	(757)	\$	(2,711)		

#### Vehicle Sales and Production Volume

The following tables summarize total production volume and industry sales of new motor vehicles and competitive position (in thousands):

	Succe	ssor	Predece	essor
	Three Months	Six Months	Three Months	Six Months
	Ended June 30, 2010	Ended June 30, 2010	Ended June 30, 2009	Ended June 30, 2009
Production Volume (a)	<u>331</u>	<u>50110 50, 2010</u> 636	<u>June 30, 2009</u> 315	<u>50110 50, 2009</u> 579

(a) Production volume represents the number of vehicles manufactured by our and Old GM's assembly facilities and also includes vehicles produced by certain joint ventures.

	Successor					Predecessor						
	Three Months Ended June 30, 2010			Six	Mon	ths	Т	hree Mon	ths	Six Months		
				Ended June 30, 2010				Ended une 30, 20	09	Ended June 30, 2009		
			GM as			GM as			Old GM as			Old GM as
	Industry	<u>GM</u>	a % of <u>Industry</u>	Industry	GM	a % of <u>Industry</u>	Industry	<u>Old GM</u>	a % of Industry	Industry	<u>Old GM</u>	a % of Industry
Vehicle Sales (a)(b)(c)(d)												
Total GME	5,013	442	8.8%	9,782	846	8.6%	5,131	474	9.2%	9,647	881	9.1%
United Kingdom	559	77	13.7%	1,235	158	12.8%	499	70	14.1%	1,039	150	14.4%
Germany	869	69	8.0%	1,598	129	8.1%	1,253	131	10.4%	2,180	211	9.7%
Italy	534	45	8.5%	1,265	96	7.6%	643	54	8.4%	1,235	102	8.3%
Spain	357	33	9.2%	677	63	9.3%	265	23	8.6%	493	42	8.4%
Russia	508	40	7.9%	810	67	8.3%	387	41	10.5%	785	84	10.7%
France	736	36	4.9%	1,441	63	4.4%	735	33	4.4%	1,348	56	4.1%

(a) Vehicle sales primarily represent estimated sales to the ultimate customer.

⁹¹ 

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

- (b) The financial results from sales of GM Daewoo produced Chevrolet brand products are reported as part of GMIO. Sales of GM Daewoo produced Chevrolet brand products included in vehicle sales and market share data was 91,000 vehicles and 166,000 vehicles in the three and six months ended June 30, 2010 and 102,000 vehicles and 185,000 vehicles in the three and six months ended June 30, 2009.
- (c) Includes Saab vehicle sales data through February 2010.
- (d) Vehicle sales data may include rounding differences.

#### Three and Six Months Ended June 30, 2010 and 2009 (Dollars in millions)

Total Net Sales and Revenue

		Succe	ssor			Predecessor								
	Three Months Six Months		Thre	Three Months Six Months		Three Months			Six Months					
	Enc				Ended		Ended		Ended 2010 vs. 2009 Change			Ended 2010 vs. 2009 Change		
	June 30	0, 2010	June	2010 30, 2010	June	30, 2009	June	e 30, 2009		nount			o vs. 2009 C	
Total net sales and revenue	\$	6,044	\$	11,505	\$	6,645	\$	11,946	\$	(601)	(9.0)%	\$	(441)	(3.7)%

In the three months ended June 30, 2010 Total net sales and revenue decreased compared to the corresponding period in 2009 by \$0.6 billion (or 9.0%) primarily due to: (1) lower wholesale volumes of \$0.4 billion; (2) unfavorable net foreign currency translation of \$0.3 billion, driven primarily by the weakening of the Euro and British Pound versus the U.S. Dollar; (3) lower powertrain revenue of \$0.1 billion primarily due to the Strasbourg facility which was retained by MLC in connection with the 363 Sale; partially offset by (4) favorable vehicle pricing of \$0.1 billion due to higher pricing on new vehicle launches; and (5) favorable vehicle mix of \$0.1 billion due to higher proportion of lower content cars in the three months ended June 30, 2009 resulting from government scrappage programs.

Revenue decreased compared to the corresponding period in 2009 due to wholesale volume decreases of 24,000 vehicles (or 6.8%). Wholesale volumes decreased in Germany by 55,000 vehicles (or 46.5%), this was partially offset by wholesale increases in Spain of 7,000 vehicles (or 43.2%), wholesale increases in the United Kingdom of 5,000 vehicles (or 7.8%), and wholesale increases to the United States of 9,000 vehicles primarily related to the Buick Regal and smaller increases in various other European countries in the three months ended June 30, 2010.

In the six months ended June 30, 2010 Total net sales and revenue decreased compared to the corresponding period in 2009 by \$0.4 billion (or 3.7%) primarily due to: (1) lower wholesale volumes of \$0.7 billion; (2) lower powertrain revenue of \$0.1 billion primarily due to the Strasbourg facility which was retained by MLC in connection with the 363 Sale; partially offset by (3) favorable vehicle pricing of \$0.2 billion due to higher pricing on new vehicle launches.

Revenue decreased compared to the corresponding period in 2009 due to wholesale volume decreases of 18,000 vehicles (or 2.8%). Wholesale volumes decreased in Germany by 85,000 vehicles (or 43.8%), partially offset by wholesale increases in Spain of 20,000 vehicles (or 76.7%), wholesale increases in the United Kingdom of 7,000 vehicles (or 5.2%), and wholesale increases to the United States of 8,000 vehicles primarily related to the Buick Regal and smaller increases in various other European countries in the six months ended June 30, 2010.

#### Loss Before Interest and Income Taxes

In the three and six months ended June 30, 2010 EBIT was a loss of \$0.2 billion and \$0.6 billion. In the three and six months ended June 30, 2009 EBIT was a loss of \$0.8 billion and \$2.7 billion.

In the three months ended June 30, 2010 results included restructuring charges of \$0.2 billion to restructure our European operations, primarily for separation programs announced in Belgium, Spain and the United Kingdom.

In the six months ended June 30, 2010 results included restructuring charges of \$0.5 billion to restructure our European operations, primarily for separation programs announced in Belgium, Spain and the United Kingdom.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

In the three months ended June 30, 2009 results included incremental depreciation charges of \$0.3 billion related to restructuring activities and charges recorded in Other expenses, net of \$0.1 billion related to adjustments to contingencies associated with the deconsolidation of Saab, which filed for reorganization protection under the laws of Sweden in February 2009.

In the six months ended June 30, 2009 results included: (1) charges recorded in Other expenses, net of \$0.8 billion related to the deconsolidation of Saab; (2) incremental depreciation charges of \$0.5 billion related to restructuring activities; and (3) operating losses related to Saab of \$0.2 billion.

Corporate Results of Operations (Dollars in millions)

	Su	ccessor	Prec	lecessor	
	Three		Three		
	Months		Months		
	Ended	Six Months	Ended	Six Months	
	June 30,	Ended	June 30,	Ended	
		<u>June 30, 2010</u>	2009	<u>June 30, 2009</u>	
Total net sales and revenue	\$ 43	\$ 97	\$ 122	\$ 321	
Net income (loss) attributable to stockholders	\$ (526)	\$ (1,377)	\$(4,500)	\$ (5,082)	

Three and six months ended June 30, 2010 and 2009 (Dollars in millions)

Total Net Sales and Revenue

	Succe	essor			Predecessor								
								Three Months			Six Months		
	Three Months	Six Mo	nths	Three 1	Months	Six	Months	Ended					
	Ended	Ende		Enc			nded	201	0 vs. 2009 (	Thange	201	10 vs. 2009	Change
	<u>June 30, 2010</u>	<u>June 30,</u>	<u>2010</u>	June 30	0 <u>, 2009</u>	June	<u>30, 2009</u>	Am	ount		Ar	<u>nount</u>	<u>%</u>
Total net sales and revenue	\$ 43	\$	97	\$	122	\$	321	\$	(79)	(64.8)%	\$	(224)	(69.8)%

In the three months ended June 30, 2010 Total net sales and revenue decreased compared to the corresponding period in 2009 by \$0.1 billion (or 64.8%) primarily due to decreased lease financing revenue related to the liquidation of the portfolio of automotive retail leases. Average outstanding automotive retail leases on–hand for GM and Old GM were 7,000 and 86,000 for the three months ended June 30, 2010 and 2009.

In the six months ended June 30, 2010 Total net sales and revenue decreased compared to the corresponding period in 2009 by \$0.2 billion (or 69.8%) primarily due to decreased lease financing revenues related to the liquidation of the portfolio of automotive leases. Average outstanding automotive retail leases on–hand for GM and Old GM were 13,000 and 104,000 for the six months ended June 30, 2010 and 2009.

#### Net Loss Attributable to Stockholders

In the three and six months ended June 30, 2010 Net loss attributable to stockholders was \$0.5 billion and \$1.4 billion. In the three and six months ended June 30, 2009 Net loss attributable to stockholders was \$4.5 billion and \$5.1 billion.

In the three months ended June 30, 2010 results included Income tax expense of \$0.4 billion primarily related to income tax provisions for profitable entities and Interest expense of \$0.3 billion primarily related to interest expense on GMIO debt of \$0.1 billion and VEBA Note interest expense and premium amortization of \$0.1 billion.

In the six months ended June 30, 2010 results included Income tax expense of \$0.9 billion primarily related to income tax provisions for profitable entities and a taxable foreign exchange gain in Venezuela; and Interest expense of \$0.6 billion related to interest expense on GMIO debt of \$0.2 billion, VEBA Note interest expense and premium amortization of \$0.1 billion and interest expense on the UST Loans of \$0.1 billion.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

The effective tax rate fluctuated in the six months ended June 30, 2010 primarily as a result of changes in the mix of earnings in valuation allowance and non-valuation allowance jurisdictions.

In the three months ended June 30, 2009 results included: (1) interest expense of \$3.4 billion primarily related to amortization of discounts related to the UST Loan Facility of \$2.6 billion and interest on the UST Loan Facility of \$0.3 billion; (2) loss on the extinguishment of the UST Ally Financial Loan of \$2.0 billion when the UST exercised its option to convert outstanding amounts into shares of Ally Financial's Class B Common Membership Interests; (3) centrally recorded Reorganization expenses, net of \$1.2 billion which primarily related to Old GM's loss on the extinguishment of debt resulting from repayment of its secured revolving credit facility, U.S. term loan, and secured credit facility due to the fair value of the U.S. term loan exceeding its carrying amount by \$1.0 billion partially offset by gains related to release of Accumulated other comprehensive income (loss) associated with derivatives of \$0.2 billion; partially offset by (4) a gain recorded on the UST Ally Financial Loan of \$2.5 billion upon the UST's conversion of the UST Ally Financial Loan for Class B Common Membership Interests in Ally Financial. The gain resulted from the difference between the fair value and the carrying amount of the Ally Financial equity interests given to the UST in exchange for the UST Ally Financial Loan. The gain was partially offset by Old GM's proportionate share of Ally Financial's losses of \$0.6 billion; and (5) income tax benefit of \$0.4 billion primarily related to a resolution of a U.S. and Canada transfer pricing matter and other discrete items offset by income tax provisions for profitable entities.

In the six months ended June 30, 2009 results included: (1) interest expense of \$4.6 billion primarily related to amortization of discounts related to the UST Loan Facility of \$2.9 billion and interest expense on unsecured debt of \$0.9 billion and on the UST Loan Facility of \$0.4 billion; (2) centrally recorded Reorganization expenses, net of \$1.2 billion which primarily related to Old GM's loss on the extinguishment of debt resulting from repayment of its secured revolving credit facility, U.S. term loan, and secured credit facility due to the fair value of the U.S. term loan exceeding its carrying amount by \$1.0 billion, loss on contract rejections, settlements of claims and other lease terminations of \$0.4 billion partially offset by gains related to release of Accumulated other comprehensive income (loss) associated with derivatives of \$0.2 billion; (3) a loss on the extinguishment of the UST Ally Financial Loan of \$2.0 billion when the UST exercised its option to convert outstanding amounts into shares of Ally Financial's Class B Common Membership Interests. This loss was partially offset by a gain on extinguishment of debt of \$0.9 billion related to an amendment to Old GM's U.S. term loan; partially offset by (4) a gain recorded on the UST Ally Financial Loan of \$2.5 billion upon the UST's conversion of the UST Ally Financial Loan for Class B Common Membership Interests given to the UST in exchange for the UST Ally Financial Loan. The gain was partially offset by Old GM's proportionate share of Ally Financial's losses of \$1.1 billion; and (5) Income tax benefit of \$0.6 billion primarily related to a resolution of a U.S. and Canada transfer pricing matter and other discrete items offset by income tax provisions for profitable entities.

#### Liquidity and Capital Resources

We believe that our current level of cash and marketable securities will be sufficient to meet our liquidity needs. However, we expect to have substantial cash requirements going forward. Our known material future uses of cash include, among other possible demands: (1) Pension and OPEB payments; (2) continuing capital expenditures; (3) spending to implement long-term cost savings and restructuring plans such as restructuring our Opel/Vauxhall operations and potential capacity reduction programs; (4) reducing our overall debt levels which may include repayment of the VEBA Notes that we issued under the VEBA Note Agreement with the New VEBA, GM Daewoo's revolving credit facility and other debt payments; (5) acquisition of AmeriCredit, an independent automobile finance company, for cash of approximately \$3.5 billion; and (6) certain South American tax-related administrative and legal proceedings may require that we deposit funds in escrow, such escrow deposits may range from \$725 million to \$900 million.

Our liquidity plans are subject to a number of risks and uncertainties, including those described in the "Risk Factors" sections of our 2009 Form 10–K and this report, some of which are outside our control. Macro–economic conditions could limit our ability to successfully execute our business plans and, therefore, adversely affect our liquidity plans.

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

## **Recent Initiatives**

We continue to monitor and evaluate opportunities to optimize the structure of our liquidity position.

In the three months ended June 30, 2010 we made investments of \$4.6 billion in highly liquid marketable securities instruments with maturities between 90 days and 365 days. Previously, these funds would have been invested in short-term instruments less than 90 days and classified as a component of Cash and cash equivalents. Investments in these longer-term securities will increase the interest we earn on these investments. We continue to monitor our investment mix and may reallocate investments based on business requirements.

In June 2010 the German federal government notified us of its decision not to provide loan guarantees to Opel/Vauxhall. As a result we have decided to fund the requirements of Opel/Vauxhall internally. Opel/Vauxhall has subsequently withdrawn all applications for government loan guarantees from European governments. In July 2010 we committed an additional Euro 1.1 billion (equivalent to \$1.3 billion) to fund Opel/Vauxhall's restructuring and ongoing cash requirements.

In July 2010 we entered into a definitive agreement to acquire AmeriCredit, an independent automobile finance company, for cash of approximately \$3.5 billion. This acquisition will allow us to provide a more complete range of financing options to our customers including additional capabilities in leasing and non-prime financing options. The transaction is expected to close in the fourth quarter of 2010 and we expect to fund the transaction using cash on hand.

The repayment of debt remains a key strategic initiative. We continue to evaluate potential debt repayments prior to maturity. Any such repayments may negatively affect our liquidity in the short-term. In July 2010 our Russian subsidiary repaid a loan facility of \$150 million to cure a technical default. In the six months ended June 30, 2010 we repaid the remaining amounts owed under the UST Loans of \$5.7 billion and Canadian Loan of \$1.3 billion. Additionally, GM Daewoo repaid a portion of its revolving credit facility in the amount of \$225 million.

We have entered into negotiations with financial institutions regarding a credit facility. While we do not believe we would require these proceeds to fund operating activities, the agreement would provide additional liquidity and financing flexibility. There is no assurance that we will reach a final agreement on this facility.

If we successfully execute a credit facility, we expect to prepay the VEBA Notes with available cash. Accordingly, at June 30, 2010 we reclassified the VEBA Notes from long-term debt to short-term debt in an amount of \$2.9 billion (including unamortized premium of \$209 million).

We continue to pursue our application for loans available under Section 136 of the Energy Independence and Security Act of 2007. While no assurance exists that we may qualify for the loans, any funds that we may receive would be used for costs associated with re-equipping, expanding and establishing manufacturing facilities in the United States to produce advanced technology vehicles and components for these vehicles.

#### Available Liquidity

Available liquidity includes cash balances and marketable securities. At June 30, 2010 available liquidity was \$31.5 billion, not including funds available under credit facilities of \$1.1 billion or in the Canadian Health Care Trust (HCT) escrow account of \$1.0 billion. The amount of available liquidity is subject to intra-month and seasonal fluctuations and includes balances held by various business units and subsidiaries worldwide that are needed to fund their operations.

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

We manage our global liquidity using cash investments in the U.S., cash held at our international treasury centers and available liquidity at consolidated overseas subsidiaries. The following table summarizes global liquidity (dollars in millions):

		Successor				
	Jur	<u>1e 30, 2010</u>	Decen	nber 31, 2009		
Cash and cash equivalents	\$	26,773	\$	22,679		
Marketable securities		4,761		134		
Available liquidity		31,534		22,813		
Available under credit facilities		1,115		618		
Total available liquidity		32,649		23,431		
UST and HCT escrow accounts (a)		956		13,430		
Total liquidity including UST and HCT escrow accounts	\$	33,605	\$	36,861		

(a) Classified as Restricted cash and marketable securities. Refer to Note 12 to the condensed consolidated financial statements. The remaining funds held in the UST Escrow account were released in April 2010 following the repayment of the UST Loans and Canadian Loan.

Total available liquidity increased by \$9.2 billion in the six months ended June 30, 2010 primarily due to positive cash flows from operating activities of \$5.7 billion, investing activities less net marketable securities acquisitions of \$11.1 billion, which were partially offset by negative cash flows from financing activities of \$7.8 billion.

#### **Credit Facilities**

At June 30, 2010 we had committed credit facilities of \$2.0 billion, under which we had borrowed \$1.6 billion leaving \$440 million available. Of these committed credit facilities GM Daewoo held \$1.1 billion and other entities held \$0.9 billion. In addition, at June 30, 2010 we had uncommitted credit facilities of \$0.9 billion, under which we had borrowed \$228 million leaving \$675 million available. Uncommitted credit facilities include lines of credit which are available to us, but under which the lenders have no legal obligation to provide funding upon our request. We and our subsidiaries use credit facilities to fund working capital needs, product programs, facilities development and other general corporate purposes.

Our largest credit facility is GM Daewoo's \$1.1 billion revolving credit facility, which was established in October 2002 with a syndicate of banks. All outstanding amounts at October 2010 will convert into a term loan and are required to be paid in four equal annual installments by October 2014. Borrowings under this facility bear interest based on Korean Won denominated certificates of deposit. The average interest rate on outstanding amounts under this facility at June 30, 2010 was 5.6%. The borrowings are secured by certain GM Daewoo property, plant and equipment and are used by GM Daewoo for general corporate purposes, including working capital needs. In the three months ended June 30, 2010 GM Daewoo repaid \$225 million of the \$1.1 billion revolving credit facility. At June 30, 2010 the credit facility had an outstanding balance of \$931 million leaving \$207 million available.

The balance of our credit facilities are held by geographically dispersed subsidiaries, with available capacity on the facilities primarily concentrated at a few of our subsidiaries. At June 30, 2010 GM Hong Kong had \$170 million of capacity on a \$200 million term facility secured by a portion of our equity interest in SGM, with an additional \$200 million revolving facility secured by the same collateral set to become available in late 2010. In addition, we have \$355 million of capacity on a \$370 million secured term facility available to certain of our subsidiaries in Thailand over 2010 and 2011. The facilities were entered into to fund growth opportunities within GMIO and meet potential cyclical cash needs.

#### **Restricted Cash and Marketable Securities**

In April 2010 we used funds from the UST Credit Agreement escrow account of \$4.7 billion to repay in full the outstanding amount of the UST Loans. In addition, GMCL repaid in full the outstanding amount of the Canadian Loan of \$1.1 billion. Both loans were repaid prior to maturity.

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

Following the repayment of the UST Loans and the Canadian Loan, the remaining UST escrow funds in an amount of \$6.6 billion became unrestricted. The availability of those funds is no longer subject to the conditions set forth in the UST Credit Agreement.

Pursuant to an agreement between GMCL, EDC and an escrow agent we had \$1.0 billion remaining in an escrow account at June 30, 2010 to fund certain of GMCL's health care obligations pending the satisfaction of certain preconditions which have not yet been met.

#### Cash Flow

## **Operating** Activities

In the six months ended June 30, 2010 we had positive cash flows from operating activities of \$5.7 billion primarily due to: (1) net income of \$2.8 billion, which included non-cash charges of \$3.5 billion resulting from depreciation, impairment and amortization expense; (2) change in income tax related balances of \$0.6 billion; partially offset by (3) pension contributions and OPEB cash payments of \$0.9 billion; and (4) unfavorable changes in working capital of \$0.8 billion. The unfavorable changes in working capital were related to increases in accounts receivables and inventories, partially offset by an increase in accounts payable as a result of increased production.

In the six months ended June 30, 2009 Old GM had negative cash flows from operating activities of \$15.1 billion primarily due to: (1) net loss of \$19.1 billion, which included non–cash charges of \$6.3 billion resulting from depreciation, impairment and amortization expense; and (2) unfavorable working capital of \$2.1 billion due to decreases in accounts payable partially offset by a decrease in accounts receivable and inventories.

#### Investing Activities

In the six months ended June 30, 2010 we had positive cash flows from investing activities of \$6.4 billion primarily due to: (1) a reduction in Restricted cash and marketable securities of \$12.6 billion primarily related to withdrawals from the UST Credit Agreement escrow account; (2) liquidations of operating leases of \$0.3 billion; partially offset by (3) net investments in marketable securities of \$4.6 billion due to investments in securities with maturities greater than 90 days; and (4) capital expenditures of \$1.9 billion.

In the six months ended June 30, 2009 Old GM had negative cash flows from investing activities of \$3.5 billion primarily due to: (1) capital expenditures of \$3.1 billion; and (2) investment in Ally Financial of \$0.9 billion; and (3) increase in Restricted cash and marketable securities of \$0.6 billion; partially offset by (4) liquidations of automotive retail leases of \$1.1 billion.

#### Financing Activities

In the six months ended June 30, 2010 we had negative cash flows from financing activities of \$7.8 billion primarily due to: (1) repayments on the UST Loans of \$5.7 billion, Canadian Loan of \$1.3 billion and the program announced by the UST in March 2009 to provide financial assistance to automotive suppliers (Receivables Program) of \$0.2 billion; (2) preferred dividend payments of \$0.4 billion; and (3) a net decrease in short–term debt of \$0.2 billion.

In the six months ended June 30, 2009 Old GM had positive cash flows from financing activities of \$21.7 billion primarily due to: (1) proceeds from the UST Loan Facility and UST Ally Financial Loan of \$16.6 billion; (2) proceeds from the DIP Facility of \$10.7 billion; (3) proceeds from the EDC Loan Facility of \$1.9 billion (4) proceeds from the German Facility of \$0.4 billion; (5) proceeds from the Receivables Program of \$0.3 billion; partially offset by (6) net payments on other debt of \$7.1 billion; and (7) a net decrease in short-term debt of \$1.0 billion.

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

## Net Liquid Assets (Debt)

Management believes the use of net liquid assets (debt) provides meaningful supplemental information regarding our liquidity. Accordingly, we believe net liquid assets (debt) is useful in allowing for greater transparency of supplemental information used by management in its financial and operational decision making to assist in identifying resources available to meet cash requirements. Our calculation of net liquid assets (debt) may not be completely comparable to similarly titled measures of other companies due to potential differences between companies in the method of calculation. As a result, the use of net liquid assets (debt) has limitations and should not be considered in isolation from, or as a substitute for, other measures such as Cash and cash equivalents and Debt. Due to these limitations, net liquid assets (debt) is used as a supplement to U.S. GAAP measures.

The following table summarizes net liquid assets (debt) (dollars in millions):

	Successor				
	Jur	ne 30, 2010	Decem	ber 31, 2009	
Cash and cash equivalents	\$	26,773	\$	22,679	
Marketable securities		4,761		134	
UST Credit Agreement and Canadian HCT escrow accounts		956		13,430	
				·	
Total liquid assets		32,490		36.243	
Short-term debt and current portion of long-term debt		(5,524)		(10, 221)	
Long-term debt		(2,637)		(5,562)	
Net liquid assets	\$	24.329	\$	20,460	
	*	,,	*	,	

Our net liquid assets increased by \$3.9 billion in the six months ended June 30, 2010. This change was due to an increase of \$4.1 billion in Cash and cash equivalents (as previously discussed); an increase of \$4.6 billion in Marketable securities; and a decrease of \$7.6 billion in Short-term and Long-term debt; partially offset by a reduction of \$12.5 billion in the UST Credit Agreement escrow balance. The decrease in Short-term and Long-term debt primarily related to: (1) repayment in full of the UST Loans of \$5.7 billion; (2) repayment in full of the Canadian Loan of \$1.3 billion; and (3) repayment in full of the loans related to the Receivables Program of \$0.2 billion.

## Other Liquidity Issues

In connection with the 363 Sale, we assumed the obligation of the Receivables Program. At December 31, 2009 our equity contributions were \$55 million and the UST had outstanding loans of \$150 million to the Receivables Program. In the three months ended March 31, 2010 we repaid these loans in full and the Receivables Program was terminated in accordance with its terms in April 2010. Upon termination, we shared residual capital of \$25 million in the program equally with the UST and paid a termination fee of \$44 million.

Ally Financial currently finances our vehicles while they are in-transit to dealers in a number of markets including the U.S. In the event Ally Financial significantly limits or ceases to finance in-transit vehicles, our liquidity will be adversely affected.

We have extended loan commitments to certain affiliated companies and critical business partners. These commitments can be triggered under certain conditions and expire in the years 2010, 2011 and 2014. At June 30, 2010 we had a total commitment of \$782 million outstanding with \$25 million loaned.

We have covenants in our VEBA Note Agreement that could limit the amount and type of additional financing that we could raise to bolster our liquidity if needed.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

# Non-Cash Charges (Gains)

The following table summarizes significant non-cash charges (gains) (dollars in millions):

		Predecessor				
	Three	Months	Six	Months		
				nded 30, 2009		
Impairment charges related to equipment on operating leases	\$	17	\$	61		
Long-lived asset impairment charges		239		566		
Impairment charges related to equity and cost method investments				28		
Gain on extinguishment of debt				(906)		
Gain on conversion of UST Ally Financial Loan		(2,477)		(2,477)		
Loss on extinguishment of UST Ally Financial Loan		1,994		1,994		
Total significant non-cash charges (gains)	\$	(227)	\$	(734)		

#### **Defined Benefit Pension Plan Contributions**

We are considering making a discretionary contribution to the U.S. hourly defined benefit pension plan. This discretionary contribution is being considered to offset the effect of the increase to the projected benefit obligation of the U.S. hourly defined benefit pension plan incurred as a result of the Delphi Benefit Guarantee Agreements being triggered as well as to possibly reduce the projected future cash funding requirements. We are currently evaluating the amount, timing and form of assets that may be contributed.

#### **Guarantees Provided to Third Parties**

We have provided guarantees related to the residual value of operating leases, certain suppliers' commitments, certain product-related claims and commercial loans made by Ally Financial and outstanding with certain third parties excluding residual support and risk sharing related to Ally Financial. The maximum potential obligation under these commitments is \$843 million at June 30, 2010.

Our current agreement with Ally Financial requires the repurchase of Ally Financial financed inventory invoiced to dealers after September 1, 2008, with limited exclusions, in the event of a qualifying voluntary or involuntary termination of the dealer's sales and service agreement. Repurchase obligations exclude vehicles which are damaged, have excessive mileage or have been altered. The repurchase obligation ends in August 2010 for vehicles invoiced through August 2009 and ends in August 2011 for vehicles invoiced through August 2010.

The maximum potential amount of future payments required to be made to Ally Financial under this guarantee would be based on the repurchase value of total eligible vehicles financed by Ally Financial in dealer stock and is estimated to be \$15.9 billion at June 30, 2010. If vehicles are required to be repurchased under this arrangement, the total exposure would be reduced to the extent vehicles are able to be resold to another dealer or at auction. The fair value of the guarantee was \$34 million at June 30, 2010, which considers the likelihood of dealers terminating and estimated loss exposure for the ultimate disposition of vehicles.

Refer to Notes 17 and 23 to the condensed consolidated financial statements for additional information on guarantees we have provided.

#### **Contractual Obligations and Other Long-Term Liabilities**

We have the following minimum commitments under contractual obligations, including purchase obligations. A purchase obligation is defined as an agreement to purchase goods or services that is enforceable and legally binding on us and that specifies all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum, or variable price provisions; and the

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

approximate timing of the transaction. Other long-term liabilities are defined as long-term liabilities that are recorded on our consolidated balance sheet. Based on this definition, the following table includes only those contracts which include fixed or minimum obligations. The majority of our purchases are not included in the table as they are made under purchase orders which are requirements based and accordingly do not specify minimum quantities.

The following table summarizes aggregated information about our outstanding contractual obligations and other long-term liabilities at June 30, 2010 (dollars in millions):

			Payme	nts Due by Period	1	
	TI	r 1, 2010 rrough per 31, 2010	2011-2012	2013-2014	2015 and after	Total
Debt (a)(b)	\$	4,623	\$ 960	\$ 229	\$ 3,094	\$ 8,906
Capital lease obligations		76	141	86	317	620
Interest payments (c)		379	391	265	812	1,847
Operating lease obligations		240	668	403	583	1,894
Contractual commitments for capital expenditures		1,267	147			1,414
Postretirement benefits (d)		251	611	_	_	862
Other contractual commitments:						
Material		585	1,317	258	74	2,234
Information technology		990	132	48		1,170
Marketing		396	256	169	60	881
Facilities		89	192	83	33	397
Rental car repurchases		2,135	2,521		_	4,656
Policy, product warranty and recall campaigns liability		1,610	4,065	1,200	275	7,150
Other		44	25	5		74
Total contractual commitments (e)(f)(g)	\$	12,685	\$ 11,426	\$ 2,746	\$ 5,248	\$32,105
Non-contractual postretirement benefits (h)	\$	122	\$ 645	\$ 1,209	\$ 18,507	\$20,483

(a) Debt obligations in the period July 1, 2010 through December 31, 2010 include VEBA Notes of \$2.5 billion that have been classified as short-term debt due to our expectation to prepay in the event that we are able to successfully execute a credit facility, and a \$150 million loan facility that was classified as short-term at June 30, 2010 and repaid early in July 2010. Refer to Note 13 to the condensed consolidated financial statements for additional information on the VEBA Notes and the \$150 million loan facility. Interest payments related to the VEBA Notes and the \$150 million loan facility are included in the period July 1, 2010 through December 31, 2010 to correspond to the expected timing of the payments.

(b) Projected future payments on lines of credit were based on outstanding amounts drawn at June 30, 2010.

(c) Amounts include interest payments based on contractual terms and current interest rates on our debt and capital lease obligations. Interest payments based on variable interest rates were determined using the current interest rate in effect at June 30, 2010.

(d) Amounts include other postretirement benefit payments under the current U.S. contractual labor agreements for the remainder of 2010 and 2011 and Canada labor agreements for the remainder of 2010 through 2012. Post-2009, the UAW hourly medical plan cash payments are capped at the contribution to the New VEBA.

(e) Future payments in local currency amounts were translated into U.S. Dollars using the balance sheet spot rate at June 30, 2010.

(f) Amounts do not include future cash payments for long-term purchase obligations which were recorded in Accounts payable or Accrued expenses at June 30, 2010.

(g) Amounts exclude the cash commitment of approximately \$3.5 billion in the period July 1, 2010 through December 31, 2010 to acquire AmeriCredit as well as future annual contingent obligations of Euro 265 million in the years 2011 to 2014 related to our Opel/Vauxhall restructuring plan.

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

(h) Amount includes all expected future payments for both current and expected future service at June 30, 2010 for other postretirement benefit obligations for salaried employees and hourly postretirement benefit obligations extending beyond the current North American union contract agreements.

The table above does not reflect unrecognized tax benefits of \$4.6 billion due to the high degree of uncertainty regarding the future cash outflows associated with these amounts.

The table above also does not reflect certain contingent loan and funding commitments that we have made with suppliers, other third parties and certain joint ventures. At June 30, 2010 we had commitments of \$1.0 billion under these arrangements that were undrawn.

We do not have any contributions due to our U.S. qualified plans in 2010. The next pension funding valuation date based on the requirements of the Pension Protection Act (PPA) of 2006 will be October 1, 2010. At that time, based on the PPA, we have the option to select a funding interest rate for the valuation based on either the Full Yield Curve method or the 3–Segment method, both of which are considered to be acceptable methods. PPA also provides the flexibility of selecting a 3–Segment rate up to the preceding five months from the valuation date of October 1, 2010, i.e., the 3–Segment rate at May 31, 2010. Therefore, for a hypothetical valuation at June 30, 2010, we have assumed the 3–Segment rate at May 31, 2010 as the potential floor for funding interest rate that we could use for the actual funding valuation. Since this hypothetical election does not limit us to only using the 3–Segment method. A hypothetical funding valuation at June 30, 2010, using the 3–Segment rate at May 31, 2010 and assuming the June 30, 2010 Full Yield Curve funding interest rate for all future valuation at June 30, 2010, using the 3–Segment rate at May 31, 2010 and assuming the June 30, 2010 Full Yield Curve funding interest rate for all future valuations projects contributions of \$4.3 billion and \$5.7 billion in 2014 and 2015 and additional contributions may be required thereafter. Contributions of \$0.2 billion and \$0.1 billion may be required in 2012 and 2013 in order to preserve our flexibility to use credit balances to reduce cash contributions.

Alternatively, a hypothetical funding valuation at June 30, 2010 using the 3–Segment rate at May 31, 2010 and assuming that same funding interest rate for all future valuations projects contributions of \$2.4 billion in 2015 and additional contributions may be required thereafter.

In both cases, we have assumed that the pension plans earn the expected return of 8.5% in the future. The hypothetical valuations do not comprehend the potential election of relief provisions that are available to us under the Pension Relief Act of 2010 (PRA) for the 2010 and 2011 plan year valuations. Electing the relief provisions for either the 2010, 2011 or both these valuations is projected to provide additional funding flexibility and allow additional deferral of significant contributions. However, the final regulations under the PRA have not yet been released, and as such we are not currently able to determine whether we would qualify or whether we would elect to avail ourselves of these relief provisions. In addition to the funding interest rate and rate of return on assets, the pension contributions could be affected by various other factors including the effect of any legislative changes.

#### **Fair Value Measurements**

In January 2009 Old GM adopted ASC 820–10, "Fair Value Measurements and Disclosures," for nonfinancial assets and nonfinancial liabilities. Refer to Note 21 to the condensed consolidated financial statements for additional information regarding fair value measurements of nonfinancial assets and nonfinancial liabilities. Refer to Note 19 to the condensed consolidated financial statements for additional information regarding fair value measurements of financial assets and financial assets and financial liabilities.

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

Significant assets and liabilities classified as Level 3, with the related Level 3 inputs, are as follows:

Foreign currency derivatives — Level 3 inputs used to determine the fair value of foreign currency derivative liabilities include the appropriate
credit spread to measure our nonperformance risk. Given our nonperformance risk is not observable through the credit default swap market we
based this measurement on an analysis of comparable industrial companies to determine the appropriate credit spread which would be applied to us
and Old GM by market participants in each period.

#### Level 3 Assets and Liabilities

At June 30, 2010 we used Level 3 inputs to measure net liabilities of \$362 million (or 0.4%) of our total liabilities. These net liabilities included \$29 million (or 0.1%) of the total assets, and \$391 million (or 99.2%) of the total liabilities (of which \$370 million were derivative liabilities) that we measured at fair value.

At June 30, 2010 net liabilities of \$362 million measured using Level 3 inputs were primarily comprised of foreign currency derivatives. Foreign currency derivatives were classified as Level 3 due to an unobservable input which relates to our nonperformance risk. Given our nonperformance risk is not observable through the credit default swap market we based this measurement on an analysis of comparable industrial companies to determine the appropriate credit spread which would be applied to us by market participants. At June 30, 2010 we included a non-performance risk adjustment of \$15 million in the fair value measurement of these derivatives which reflects a discount of 4.2% to the fair value before considering our credit risk. We anticipate settling these derivatives at maturity at fair value unadjusted for our nonperformance risk. Credit risk adjustments made to a derivative liability reverse as the derivative contract approaches maturity. This effect is accelerated if a contract is settled prior to maturity.

In the three months ended June 30, 2010 assets and liabilities measured using Level 3 inputs decreased \$14 million from a net liability of \$376 million to a net liability of \$362 million primarily due to unrealized and realized gains on and the settlement of derivatives. In the six months ended June 30, 2010 assets and liabilities measured using Level 3 inputs decreased by \$310 million from a net liability of \$672 million to a net liability of \$362 million primarily due to unrealized and realized settlement of derivatives.

At December 31, 2009 we used Level 3 inputs to measure net liabilities of \$672 million (or 0.6%) of our total liabilities. These net liabilities included \$33 million (or 0.1%) of the total assets, and \$705 million (or 98.7%) of the total liabilities (all of which were derivative liabilities) that we measured at fair value. At December 31, 2009 we also included a non-performance risk adjustment of \$47 million in the fair value measurement of these derivatives which reflects a discount of 6.5% to the fair value before considering our credit risk.

At June 30, 2009 Old GM's mortgage- and asset-backed securities were transferred from Level 3 to Level 2 as the significant inputs used to measure fair value and quoted prices for similar instruments were determined to be observable in an active market.

For periods presented after June 1, 2009 nonperformance risk for us and Old GM was not observable through the credit default swap market as a result of the Chapter 11 Proceedings for Old GM and the lack of traded instruments for us. As a result, foreign currency derivatives with a fair market value of \$1.6 billion were transferred from Level 2 to Level 3 in the three months ended June 30, 2009.

In the three months ended March 31, 2009 Old GM determined the credit profile of certain foreign subsidiaries was equivalent to Old GM's nonperformance risk which was observable through the credit default swap market and bond market based on prices for recent trades. Accordingly, foreign currency derivatives with a fair value of \$2.1 billion were transferred from Level 3 into Level 2 in the six months ended June 30, 2009.

Realized gains and losses related to assets and liabilities measured using Level 3 inputs did not have a material effect on operations, liquidity or capital resources in the three and six months ended June 30, 2010 and 2009.

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

# Dividends

Since our formation, we have not paid any dividends on our common stock. We have no current plans to pay any dividends on our common stock. So long as any share of our Series A Fixed Rate Cumulative Perpetual Preferred Stock (Series A Preferred Stock) remains outstanding, no dividend or distribution may be declared or paid on our common stock unless all accrued and unpaid dividends have been paid on our Series A Preferred Stock subject to exceptions such as dividends on our common stock payable solely in shares of our common stock. In addition, the VEBA Note Agreement contains certain restrictions on our ability to pay dividends, other than dividends payable solely in our shares of common stock.

In particular, the VEBA Note Agreement provides that we may not pay any such dividends on our common stock unless no default or event of default has occurred under such agreement and is continuing at the time of such payment and, immediately prior to and after giving effect to such dividend, our consolidated leverage ratio is less than 3.00 to 1.00.

Our payment of dividends in the future, if any, will be determined by our Board of Directors and will be paid out of funds legally available for that purpose.

We paid dividends of \$203 million on March 15, 2010 and \$202 million on June 15, 2010 on our Series A Preferred Stock for the periods December 15, 2009 to March 14, 2010 and March 15, 2010 to June 14, 2010 following approval by our Board of Directors.

#### Employees

At June 30, 2010 we employed 208,000 employees. The following table summarizes employment by region (in thousands):

		Successor
	June 30, 2010	December 31, 2009
GMNA	105	103
GMIO (a)	61	62
GME (b)	42	50
Total Worldwide	208	215
United States — Salaried	26	26
United States — Hourly	53	51

(a) Decrease in GMIO reflects a reduction of 2,400 employees due to the sale of our India Operations.

(b) Decrease in GME primarily relates to the sale of Saab, employees located within Russia and Uzbekistan transferred from our GME segment to our GMIO segment and restructuring initiatives in Germany, Spain, and the United Kingdom.

#### **Critical Accounting Estimates**

The condensed consolidated financial statements are prepared in conformity with U.S. GAAP, which require the use of estimates, judgments and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses in the periods presented. The critical accounting estimates that affect the condensed consolidated financial statements and the judgments and assumptions used are consistent with those described in the MD&A section in our 2009 Form 10–K.

We believe that the accounting estimates employed are appropriate and resulting balances are reasonable; however, due to inherent uncertainties in making estimates actual results could differ from the original estimates, requiring adjustments to these balances in future periods. We have discussed the development, selection and disclosures of our critical accounting estimates with the Audit Committee of the Board of Directors, and the Audit Committee has reviewed the disclosures relating to these estimates. Updates to our critical accounting estimates related to events occurring subsequent to the filing of our 2009 Form 10–K are discussed below.

#### GENERAL MOTORS COMPANY AND SUBSIDIARIES

#### Pensions

The defined benefit pension plans are accounted for on an actuarial basis, which requires the selection of various assumptions, including an expected rate of return on plan assets and a discount rate. Due to significant events including those discussed in Note 19 to our 2009 Form 10–K, certain of the pension plans were remeasured at various dates in the periods January 1, 2010 through June 30, 2010, July 10, 2009 through December 31, 2009, January 1, 2009 through July 9, 2009 and in the years ended 2008 and 2007.

Net pension expense is calculated based on the expected return on plan assets and not the actual return on plan assets. The expected return on U.S. plan assets that is included in pension expense is determined from periodic studies, which include a review of asset allocation strategies, anticipated future long–term performance of individual asset classes, risks using standard deviations, and correlations of returns among the asset classes that comprise the plans' asset mix. While the studies give appropriate consideration to recent plan performance and historical returns, the assumptions are primarily long–term, prospective rates of return. Differences between the expected return on plan assets and the actual return on plan assets are recorded in Accumulated other comprehensive income (loss) as an actuarial gain or loss, and subject to possible amortization into net pension expense over future periods. A market–related value of plan assets, which averages gains and losses over a period of years, is utilized in the determination of future pension expense. For substantially all pension plans, market–related value is defined as an amount that initially recognizes 60.0% of the difference between the actual fair value of assets and the expected calculated value, and 10.0% of that difference over each of the next four years. The market–related value of assets at December 31, 2009 used to determine net periodic pension income for the year ending December 31, 2010 was \$2.8 billion lower than the actual fair value of plan assets at December 31, 2009.

Another key assumption in determining net pension expense is the assumed discount rate to be used to discount plan obligations. We estimate this rate for U.S. plans, using a cash flow matching approach, also called a spot rate yield curve approach, which uses projected cash flows matched to spot rates along a high quality corporate yield curve to determine the present value of cash flows to calculate a single equivalent discount rate. Old GM used an iterative process based on a hypothetical investment in a portfolio of high–quality bonds rated AA or higher by a recognized rating agency and a hypothetical reinvestment of the proceeds of such bonds upon maturity using forward rates derived from a yield curve until the U.S. pension obligation was defeased. This reinvestment component was incorporated into the methodology because it was not feasible, in light of the magnitude and time horizon over which U.S. pension obligations extend, to accomplish full defeasance through direct cash flows from an actual set of bonds selected at any given measurement date.

The benefit obligation for pension plans in Canada, the United Kingdom and Germany comprise 92% of the non–U.S. pension projected benefit obligation at December 31, 2009. The discount rates for Canadian plans are determined using a cash flow matching approach, similar to the U.S. The discount rates for plans in the United Kingdom and Germany use a curve derived from high quality corporate bonds with maturities consistent with the plans' underlying duration of expected benefit payments.

In the U.S., from December 31, 2009 to June 30, 2010, interest rates on high quality corporate bonds have decreased. We believe that a discount rate calculated as of June 30, 2010 using the methods described previously for U.S. pensions would be approximately 65 to 75 basis points lower than the rates used to measure the pension plans at December 31, 2009, the date of the last remeasurement for the U.S. Plans. As a result, funded status would decrease if the plans were remeasured at June 30, 2010, holding all other factors (e.g., actuarial assumptions and asset returns) constant. Refer to the following table, which presents the 25 basis point sensitivity for U.S. Pension Plans. It is not possible for us to predict what the economic environment will be at our next scheduled remeasurement as of December 31, 2010. Accordingly, discount rates and plan assets may be considerably different than those at June 30, 2010. Under U.S. GAAP, we are not obligated to remeasure the pension plans as of June 30, 2010.

	 sis point rease	-	is point rease	
U. S. Plans (a)				
Effect on Annual Pension Expense (in millions)	\$ 90	\$	(95)	
Effect on December 31, 2009 PBO (in billions)	\$ (2.3)	\$	2.4	

(a) Based on December 31, 2009 remeasurements

## GENERAL MOTORS COMPANY AND SUBSIDIARIES

There were multiple remeasurements of certain non–U.S. plans during the six months ended June 30, 2010. If all non–U.S. plans were remeasured as of June 30, 2010, we believe that the weighted average discount rate would not change significantly from the discount rates used to measure the obligations included in our balance sheet at June 30, 2010. Refer to the following table, which presents the 25 basis point sensitivity for non–U.S. plans.

	sis point rease	is point ·ease	
Non–U. S. Plans (a)			
Effect on Annual Pension Expense (in millions)	\$ (6)	\$ 11	
Effect on December 31, 2009 PBO (in billions)	\$ (0.6)	\$ 0.7	

(a) Our largest plans are in Canada, Germany and the U.K. The largest plans in Germany and the U.K. were remeasured at June 30, 2010 and our plans in Canada at December 31, 2009.

The following table summarizes rates used to determine net pension expense:

	Successor		Predecessor		
	January 1, 2010 Through June 30, 2010 (1)	July 10, 2009 Through December 31, 2009	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Weighted-average expected long-term rate of return on U.S. plan assets	8.50%	8.50%	8.50%	8.50%	8.50%
Weighted-average expected long-term rate of return on non-U.S. plan assets	7.34%	7.97%	7.74%	7.78%	7.85%
Weighted-average discount rate for U.S. plan obligations	5.52%	5.63%	6.27%	6.56%	5.97%
Weighted-average discount rate for non-U.S. plan obligations	5.31%	5.82%	6.23%	5.77%	4.97%

(1) No remeasurement except for pension plans in the United Kingdom, Belgium, and Germany.

Significant differences in actual experience or significant changes in assumptions may materially affect the pension obligations. The effect of actual results differing from assumptions and the changing of assumptions are included in unamortized net actuarial gains and losses that are subject to amortization to expense over future periods.

The following table summarizes the unamortized actuarial (gain) loss (before tax) on U.S. and non-U.S. pension plans (dollars in billions):

	Su	Successor		
	June 30,	December 31,	December 31,	
	2010	2009	2008	
Unamortized actuarial (gain) loss	\$ (2.7)	\$ (3.0)	\$ 41.1	

The unamortized actuarial gain of \$2.7 million as of June 30, 2010, reflects the December 31, 2009 amount updated for accounting activity during the six months ended June 30, 2010, arising primarily from the remeasurements in the United Kingdom, Belgium and Germany and foreign currency translation.

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

The following table summarizes the actual and expected return on pension plan assets (dollars in billions):

	Suc	cessor			Prede	ecessor			
	July 10, 2009 Through December 31, 2009		Thi	January 1, 2009 Through July 9, 2009		Year Ended December 31, 2008		Year Ended December 31, 2007	
U.S. actual return (a)	\$	9.9	\$	(0.2)	\$	(11.4)	\$	10.1	
U.S. expected return	\$	3.0	\$	3.8	\$	8.0	\$	8.0	
Non–U.S. actual return (a)	\$	1.2	\$	0.2	\$	(2.9)	\$	0.5	
Non-U.S. expected return	\$	0.4	\$	0.4	\$	1.0	\$	1.0	

(a) Actual return not available for the six months ended June 30, 2010 as all of the plans were not remeasured.

Based on the last full set of pension plan remeasurements that was completed as of December 31, 2009, a change in the expected return on assets (EROA) assumption has the following effects: For the U.S. plans, an increase in the EROA of 25 basis points will decrease annual pension expense by \$193 million; a decrease to the EROA will increase pension expense by \$193 million. For the non–U.S. plans, an increase in the EROA of 25 basis points will decrease annual pension expense by \$32 million, a decrease to the EROA of 25 basis points will increase pension expense by \$32 million.

The U.S. pension plans generally provide covered U.S. hourly employees hired prior to October 15, 2007 with pension benefits of negotiated, flat dollar amounts for each year of credited service earned by an individual employee. Early retirement supplements are also provided to those who retire prior to age 62. Hourly employees hired after October 15, 2007 participate in a cash balance pension plan. Formulas providing for such stated amounts are contained in the applicable labor contract. Pension expense in the six months ended June 30, 2010, the periods July 10, 2009 through December 31, 2009, January 1, 2009 through July 9, 2009, and in the years ended 2008 and 2007 and the pension obligations at June 30, 2010, December 31, 2009 and 2008 do not comprehend any future benefit increases or decreases that may occur beyond current labor contracts. The usual cycle for negotiating new labor contracts is every four years. There is not a past practice of maintaining a consistent level of benefit increases or decreases from one contract to the next.

The following data illustrates the sensitivity of changes in pension expense and pension obligation based on the last remeasurement of the U.S hourly pension plan at December 31, 2009, as a result of changes in future benefit units for U.S. hourly employees, effective after the expiration of the current contract:

	Effect on 2010 Pension	Effect on December 31, 2009
Change in future benefit units	Expense	РВО
One percentage point increase in benefit units	+\$82 million	+\$ 239 million
One percentage point decrease in benefit units	–\$79 million	-\$ 232 million

### **Other Postretirement Benefits**

OPEB plans are accounted for on an actuarial basis, which requires the selection of various assumptions, including a discount rate and healthcare cost trend rates. Old GM used an iterative process based on a hypothetical investment in a portfolio of high–quality bonds rated AA or higher by a recognized rating agency and a hypothetical reinvestment of the proceeds of such bonds upon maturity using forward rates derived from a yield curve until the U.S. OPEB obligation was defeased. This reinvestment component was incorporated into the methodology because it was not feasible, in light of the magnitude and time horizon over which the U.S. OPEB obligations extend, to accomplish full defeasance through direct cash flows from an actual set of bonds selected at any given measurement date.

Beginning in September 2008, the discount rate used for the benefits to be paid from the UAW retiree medical plan during the period September 2008 through December 2009 is based on a yield curve which uses projected cash flows of representative high–quality AA rated bonds matched to spot rates along a yield curve to determine the present value of cash flows to calculate a single equivalent discount rate. All other U.S. OPEB plans started using a discount rate based on a yield curve on July 10, 2009. The UAW retiree medical plan was settled on December 31, 2009 and the plan assets were contributed to the New VEBA as part of the payment terms under the 2009 Revised UAW Settlement Agreement. We are released from UAW retiree health care claims incurred after December 31, 2009.

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

An estimate is developed of the healthcare cost trend rates used to value benefit obligations through review of historical retiree cost data and near-term healthcare outlook which includes appropriate cost control measures that have been implemented. Changes in the assumed discount rate or healthcare cost trend rate can have significant effect on the actuarially determined obligation and related U.S. OPEB expense. As a result of modifications made as part of the 363 Sale, there are no significant uncapped U.S. healthcare plans remaining at December 31, 2009 and, therefore, the healthcare cost trend rate no longer has a significant effect in the U.S.

The significant non–U.S. OPEB plans cover Canadian employees. The discount rates for the Canadian plans are determined using a cash flow matching approach, similar to the U.S. OPEB obligations plans.

Due to the significant events discussed in Note 19 to our 2009 Form 10–K, the U.S. and non–U.S. OPEB plans were remeasured at various dates in the periods July 10, 2009 through December 31, 2009, January 1, 2009 through July 9, 2009 and in the years ended 2008 and 2007.

Significant differences in actual experience or significant changes in assumptions may materially affect the OPEB obligations. The effects of actual results differing from assumptions and the effects of changing assumptions are included in net actuarial gains and losses in Accumulated other comprehensive income (loss) that are subject to amortization over future periods.

In the U.S., from December 31, 2009 to June 30, 2010, interest rates on high quality corporate bonds have decreased. We believe that a discount rate calculated as of June 30, 2010 using the methods described previously for U.S. OPEB plans would be approximately 65 to 75 basis points lower than the rates used to measure the plans at December 31, 2009, the date of the last remeasurement for U.S. OPEB Plans. As a result, funded status would decrease if the plans were remeasured at June 30, 2010, holding all other factors constant (e.g., actuarial assumptions). Our significant non–U.S. OPEB plans are in Canada. We do not believe that there has been a significant change in interest rates on high quality corporate bonds in Canada from December 31, 2009 to June 30, 2010. Accordingly, we believe that the weighted average discount rate would not change significantly from December 31, 2009. It is not possible for us to predict what the economic environment will be at our next scheduled remeasurement as of December 31, 2010. Accordingly, discount rates may be considerably different than those at June 30, 2010. Under U.S. GAAP, we are not obligated to remeasure the plans as of June 30, 2010.

The estimated effect of a 25 basis point change in discount rate is summarized in the sensitivity table which follows.

	 Change in Assumption		
	sis point crease		is point rease
U. S. Plans			
Effect on Annual OPEB Expense (in millions)	\$ 5	\$	(3)
Effect on December 31, 2009 APBO (in billions)	\$ (0.1)	\$	0.1
Non-U. S. Plans			
Effect on Annual OPEB Expense (in millions)	\$ 1	\$	(1)
Effect on December 31, 2009 APBO (in billions)	\$ (0.1)	\$	0.1

The following table summarizes the weighted-average discount rate used to determine net OPEB expense for the significant plans:

	Suc	cessor		Predecessor	
	January 1, 2010 Through June 30, 2010	July 10, 2009 Through December <u>31, 2009</u>	January 1, 2009 Through July 9, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
Weighted-average discount rate for U.S. plans	5.57%	6.81%	8.11%	7.02%	5.90%
Weighted-average discount rate for non-U.S. plans	5.22%	5.47%	6.77%	5.90%	5.00%



### GENERAL MOTORS COMPANY AND SUBSIDIARIES

The following table summarizes the health care cost trend rates used in the last remeasurement of the accumulated postretirement benefit obligations (APBO) at December 31:

	Successor		Prede	cessor
	Decembe	r 31, 2009	Decembe	r 31, 2008
Assumed Healthcare Trend Rates	U.S. Plans(a)	Non U.S. Plans(b)	U.S. Plans	Non U.S. Plans
Initial healthcare cost trend rate	%	5.4%	8.0%	5.5%
Ultimate healthcare cost trend rate	%	3.3%	5.0%	3.3%
Number of years to ultimate trend rate		8	6	8

(a) As a result of modifications made to health care plans in connection with the 363 Sale, there are no significant uncapped U.S. healthcare plans remaining at December 31, 2009 and, therefore, the healthcare cost trend rate does not have a significant effect on the U.S. plans.

(b) The implementation of the HCT in Canada is anticipated in the near future, which will significantly reduce our exposure to changes in the healthcare cost trend rate.

The following table summarizes the effect of a one-percentage point change in the assumed healthcare trend rates based on the last remeasurement of the benefit plans at December 31, 2009:

		U.S. F	S. Plans(a)		Non-U		-U.S. Plans	
	Effect o	n 2010		ect on	Ef	fect on 2010		Effect on
	Aggregate	e Service		er 31, 2009		egate Service	Dece	ember 31, 2009
Change in Assumption	and Inter	est Cost	AF	PBO	and	Interest Cost		APBO
One percentage point increase	\$		\$		+\$	14 million	+\$	413 million
One percentage point decrease	\$		\$		-\$	11 million	-\$	331 million

⁽a) As a result of modifications made to health care plans in connection with the 363 Sale, there are no significant uncapped U.S. healthcare plans remaining at December 31, 2009 and, therefore, the healthcare cost trend rate does not have a significant effect in the U.S.

### Impairment of Goodwill

Goodwill is tested for impairment in the fourth quarter of each year for all reporting units, or more frequently if events occur or circumstances change that would warrant such a review. Our reporting units are GMNA, GME, and various components within the GMIO segment. The fair values of the reporting units are determined based on valuation techniques using the best available information, primarily discounted cash flow projections. We make significant assumptions and estimates about the extent and timing of future cash flows, growth rates and discount rates. The cash flows are estimated over a significant future period of time, which makes those estimates and assumptions subject to a high degree of uncertainty. While we believe that the assumptions and estimates used to determine the estimated fair values of each of our reporting units are reasonable, a change in assumptions underlying these estimates could result in a material effect on the financial statements.

At June 30, 2010 and December 31, 2009 we had goodwill of \$30.2 billion and \$30.7 billion, which predominately arose upon the application of fresh-start reporting. When applying fresh-start reporting, certain accounts, primarily employee benefit and income tax related, were recorded at amounts determined under specific U.S. GAAP rather than fair value, and the difference between the U.S. GAAP and fair value amounts gives rise to goodwill, which is a residual. Our employee benefit related accounts were recorded in accordance with ASC 712 and ASC 715 and deferred income taxes were recorded in accordance with ASC 740. Further, we recorded valuation allowances against certain of our deferred tax assets, which under ASC 852 also resulted in goodwill. If all identifiable assets and liabilities had been recorded at fair value upon application of fresh-start reporting, no goodwill would have resulted.

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

In the future, we have an increased likelihood of measuring goodwill for possible impairment during our annual or event-triggered goodwill impairment testing. An event driven impairment test is required if it is more likely than not that the fair value of a reporting unit is less than its net book value. Because our reporting units were recorded at their fair values upon application of fresh-start reporting, it is more likely that a decrease in the fair value of our reporting units from their fresh-start reporting values could occur, and such a decrease would trigger the need to measure for possible goodwill impairments.

Future goodwill impairments would occur should the fair value-to-U.S. GAAP adjustments differences decrease. Goodwill resulted from our recorded liabilities for certain employee benefit obligations being higher than the fair value of these obligations because lower discount rates were utilized in determining the U.S. GAAP values compared to those utilized to determine fair values. The discount rates utilized to determine the fair value of these obligations were based on our incremental borrowing rates, which included our nonperformance risk. Our incremental borrowing rates are also impacted by changes in market interest rates. Further, the recorded amounts of our assets were lower than their fair values because of the recording of valuation allowances on certain of our deferred tax assets. The difference between these fair value to U.S. GAAP amounts would decrease upon an improvement in our credit rating, thus resulting in a decrease in the spread between our employee benefit related obligations under U.S. GAAP and their fair values. A decrease will also occur upon reversal of our deferred tax asset valuation allowances. Should the fair value to U.S. GAAP adjustments differences decrease for these reasons, the implied goodwill balance will decline. Accordingly, at the next annual or event-driven goodwill impairment test, to the extent the carrying value of a reporting unit exceeds its fair value, a goodwill impairment could occur.

In the three months ended June 30, 2010 there were event driven changes in circumstances within our GME reporting unit that warranted the testing of goodwill for impairment. Anticipated competitive pressure on our margins in the near- and medium-term led us to believe that the goodwill associated with our GME reporting unit may be impaired. Utilizing the best available information as of June 30, 2010 we performed a step one goodwill impairment test for our GME reporting unit, and concluded that goodwill was not impaired. The fair value of our GME reporting unit was estimated to be approximately \$325 million over its carrying amount. If we had not passed step one, we believe the amount of any goodwill impairment would approximate \$140 million based on the estimated differences between the fair value to U.S. GAAP adjustments at June 30, 2010 primarily for employee benefit plans and income taxes that gave rise to goodwill.

We utilized a discounted cash flow methodology to estimate the fair value of our GME reporting unit. The valuation methodologies utilized were consistent with those used in our application of fresh-start reporting on July 10, 2009, as discussed in Note 2 to our 2009 Form 10–K, and in our 2009 annual and event driven GME impairment tests and result in Level 3 measures within the valuation hierarchy. Assumptions used in our discounted cash flow analysis that had the most significant effect on the estimated fair value of our GME reporting unit include:

- Our estimated weighted-average cost of capital (WACC);
- Our estimated long-term growth rates; and
- Our estimate of industry sales and our market share.

We used a WACC of 22.0% that considered various factors including bond yields, risk premiums, and tax rates; a terminal value that was determined using a growth model that applied a long-term growth rate of 0.5% to our projected cash flows beyond 2015; and industry sales of 18.4 million vehicles and a market share for Opel/Vauxhall of 6.45% in 2010 increasing to industry sales of 22.0 million vehicles and a 7.4% market share in 2015.

Our fair value estimate assumes the achievement of the future financial results contemplated in our forecasted cash flows, and there can be no assurance that we will realize that value. The estimates and assumptions used are subject to significant uncertainties, many of which are beyond our control, and there is no assurance that anticipated financial results will be achieved.

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

The following table summarizes the approximate effects that a change in the WACC and long-term growth rate assumptions would have had on our determination of the fair value of our GME reporting unit at June 30, 2010 keeping all other assumptions constant (dollars in millions):

Change in Assumption	Fair V GME R	ect on Value of Reporting hit at
	<u>June 5</u>	
One percentage point decrease in WACC	+\$	272
One percentage point increase in WACC	-\$	247
One-half percentage point increase in long-term growth rate	+\$	38
One-half percentage point decrease in long-term growth rate	-\$	36

Refer to Note 8 to the unaudited condensed consolidated financial statements for additional information on goodwill impairments.

During the three months ended December 31, 2009 we performed our annual goodwill impairment testing for all of our reporting units and event driven impairment testing for our GME and certain other reporting units in GMIO. Based on this testing, we determined that goodwill was not impaired. Refer to Notes 12 and 25 to the 2009 Form 10–K for additional information on goodwill impairments.

### Deferred Taxes

We establish and Old GM established valuation allowances for deferred tax assets based on a more likely than not threshold. The ability to realize deferred tax assets depends on the ability to generate sufficient taxable income within the carryback or carryforward periods provided for in the tax law for each applicable tax jurisdiction. We consider and Old GM considered the following possible sources of taxable income when assessing the realization of deferred tax assets:

- Future reversals of existing taxable temporary differences;
- Future taxable income exclusive of reversing temporary differences and carryforwards;
- Taxable income in prior carryback years; and
- Tax-planning strategies.

The assessment regarding whether a valuation allowance is required or should be adjusted also considers, among other matters, the nature, frequency and severity of recent losses, forecasts of future profitability, the duration of statutory carryforward periods, our and Old GM's experience with tax attributes expiring unused and tax planning alternatives. In making such judgments, significant weight is given to evidence that can be objectively verified.

Concluding that a valuation allowance is not required is difficult when there is significant negative evidence that is objective and verifiable, such as cumulative losses in recent years. Although we are a new company, and our ability to achieve future profitability was enhanced by the cost and liability reductions that occurred as a result of the Chapter 11 Proceedings and 363 Sale, Old GM's historic operating results remain relevant as they are reflective of the industry and the effect of economic conditions. The fundamental businesses and inherent risks in which we globally operate did not change from those in which Old GM operated. We utilize an Old GM utilized a rolling three years of actual and current year anticipated results as the primary measure of cumulative losses in recent years. However, because a substantial portion of those cumulative losses relate to various non-recurring matters, those three-year cumulative results are adjusted for the effect of these items. In addition the near- and medium-term financial outlook is considered when assessing the need for a valuation allowance.

If, in the future, we generate taxable income in jurisdictions where we have recorded full valuation allowances, on a sustained basis, our conclusion regarding the need for full valuation allowances in these tax jurisdictions could change, resulting in the reversal of

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

some or all of the valuation allowances. If our operations generate taxable income prior to reaching profitability on a sustained basis, we would reverse a portion of the valuation allowance related to the corresponding realized tax benefit for that period, without changing our conclusions on the need for a full valuation allowance against the remaining net deferred tax assets.

The valuation of deferred tax assets requires judgment and accounting for deferred tax consequences of events that have been recorded in the financial statements or in the tax returns and our future profitability represents our best estimate of those future events. Changes in our current estimates, due to unanticipated events or otherwise, could have a material effect on our financial condition and results of operations. In 2008 because Old GM concluded there was substantial doubt related to its ability to continue as a going concern, it was determined that it was more likely than not that it would not realize its net deferred tax assets in most jurisdictions even though certain of these entities were not in three–year adjusted cumulative loss positions. In July 2009 with U.S. parent company liquidity concerns resolved in connection with the Chapter 11 Proceedings and the 363 Sale, to the extent there was no other significant negative evidence, we concluded that it is more likely than not that we would realize the deferred tax assets in jurisdictions not in three–year adjusted cumulative loss positions.

### Accounting Standards Not Yet Adopted

Refer to Note 3 to the condensed consolidated financial statements.

#### Forward-Looking Statements

In this report and in reports we subsequently file with the SEC on Forms 10–K and 10–Q and file or furnish on Form 8–K, and in related comments by our management, we use words like "anticipate," "believe," "continue," "could," "designed," "effect," "estimate," "evaluate," "expect," "forecast," "goal," "initiative," "intend," "may," "objective," "outlook," "plan," "potential," "priorities," "project," "pursue," "seek," "should," "target," "when," "would," or the negative of any of those words or similar expressions to identify forward–looking statements that represent our current judgment about possible future events. In making these statements we rely on assumptions and analyses based on our experience and perception of historical trends, current conditions and expected future developments as well as other factors we consider appropriate under the circumstances. We believe these judgments are reasonable, but these statements are not guarantees of any events or financial results, and our actual results may differ materially due to a variety of important factors, both positive and negative. These factors, which may be revised or supplemented in subsequent reports on SEC Forms 10–K, 10–Q and 8–K, include among others the following:

- Our ability to realize production efficiencies and to achieve reductions in costs as a result of our restructuring initiatives and labor modifications;
- Our ability to maintain quality control over our vehicles and avoid material vehicle recalls;
- Our ability to maintain adequate liquidity and financing sources and an appropriate level of debt, including as required to fund our planned significant investment in new technology, and, even if funded, our ability to realize successful vehicle applications of new technology;
- The effect of business or liquidity difficulties for us or one or more subsidiaries on other entities in our corporate group as a result of our highly integrated and complex corporate structure and operation;
- Our ability to continue to attract customers, particularly for our new products, including cars and crossover vehicles;
- Availability of adequate financing on acceptable terms to our customers, dealers, distributors and suppliers to enable them to continue their business relationships with us;
- The financial viability and ability to borrow of our key suppliers and their ability to provide systems, components and parts without disruption;
- Our ability to take actions we believe are important to our long-term strategy, including our ability to enter into certain material transactions
  outside of the ordinary course of business, which may be limited due to significant covenants in the VEBA Note Agreement;

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

- Our ability to manage the distribution channels for our products, including our ability to consolidate our dealer network;
- Our ability to qualify for federal funding of our advanced technology vehicle programs under Section 136 of the Energy Independence and Security Act of 2007;
- The ability to successfully restructure our European operations;
- The continued availability of both wholesale and retail financing from Ally Financial and its affiliates in the United States, Canada and the other
  markets in which we operate to support our ability to sell vehicles in those markets, which is dependent on Ally Financial's ability to obtain
  funding and which may be suspended by Ally Financial if Ally Financial's credit exposure to us exceeds certain limitations provided in our
  operating arrangements with Ally Financial;
- Our ability to develop captive financing capability, including by closing the acquisition of AmeriCredit, which is contingent upon certain closing conditions such as the approval of AmeriCredit shareholders;
- Overall strength and stability of general economic conditions and of the automotive industry, both in the United States and in global markets;
- Continued economic instability or poor economic conditions in the United States and global markets, including the credit markets, or changes in
  economic conditions, commodity prices, housing prices, foreign currency exchange rates or political stability in the markets in which we operate;
- Shortages of and increases or volatility in the price of oil;
- Significant changes in the competitive environment, including the effect of competition and excess manufacturing capacity in our markets, on our
  pricing policies or use of incentives and the introduction of new and improved vehicle models by our competitors;
- Significant changes in economic and market conditions in China, including the effect of competition from new market entrants, on our vehicle sales and market position in China;
- Changes in the existing, or the adoption of new, laws, regulations, policies or other activities of governments, agencies and similar organizations, including where such actions may affect the production, licensing, distribution or sale of our products, the cost thereof or applicable tax rates;
- Costs and risks associated with litigation;
- Significant increases in our pension expense or projected pension contributions resulting from changes in the value of plan assets, the discount rate
  applied to value the pension liabilities or other assumption changes;
- Changes in accounting principles, or their application or interpretation, and our ability to make estimates and the assumptions underlying the estimates, which could have an effect on earnings; and
- Other risks described from time to time in periodic and current reports that we file with the SEC.

We caution readers not to place undue reliance on forward-looking statements. We undertake no obligation to update publicly or otherwise revise any forward-looking statements, whether as a result of new information, future events or other factors that affect the subject of these statements, except where we are expressly required to do so by law.

* * * * * * *

### Item 3. Quantitative and Qualitative Disclosures About Market Risk

We and Old GM entered into a variety of foreign currency exchange, interest rate and commodity forward contracts and options to manage exposures arising from market risks resulting from changes in foreign currency exchange rates, interest rates and certain commodity prices. We do not enter into derivative transactions for speculative purposes.

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

The overall financial risk management program is under the responsibility of the Risk Management Committee, which reviews and, where appropriate, approves strategies to be pursued to mitigate these risks. A risk management control framework is utilized to monitor the strategies, risks and related hedge positions, in accordance with the policies and procedures approved by the Risk Management Committee.

In August 2010 we changed our risk management policy. Our prior policy was intended to reduce volatility of forecasted cash flows primarily through the use of forward contracts and swaps. The intent of the new policy is primarily to protect against risk arising from extreme adverse market movements on our key exposures and involves a shift to greater use of purchased options.

A discussion of our and Old GM's accounting policies for derivative financial instruments is included in Note 4 to the consolidated financial statements in our 2009 10–K. Further information on our exposure to market risk is included in Note 20 to the consolidated financial statements in our 2009 10–K.

In 2008 credit market volatility increased significantly, creating broad credit concerns. In addition, Old GM's credit standing and liquidity position in the first half of 2009 and the Chapter 11 Proceedings severely limited its ability to manage risks using derivative financial instruments as most derivative counterparties were unwilling to enter into transactions with Old GM. Subsequent to the 363 Sale and through December 31, 2009, we were largely unable to enter forward contracts pending the completion of negotiations with potential derivative counterparties. In August 2010 we executed new agreements with counterparties that enable us to enter into options, forward contracts and swaps.

In accordance with the provisions of ASC 820–10, "Fair Value Measurements and Disclosures," which requires companies to consider nonperformance risk as part of the measurement of fair value of derivative liabilities, we record changes in the fair value of our derivative liabilities based on our current credit standing. At June 30, 2010 the fair value of derivatives in a net liability position was \$340 million.

The following analyses provide quantitative information regarding exposure to foreign currency exchange rate risk, interest rate risk, commodity price risk and equity price risk. Sensitivity analysis is used to measure the potential loss in the fair value of financial instruments with exposure to market risk. The models used assume instantaneous, parallel shifts in exchange rates, interest rate yield curves and commodity prices. For options and other instruments with nonlinear returns, models appropriate to these types of instruments are utilized to determine the effect of market shifts. There are certain shortcomings inherent in the sensitivity analyses presented, primarily due to the assumption that interest rates and commodity prices change in a parallel fashion and that spot exchange rates change instantaneously. In addition, the analyses are unable to reflect the complex market reactions that normally would arise from the market shifts modeled and do not contemplate the effects of correlations between foreign currency pairs, or offsetting long–short positions in currency pairs which may significantly reduce the potential loss in value.

#### Foreign Currency Exchange Rate Risk

We have and Old GM had foreign currency exposures related to buying, selling, and financing in currencies other than the functional currencies of our and Old GM's operations. Derivative instruments, such as foreign currency forwards, swaps and options are used primarily to hedge exposures with respect to forecasted revenues, costs and commitments denominated in foreign currencies. At June 30, 2010 such contracts have remaining maturities of up to 14 months. At June 30, 2010 our three most significant foreign currency exposures are the U.S. Dollar/Korean Won, Euro/British Pound and Euro/Korean Won.

At June 30, 2010, December 31, 2009 and 2008 the net fair value liability of financial instruments with exposure to foreign currency risk was \$3.6 billion, \$5.9 billion and \$6.3 billion. This presentation utilizes a population of foreign currency exchange derivatives and foreign currency denominated debt and excludes the offsetting effect of foreign currency cash, cash equivalents and other assets. The potential loss in fair value for such financial instruments from a 10% parallel shift in all quoted foreign currency exchange rates would be \$589 million, \$941 million and \$2.3 billion at June 30, 2010, December 31, 2009 and 2008.

We are and Old GM was also exposed to foreign currency risk due to the translation of the results of certain international operations into U.S. Dollars as part of the consolidation process. Fluctuations in foreign currency exchange rates can therefore create volatility in

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

the results of operations and may adversely affect our and Old GM's financial position. The effect of foreign currency exchange rate translation on our consolidated financial position was a net translation loss of \$189 million in the six months ended June 30, 2010 and a gain of \$157 million in the period July 10, 2009 through December 31, 2009. The effect of foreign currency exchange rate translation on Old GM's consolidated financial position was a net translation gain of \$232 million in the period January 1, 2009 through July 9, 2009 and a net translation loss of \$1.2 billion in the year ended December 31, 2008. These gains and losses were recorded as an adjustment to Total stockholders' deficit through Accumulated other comprehensive income (loss). The effects of foreign currency exchange rate transactions were a loss of \$33 million in the six months ended June 30, 2010 a loss of \$755 million in the period July 10, 2009 through December 31, 2009, a loss of \$1.1 billion in the period January 1, 2009 through July 9, 2009 and a gain of \$1.7 billion in the year ended December 31, 2009.

### **Interest Rate Risk**

We are and Old GM was subject to market risk from exposure to changes in interest rates due to financing activities. Interest rate risk in Old GM was managed primarily with interest rate swaps. The interest rate swaps Old GM entered into usually involved the exchange of fixed for variable rate interest payments to effectively convert fixed rate debt into variable rate debt in order to achieve a target range of variable rate debt. At June 30, 2010 we did not have any interest rate swap derivative positions to manage interest rate exposures.

At June 30, 2010 we had fixed rate short-term debt of \$4.4 billion and variable rate short-term debt of \$1.1 billion. Of this fixed rate short-term debt, \$3.2 billion was denominated in U.S. Dollars and \$1.2 billion was denominated in foreign currencies. Of the variable rate short-term debt, \$339 million was denominated in U.S. Dollars and \$796 million was denominated in foreign currencies.

At December 31, 2009 we had fixed rate short-term debt of \$592 million and variable rate short-term debt of \$9.6 billion. Of this fixed rate short-term debt, \$232 million was denominated in U.S. Dollars and \$360 million was denominated in foreign currencies. Of the variable rate short-term debt, \$6.2 billion was denominated in U.S. Dollars and \$3.4 billion was denominated in foreign currencies.

At June 30, 2010 we had fixed rate long-term debt of \$2.1 billion and variable rate long-term debt of \$588 million. Of this fixed rate long-term debt, \$576 million was denominated in U.S. Dollars and \$1.5 billion was denominated in foreign currencies. Of the variable rate long-term debt, \$358 million was denominated in U.S. Dollars and \$230 million was denominated in foreign currencies.

At December 31, 2009 we had fixed rate long-term debt of \$4.7 billion and variable rate long-term debt of \$873 million. Of this fixed rate long-term debt, \$3.4 billion was denominated in U.S. Dollars and \$1.3 billion was denominated in foreign currencies. Of the variable rate long-term debt, \$551 million was denominated in U.S. Dollars and \$322 million was denominated in foreign currencies.

At June 30, 2010, December 31, 2009 and 2008 the net fair value liability of financial instruments with exposure to interest rate risk was \$7.8 billion, \$16.0 billion and \$17.0 billion. The potential increase in fair value at June 30, 2010 resulting from a 10% decrease in quoted interest rates would be \$226 million. The potential increase in fair value at December 31, 2009 resulting from a 10% decrease in quoted interest rates would be \$402 million. The potential increase in fair value at December 31, 2009 resulting from a 10% decrease in quoted interest rates would be \$402 million. The potential increase in fair value at December 31, 2008 resulting from a 10 percentage point increase in quoted interest rates would be \$3.6 billion.

### **Commodity Price Risk**

We are and Old GM was exposed to changes in prices of commodities used in the automotive business, primarily associated with various non-ferrous and precious metals for automotive components and energy used in the overall manufacturing process. Certain commodity purchase contracts meet the definition of a derivative. Old GM entered into various derivatives, such as commodity swaps and options, to offset its commodity price exposures. We resumed a derivative commodity hedging program using options in December 2009.

At June 30, 2010, December 31, 2009 and 2008 the net fair value asset (liability) of commodity derivatives was \$24 million, \$11 million and (\$553) million. The potential loss in fair value resulting from a 10% adverse change in the underlying commodity prices

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

would be \$13 million, \$6 million and \$109 million at June 30, 2010, December 31, 2009 and 2008. This amount excludes the offsetting effect of the commodity price risk inherent in the physical purchase of the underlying commodities.

### **Equity Price Risk**

We are and Old GM was exposed to changes in prices of equity securities held. We typically do not attempt to reduce our market exposure to these equity instruments. Our exposure includes certain investments we hold in warrants of other companies. At June 30, 2010 and December 31, 2009 the fair value of these warrants was \$25 million. At June 30, 2010 and December 31, 2009 our exposure also includes investments of \$30 million and \$32 million in equity securities classified as trading. At December 31, 2008 Old GM had investments of \$24 million in equity securities classified as available–for–sale. These amounts represent the maximum exposure to loss from these investments.

At June 30, 2010, the carrying amount of cost method investments was \$1.7 billion, of which the carrying amounts of our investments in Ally Financial common stock and Ally Financial preferred stock were \$966 million and \$665 million. At December 31, 2009 the carrying amount of cost method investments was \$1.7 billion, of which the carrying amounts of our investments in Ally Financial common stock and preferred stock were \$970 million and \$665 million. At December 31, 2009 the carrying amount of the investment in Ally Financial common stock and preferred stock were \$970 million and \$665 million. At December 31, 2008 the carrying amount of cost method investments was \$98 million, of which the carrying amount of the investment in Ally Financial Preferred Membership Interests was \$43 million. These amounts represent the maximum exposure to loss from these investments. On June 30, 2009 Ally Financial converted from a tax partnership to a C corporation and, as a result, our equity ownership in Ally Financial common stock as a cost method investment. On July 10, 2009 as a result of our application of fresh–start reporting, we recorded an increase of \$1.3 billion and \$665 million. In the period July 10, 2009 through December 31, 2009 we recorded impairment charges of \$270 million related to our investment in Ally Financial common stock and \$4 million related to other cost method investments. In the year ended 2008 Old GM recorded impairment charges of \$1.0 billion related to its investment in Ally Financial common stock and \$4 million related to other cost method investments. In the year ended 2008 Old GM recorded impairment charges of \$1.0 billion related to its investment in Ally Financial common stock and \$4 million related to other cost method investments.

### **Counterparty Risk**

We are exposed to counterparty risk on derivative contracts, which is the loss we could incur if a counterparty to a derivative contract defaulted. We enter into agreements with counterparties that allow the set-off of certain exposures in order to manage this risk.

Our counterparty risk is managed by our Risk Management Committee, which establishes exposure limits by counterparty. We monitor and report our exposures to the Risk Management Committee and our Treasurer on a periodic basis. At June 30, 2010 a majority of all of our counterparty exposures are with counterparties that are rated A or higher.

#### **Concentration of Credit Risk**

We are exposed to concentration of credit risk primarily through holding cash and cash equivalents (which include money market funds), short- and long-term investments and derivatives. As part of our risk management process, we monitor and evaluate the credit standing of the financial institutions with which we do business. The financial institutions with which we do business are generally highly rated and geographically dispersed.

We are exposed to credit risk related to the potential inability to access liquidity in money market funds we invested in if the funds were to deny redemption requests. As part of our risk management process, we invest in large funds that are managed by reputable financial institutions. We also follow investment guidelines to limit our exposure to individual funds and financial institutions.

* * * * * *

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

### Item 4. Controls and Procedures

### **Disclosure Controls and Procedures**

We maintain disclosure controls and procedures designed to provide reasonable assurance that information required to be disclosed in reports filed under the Securities Exchange Act of 1934, as amended (Exchange Act), is recorded, processed, summarized, and reported within the specified time periods and accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Our management, with the participation of our Chairman and CEO and Vice Chairman and CFO, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a–15(e) or 15d–15(e) promulgated under the Exchange Act) at June 30, 2010. Based on this evaluation, our CEO and CFO concluded that, at that date, the disclosure controls and procedures required by paragraph (b) of Rules 13a–15 or 15d–15 were not effective at a reasonable assurance level because of a material weakness in internal control over financial reporting at GM as reported in our 2009 Form 10–K at December 31, 2009 that continues to exist.

#### Material Weakness, Remediation, and Changes in Internal Controls

The material weakness relates to controls that were not effective over the period–end financial reporting process. This ineffective process resulted in a significant number and magnitude of out–of–period adjustments to the consolidated financial statements. Specifically, controls have not been effective to ensure that accounting estimates and other adjustments were appropriately reviewed, analyzed and monitored by competent accounting staff on a timely basis. Additionally, some of the adjustments that were recorded related to account reconciliations not being performed effectively. Such a material weakness in the period–end financial reporting and could result in a company not being able to meet its regulatory filing deadlines. If not remediated, it is reasonably possible that our condensed consolidated financial statements could contain a material misstatement or that we could miss a filing deadline in the future.

We believe that the remediation activities completed at December 31, 2009 and discussed in our 2009 Form 10–K would have been sufficient to allow us to conclude that the previously identified material weakness no longer existed at December 31, 2009. However, due to the complexity of fresh-start adjustments resulting from the Chapter 11 Proceedings and the related 363 Sale in 2009 and the number of accounting periods open at one time, management did not have clear visibility into the operational effectiveness of newly remediated controls within the period-end financial reporting process. In some cases, management was not able to sufficiently test the operating effectively. During the six months ended June 30, 2010, management led various initiatives, including training, to help ensure the controls related to the period-end financial coporting the controls related to the 2009 material weakness remediation effectiveness and efficiency of the Company's internal controls related to the period-end financial opportunities to improve the effectiveness and efficiency of the Company's internal controls related to the period-end financial reporting process and effectiveness and efficiency of the Company's internal controls related to the period-end financial reporting 2010. Also,

Corporate Accounting and other key departments had their resources augmented by utilizing external resources and performing additional closing procedures in 2010. As a result, we believe that there are no material inaccuracies or omissions of material fact and, to the best of our knowledge, believe that the condensed consolidated financial statements of the Company at and for the three and six months ended June 30, 2010, fairly present in all material respects, the financial condition and results of operations in conformity with U.S. GAAP.

There have not been any other changes in internal control over financial reporting in the six months ended June 30, 2010 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

### Limitations on the Effectiveness of Controls

Our management, including our CEO and CFO, does not expect that our disclosure controls and procedures or internal control over financial reporting will prevent or detect all errors and all fraud. A control system cannot provide absolute assurance due to its inherent limitations; it is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. A control system also can be circumvented by collusion or improper management override. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of such limitations, disclosure controls and procedures and internal control over financial reporting cannot prevent or detect all misstatements, whether unintentional errors or fraud. However, these inherent limitations are known features of the financial reporting process, therefore, it is possible to design into the process safeguards to reduce, though not eliminate, this risk.

* * * * * *

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

### PART II

### Item 1. Legal Proceedings

The discussion in the following paragraphs is limited to an update of developments that have occurred in various material pending legal proceedings to which we are a party, other than in the ordinary routine litigation incidental to our business. These proceedings are fully described in our 2009 Form 10-K as updated in our Form 10-Q for the three months ended March 31, 2010. We and other defendants affiliated with us intend to defend all of the following actions vigorously.

### **OnStar Analog Equipment Litigation**

As previously reported, our wholly-owned subsidiary OnStar Corporation is a party to more than 20 putative class actions filed in various states, including Michigan, Ohio, New Jersey, Pennsylvania and California. All of these cases have been consolidated for pretrial purposes in a multi-district proceeding under the caption *In re OnStar Contract Litigation* in the U.S. District Court for the Eastern District of Michigan. On August 2, 2010 plaintiffs filed a motion seeking to add General Motors LLC as an additional defendant. We will oppose that motion, which we believe is barred by the Sale Approval Order entered by the United States Bankruptcy Court for the Southern District of New York on July 5, 2009.

#### **Unintended Acceleration Class Actions**

As previously reported, we have been named as a co-defendant in two of the many class action lawsuits brought against Toyota arising from Toyota's recall of certain vehicles related to reports of unintended acceleration. The two cases are *Nimishabahen Patel v. Toyota Motors North America, Inc. et al.* (filed in the United States District Court for the District of Connecticut on February 9, 2010) *and Darshak Shah v. Toyota Motors North America, Inc. et al.* (filed in the United States District court for the District of Massachusetts on or about February 16, 2010). The cases were consolidated in the multi-district proceeding pending in the Central District of California created to administer all cases in the Federal court system addressing Toyota unintended acceleration issues. On August 2, 2010, a consolidated Complaint was filed in the multi-district proceeding and we were omitted from the list of named defendants. Accordingly, it is possible that the claims asserted will not be further pursued against us.

### **AmeriCredit Transaction Claims**

On July 27, 2010 Robert Hatfield, Derivatively on behalf of AmeriCredit Corp v, Clifton Morris, Jr. et al, was filed in the district court for Tarrant County, Texas. General Motors Holdings, LLC and General Motors Company ("the GM entities") are two of the named defendants. Among other allegations, the complaint alleges that the individual defendants breached their fiduciary duty with regard to the proposed transaction between AmeriCredit and General Motors. The GM Entities are accused of aiding and abetting the alleged breach of fiduciary duty by the individual defendants (officers and directors of AmeriCredit). Among other relief, the complaint seeks to enjoin the transaction from closing. It is not possible to determine the likelihood of success or reasonably ascertain the amount of any attorneys' fees or costs that may be awarded.

On July 28, 2010 Labourers Pension Fund of Eastern and Central Canada, on behalf of itself and all others similarly situated v. AmeriCredit Corp, et al. was filed in the district court for Tarrant County, Texas. General Motors Company is one of the named defendants. The plaintiff seeks class action status and alleges that AmeriCredit and the individual defendants (officers and directors of AmeriCredit) breached their fiduciary duties in negotiating and approving the proposed transaction between AmeriCredit and General Motors. General Motors is accused of aiding and abetting the alleged breach of fiduciary duty. Among other relief, the complaint seeks to enjoin both the transaction from closing as well as a shareholder vote on the proposed transaction. No determination has been made that the case may be maintained as a class action, and it is not possible to determine the likelihood of liability or reasonably ascertain the amount of any damages.

On or about August 6, 2010, Clara Butler, Derivatively on behalf of AmeriCredit Corp v, Clifton Morris, Jr. et al, was filed in the district court for Tarrant County, Texas. General Motors Holdings, LLC and General Motors Company are among the named

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

defendants. Like previously filed litigation related to the proposed AmeriCredit acquisition, the complaint initiating this case alleges that individual officers and directors of AmeriCredit breached their fiduciary duties to AmeriCredit shareholders. The GM Entities are accused of breaching a fiduciary duty and aiding and abetting the individual defendants in usurping a corporate opportunity. Among other relief, the complaint seeks to rescind the AmeriCredit transaction and enjoin its consummation, and also to award plaintiff costs and disbursements including attorneys' and expert fees. It is not possible to determine the likelihood of success or reasonably ascertain the amount of any attorneys' fees or costs that may be awarded.

* * * * * *

#### Item 1A. Risk Factors

We face a number of significant risks and uncertainties in connection with our operations. Our business, results of operations and financial condition could be materially adversely affected by these risk factors.

While we described each risk separately, some of these risks are interrelated and certain risks could trigger the applicability of other risks.

### Our business is highly dependent on sales volume. Global vehicle sales have declined significantly from their peak levels, and there is no assurance that the global automobile market will recover in the near future or that it will not suffer a significant further downturn.

Our business and financial results are highly sensitive to sales volume, as demonstrated by the effect of sharp declines in vehicle sales on our business in the U.S. since 2007 and globally since 2008. Vehicle sales in the U.S. have fallen significantly on an annualized basis since their peak in 2007, and sales globally have shown steep declines on an annualized basis since their peak in January 2008. Many of the economic and market conditions that drove the drop in vehicle sales, including declines in real estate and equity values, increases in unemployment, tightened credit markets, depressed consumer confidence and weak housing markets, continue to impact sales. In addition, recent concerns over levels of sovereign indebtedness have contributed to a renewed tightening of credit markets in some of the markets in which we do business. Although vehicle sales began to recover in certain of our markets in the three months ended December 31, 2009 there is no assurance that this recovery in vehicle sales will continue or spread across all our markets. Further, sales volumes may again decline severely or take longer to recover than we expect, and if they do, our results of operations and financial condition will be materially adversely affected.

### Our ability to attract a sufficient number of consumers to consider our vehicles, particularly our new products, is essential to our ability to achieve long-term profitability.

Our ability to achieve long-term profitability depends on our ability to entice consumers to consider our products when purchasing a new vehicle. The automotive industry, particularly in the U.S., is very competitive, and our competitors have been very successful in persuading customers that previously purchased our products to purchase their vehicles instead as is reflected by our loss of market share over the past three years. We believe that this is due, in part, to a negative public perception of our products in relation to those of some of our competitors. Changing this perception, including with respect to the fuel efficiency of our products, will be critical to our long-term profitability. If we are unable to change public perception of our company and products, especially our new products, including cars and crossovers, our results of operations and financial condition could be materially adversely affected.

# The pace of introduction and market acceptance of new vehicles is important to our success, and the frequency of new vehicle introductions may be materially adversely affected by reductions in capital expenditures.

Our competitors have introduced new and improved vehicle models designed to meet consumer expectations and will continue to do so. Our profit margins, sales volumes, and market shares may decrease if we are unable to produce models that compare favorably to these competing models. If we are unable to produce new and improved vehicle models on a basis competitive with the models introduced by our competitors, including models of smaller vehicles, demand for our vehicles may be materially adversely affected. Further, the pace of our development and introduction of new and improved vehicle depends on our ability to implement successfully improved technological innovations in design, engineering, and manufacturing, which requires extensive capital investment. Any

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

capital expenditure cuts in these areas that we may determine to implement in the future to reduce costs and conserve cash could reduce our ability to develop and implement improved technological innovations, which may materially reduce demand for our vehicles.

# Our continued ability to achieve cost reductions and to realize production efficiencies for our automotive operations is critical to our ability to achieve long-term profitability.

We are continuing to implement a number of cost reduction and productivity improvement initiatives in our automotive operations, including labor modifications and substantial restructuring initiatives for our European operations. Our future competitiveness depends upon our continued success in implementing these restructuring initiatives throughout our automotive operations, especially in North America and Europe. In addition, while some of the elements of cost reduction are within our control, others such as interest rates or return on investments, which influence our expense for pensions, depend more on external factors, and there can be no assurance that such external factors will not materially adversely affect our ability to reduce our structural costs. Reducing costs may prove difficult due to our focus on increasing advertising and our belief that engineering expenses necessary to improve the performance, safety, and customer satisfaction of our vehicles are likely to increase.

# Failure of our suppliers, due to difficult economic conditions affecting our industry, to provide us with the systems, components, and parts that we need to manufacture our automotive products and operate our business could result in a disruption in our operations and have a material adverse effect on our business.

We rely on many suppliers to provide us with the systems, components, and parts that we need to manufacture our automotive products and operate our business. In recent years, a number of these suppliers have experienced severe financial difficulties and solvency problems, and some have sought relief under the Bankruptcy Code or similar reorganization laws. This trend intensified in 2009 due to the combination of general economic weakness, sharply declining vehicle sales, and tightened credit availability that has affected the automotive industry generally. Suppliers may encounter difficulties in obtaining credit or may receive an opinion from their independent public accountants regarding their financial statements that includes a statement expressing substantial doubt about their ability to continue as a going concern, which could trigger defaults under their financings or other agreements or impede their ability to raise new funds.

When comparable situations have occurred in the past, suppliers have attempted to increase their prices, pass through increased costs, alter payment terms, or seek other relief. In instances where suppliers have not been able to generate sufficient additional revenues or obtain the additional financing they need to continue their operations, either through private sources or government funding, which may not be available, some have been forced to reduce their output, shut down their operations, or file for bankruptcy protection. Such actions would likely increase our costs, create challenges to meeting our quality objectives, and in some cases make it difficult for us to continue production of certain vehicles. To the extent we take steps in such cases to help key suppliers remain in business, our liquidity would be adversely affected. It may also be difficult to find a replacement for certain suppliers without significant delay.

#### Increase in cost, disruption of supply, or shortage of raw materials could materially harm our business.

We use various raw materials in our business including steel, non-ferrous metals such as aluminum and copper, and precious metals such as platinum and palladium. The prices for these raw materials fluctuate depending on market conditions. In recent years, freight charges and raw material costs increased significantly. Substantial increases in the prices for our raw materials increase our operating costs and could reduce our profitability if we cannot recoup the increased costs through increased vehicle prices. In addition, some of these raw materials, such as corrosion-resistant steel, are only available from a limited number of suppliers. We cannot guarantee that we will be able to maintain favorable arrangements and relationships with these suppliers. An increase in the cost or a sustained interruption in the supply or shortage of some of these raw materials, which may be caused by a deterioration of our relationships with suppliers or by events such as labor strikes, could negatively affect our net revenues and profitability to a material extent.

### We operate in a highly competitive industry that has excess manufacturing capacity and attempts by our competitors to sell more vehicles could have a significant negative impact on our vehicle pricing, market share, and operating results.

The global automotive industry is highly competitive, and overall manufacturing capacity in the industry exceeds demand. Many manufacturers have relatively high fixed labor costs as well as significant limitations on their ability to close facilities and reduce fixed

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

costs. Our competitors may respond to these relatively high fixed costs by attempting to sell more vehicles by adding vehicle enhancements, providing subsidized financing or leasing programs, offering option package discounts or other marketing incentives, or reducing vehicle prices in certain markets. In addition, manufacturers in lower cost countries such as China and India have emerged as competitors in key emerging markets and announced their intention of exporting their products to established markets as a bargain alternative to entry-level automobiles. These actions have had, and are expected to continue to have, a significant negative impact on our vehicle pricing, market share, and operating results, and present a significant risk to our ability to enhance our revenue per vehicle.

#### Inadequate cash flow could materially adversely affect our business operations in the future.

We will require substantial liquidity to implement long-term cost savings and restructuring plans, continue capital spending to support product programs and development of advanced technologies, and meet scheduled term debt and lease maturities and pension contributions, in each case as contemplated by our business plan. If our cash levels approach the minimum cash levels necessary to support our normal business operations, we may be forced to borrow additional funds at rates that may not be favorable, curtail capital spending, and reduce research and development and other programs that are important to the future success of our business. If this were to happen, our need for cash would be intensified.

Although we believe that the funding we received in connection with our formation and our purchase of substantially all of MLC's assets provides us with sufficient liquidity to operate our business, our ability to maintain adequate liquidity over the long-term will depend significantly on the volume, mix and quality of our vehicle sales and our ability to minimize operating expenses. Our liquidity needs are sensitive to changes in each of these and other factors.

#### As part of our business plan, we have reduced compensation for our most highly paid executives and have reduced the number of our management and non-management salaried employees, and these actions may materially adversely affect our ability to hire and retain salaried employees.

As part of the cost reduction initiatives in our business plan, and pursuant to the direction of the Special Master for TARP Executive Compensation (the Special Master), the form and timing of the compensation for our most highly paid executives is not competitive with that offered by other major corporations. Furthermore, while we have repaid in full our indebtedness under the UST Credit Agreement, the executive compensation and corporate governance provisions of Section 111 of the Emergency Economic Stabilization Act of 2008, as amended (the EESA), including the Interim Final Rule implementing Section 111 (the Interim Final Rule), will continue to apply to us for the period specified in the EESA and the Interim Final Rule. In addition, certain of the covenants in the UST Credit Agreement will continue to apply to us until the earlier to occur of (i) us ceasing to be a recipient of Exceptional Financial Assistance, as determined pursuant to the Interim Final Rule or any successor or final rule, or (ii) UST ceasing to own any direct or indirect equity interests in us. The effect of Section 111 of EESA, the Interim Final Rule and the covenants is to restrict the compensation that we can provide to our top executives and prohibit certain types of compensation or benefits for any employees. At the same time, we have substantially decreased the number of salaried employees so that the workload is shared among fewer employees and in general the demands on each salaried employees are increased. Companies in similar situations have experienced significant difficulties in hiring and retaining highly skilled employees, particularly in competitive specialties. Given our compensation structure and increasing job demands, there is no assurance that we will be able to hire and retain the employees whose expertise is required to execut our business plan while at the same time developing and producing vehicles that will stimulate demand for our products.

# Our plan to reduce the number of our retail channels and brands and to consolidate our dealer network is likely to reduce our total sales volume, may not create the cost savings we anticipate, and is likely to result in restructuring costs that may materially adversely affect our results of operations.

As part of our business plan, we will focus our resources in the U.S. on four brands: Chevrolet, Cadillac, Buick, and GMC. We completed the sale of Saab Automobile AB (Saab) in February 2010, and have ceased production of our Pontiac, Saturn and HUMMER brands. We also intend to consolidate our dealer network by reducing the total number of our U.S. dealers from approximately 5,200 as of June 30, 2010 to approximately 4,500 by the end of 2010. We anticipate that this reduction in retail outlets, brands, and dealers will result in cost savings over time, but there is no assurance that we would realize the savings expected. Based

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

on our experience and the experiences of other companies that have eliminated brands, models, and/or dealers, we believe that our market share could decline because of these reductions. In addition, executing the phase–out of retail channels and brands and the reduction in the number of our dealers will require us to terminate established business relationships. There is no assurance that we will be able to terminate all of these relationships, and if we are not able to terminate substantially all of these relationships, we would not be able to achieve all of the benefits we have targeted. In addition, the cost of negotiating terminations of any remaining dealers on an individual basis may adversely affect our results of operations.

### Our business plan contemplates that we restructure our operations in various European countries, but we may not succeed in doing so, and that could have a material adverse effect on our business.

Our business plan contemplates that we restructure our operations in various European countries, and we are actively working to accomplish this. We continue to work towards a restructuring of our German and certain other European operations. We cannot be certain that we will be able to successfully complete any of these restructurings. In addition, restructurings, whether or not ultimately successful, can involve significant expense and disruption to the business as well as labor disruptions, which can adversely affect the business. Moreover, in June 2010 the German federal government notified us of its decision not to provide loan guarantees to Opel/Vauxhall. As a result, we decided to fund the requirements of Opel/Vauxhall internally and withdrew all applications for government loan guarantees from European governments. Our decision to restructure our European operations will require us to invest significant additional funds and require significant management attention. We cannot assure you that any of our contemplated restructurings will be completed or achieve the desired results, and if we cannot successfully complete such restructurings, we may choose to, or the directors of the relevant entity may be compelled to, or creditors may force us to, seek relief for our various European operations under applicable local bankruptcy, reorganization, insolvency, or similar laws, where we may lose control over the outcome of the restructuring process due to the appointment of a local receiver, trustee, or administrator (or similar official) or otherwise and which could result in a liquidation and us losing all or a substantial part of our interest in the business.

# Our U.S. defined benefit pension plans are currently underfunded, and our pension funding obligations may increase significantly due to weak performance of financial markets and its effect on plan assets.

Our future funding obligations for our U.S. defined benefit pension plans qualified with the IRS depends upon the future performance of assets placed in trusts for these plans, the level of interest rates used to determine funding levels, the level of benefits provided for by the plans and any changes in government laws and regulations. Our employee benefit plans currently hold a significant amount of equity and fixed income securities. Due to Old GM's contributions to the plans and to the strong performance of these assets during prior periods, the U.S. hourly and salaried pension plans were consistently overfunded from 2005 through 2007, which allowed Old GM to maintain a surplus without making additional contributions to the plans. However, due to a number of factors, including significant declines in financial markets and a deterioration in the value of our plan assets, as well as the coverage of additional retirees, including certain Delphi hourly employees, our U.S. defined benefit pension plans were underfunded on a U.S. GAAP basis by \$17.1 billion at December 31, 2009. In addition, at December 31, 2009, our non-U.S. defined benefit pension plans were underfunded on a U.S. GAAP basis by approximately \$10.3 billion. The defined benefit pension plans are accounted for on an actuarial basis, which requires the selection of various assumptions, including an expected rate of return on plan assets and a discount rate. In the U.S., from December 31, 2009 to June 30, 2010, interest rates on high quality corporate bonds have decreased. We believe that a discount rate calculated as of June 30, 2010 would be approximately 65 to 75 basis points lower than the rates used to measure the pension plans at December 31, 2009, the date of the last remeasurement for the U.S. pension plans. As a result, funded status would decrease if the plans were remeasured at June 30, 2010, holding all other factors (e.g., actuarial assumptions and asset returns) constant (see the Critical Accounting Estimates for an indication of the se

The next U.S. pension funding valuation date based on the requirements of the Pension Protection Act (PPA) of 2006 will be October 1, 2010. However, based on a hypothetical funding valuation at June 30, 2010, we may need to make significant contributions to our U.S. pension plans in 2014 and beyond (see Contractual Obligations and Other Long–Term Liabilities section of Management's Discussion and Analysis of Financial Condition and Results of Operations for more details).

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

If the total values of the assets held by our pension plans decline and/or the returns on such assets underperform the Company's return assumptions, our pension expenses would generally increase and, as a result, could materially adversely affect our financial position. Changes in interest rates that are not offset by contributions, asset returns and/or hedging activities could also increase our obligations under such plans. If local legal authorities increase the minimum funding requirements for our pension plans outside the U.S., we could be required to contribute more funds, which would negatively affect our cash flow.

### If adequate financing on acceptable terms is not available through Ally Financial or other sources to our customers and dealers, distributors, and suppliers to enable them to continue their business relationships with us, our business could be materially adversely affected.

Our customers and dealers require financing to purchase a significant percentage of our global vehicle sales. Historically, Ally Financial has provided most of the financing for our dealers and a significant amount of financing for our customers. Due to recent conditions in credit markets, particularly later in 2008, retail customers and dealers experienced severe difficulty in accessing the credit markets. As a result, the number of vehicles sold or leased declined rapidly in the second half of 2008, with lease contract volume dropping significantly by the end of 2008. This had a significant adverse effect on Old GM vehicle sales overall because many of its competitors have captive financing subsidiaries that were better capitalized than Ally Financial during 2008 and 2009 and thus were able to offer consumers subsidiared financing and leasing offers.

Similarly, the reduced availability of Ally Financial wholesale dealer financing (in the second half of 2008 and 2009), the increased cost of such financing, and the limited availability of other sources of dealer financing due to the general weakness of the credit market has caused and may continue to cause dealers to modify their plans to purchase vehicles from us.

Because of recent modifications to our commercial agreements with Ally Financial, Ally Financial no longer is subject to contractual wholesale funding commitments or retail underwriting targets. In addition, Ally Financial's credit rating has declined in recent years. This may negatively affect its access to funding and therefore its ability to provide adequate financing at competitive rates to our customers and dealers. Further, if any of our competitors with captive financing subsidiaries are able to continue to offer consumers and dealers financing and leasing on better terms than our customers and dealers are able to obtain, consumers may be more inclined to purchase our competitors' vehicles and our competitors' dealers may be better able to stock our competitors' products.

As part of a strategy to develop our own captive financing unit, we have entered into a definitive agreement to acquire AmeriCredit, which we expect will enable us to offer increased availability of leasing and non-prime financing for our customers. We cannot assure you that we will be able to close the acquisition of AmeriCredit, which is subject to certain closing conditions, many of which are beyond our control, including the approval of AmeriCredit shareholders. Our failure to successfully develop our own captive financing unit, including through the AmeriCredit acquisition, could materially adversely affect our business.

### The UST (or its designee) owns a controlling in us, and its interests may differ from those of our other stockholders.

The UST beneficially owns a majority of our common stock on a fully diluted basis. As a result of this stock ownership interest, the UST is able to exercise significant influence over our business if it elects to do so. This includes the ability to have significant influence over matters brought for a stockholder vote. To the extent the UST elects to exercise such influence over us, its interests (as a government entity) may differ from those of our other stockholders and it may influence, through its ability to vote for the election of our directors, matters including:

- The selection, tenure and compensation of our management;
- Our business strategy and product offerings;

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

- Our relationship with our employees, unions and other constituencies; and
- Our financing activities, including the issuance of debt and equity securities.

In the future we may also become subject to new and additional laws and government regulations regarding various aspects of our business as a result of participation in the TARP program and the U.S. government's ownership in our business. These regulations could make it more difficult for us to compete with other companies that are not subject to similar regulations.

# The VEBA Note Agreement and the UST Credit Agreement contain significant covenants that may restrict our ability and the ability of our subsidiaries to take actions management believes are important to our long-term strategy.

The VEBA Note Agreement contains affirmative covenants requiring us to take certain actions and negative covenants restricting our ability to take certain actions. The affirmative covenants impose obligations on us with respect to, among other things, financial reporting to the New VEBA, use of proceeds of asset sales, maintenance of facility collateral and other property and payment of obligations. The negative covenants in the VEBA Note Agreement generally apply to us and our U.S. subsidiaries that provided guarantees of our obligations under that agreement and restrict us with respect to, among other things, granting liens, distributions on capital stock, amendments or waivers of certain documents and entering into new indebtedness.

In addition, while we have repaid in full our indebtedness under the UST Credit Agreement, the executive compensation and corporate governance provisions of Section 111 of the EESA, including the Interim Final Rule, will continue to apply to us for the period specified in the EESA and the Interim Final Rule. In addition, certain of the covenants in the UST Credit Agreement will continue to apply to us until the earlier to occur of (i) us ceasing to be a recipient of Exceptional Financial Assistance, as determined pursuant to the Interim Final Rule or any successor or final rule, or (ii) UST ceasing to own any direct or indirect equity interests in us. The effect of Section 111 of EESA, the Interim Final Rule and the covenants is to restrict the compensation that we can provide to our top executives and prohibit certain types of compensation or benefits for any employees. Compliance with the covenants to our long-term strategic transactions we wish to undertake are prohibited or inconsistent with, or detrimental to, our long-term viability, our ability to execute our long-term strategy could be materially adversely affected. In addition, monitoring and certifying our compliance with the VEBA Note Agreement and the UST Credit Agreement and management attention on a continuing basis.

# Even though we have made significant modifications to our obligations to the New VEBA, we are still obligated to contribute a significant amount of cash to fund the New VEBA in the future.

Even though we have made significant modifications to our obligations to the New VEBA, we are still required to contribute a significant amount of cash to the New VEBA over a period of years. The amounts payable to the New VEBA include: (1) dividends payable on the 260 million shares of Series A Preferred Stock issued to the New VEBA in connection with the closing of the 363 Sale, which have a liquidation preference of \$25.00 per share and accrue cumulative dividends at a rate equal to 9.0% per annum (payable quarterly on March 15, June 15, September 15 and December 15) if, as and when declared by our Board of Directors (the UST and Canada GEN Investment Corporation (Canada Holdings) hold an additional 100 million shares of Series A Preferred Stock); and (2) payments on the VEBA Notes in three equal installments of \$1.4 billion on July 15, 2013, 2015 and 2017. On or after December 31, 2014, we may redeem, in whole or in part, the shares of Series A Preferred Stock at the time outstanding, at a redemption price per share equal to the sum of: (1) \$25.00 per share; and (2) subject to limited exceptions, any accrued and unpaid dividends. There is no assurance that we will be able to obtain all of the necessary funding to fund our existing VEBA payment obligations on terms that will be acceptable to us. If we are unable to obtain funding from internal or external sources or some combination thereof on terms that are consistent with our business plan, we would have to delay, reduce, or cancel other planned expenditures.

### Our planned investment in new technology in the future is significant and may not be funded at anticipated levels and, even if funded at anticipated levels, may not result in successful vehicle applications.

We intend to invest significant capital resources to support our products and to develop new technology. In addition, we plan to invest heavily in alternative fuel and advanced propulsion technologies between 2010 and 2012, largely to support our planned

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

expansion of hybrid and electric vehicles, consistent with our announced objective of being recognized as the industry leader in fuel efficiency. Moreover, if our future operations do not provide us with the liquidity we anticipate, we may be forced to reduce, delay, or cancel our planned investments in new technology.

In some cases, the technologies that we plan to employ, such as hydrogen fuel cells and advanced battery technology, are not yet commercially viable and depend on significant future technological advances by us and by suppliers. For example, we have announced that we intend to produce by November 2010 the Chevrolet Volt, an electric car, which requires battery technology that has not yet proven to be commercially viable. There can be no assurance that these advances will occur in a timely or feasible way, that the funds that we have budgeted for these purposes will be adequate, or that we will be able to establish our right to these technologies. However, our competitors and others are pursuing similar technologies and other competing technologies, in some cases with more money available, and there can be no assurance that they will not acquire similar or superior technologies sooner than we do or on an exclusive basis or at a significant price advantage.

### New laws, regulations, or policies of governmental organizations regarding increased fuel economy requirements and reduced greenhouse gas emissions, or changes in existing ones, may have a significant effect on how we do business.

We are affected significantly by governmental regulations that can increase costs related to the production of our vehicles and affect our product portfolio. We anticipate that the number and extent of these regulations, and the related costs and changes to our product lineup, will increase significantly in the future. In the U.S. and Europe, for example, governmental regulation is primarily driven by concerns about the environment (including greenhouse gas emissions), vehicle safety, fuel economy, and energy security. These government regulatory requirements could significantly affect our plans for global product development and may result in substantial costs, including civil penalties. They may also result in limits on the types of vehicles we sell and where we sell them, which can affect revenue.

Corporate Average Fuel Economy provisions in the Energy Independence and Security Act of 2007 (the EISA) mandate fuel economy standards beginning in the 2011 model year that would increase to at least 35 mpg by 2020 on a combined car and truck fleet basis, a 40% increase over current levels. In addition, California is implementing a program to regulate vehicle greenhouse gas emissions (AB 1493 Rules) and therefore will require increased fuel economy. This California program has standards currently established for the 2009 model year through the 2016 model year. Thirteen additional states and the Province of Quebec have also adopted the California greenhouse gas standards.

On May 19, 2009, President Obama announced his intention for the federal government to implement a harmonized federal program to regulate fuel economy and greenhouse gases. He directed the Environmental Protection Agency (EPA) and the United States Department of Transportation (DOT) to work together to create standards through a joint rulemaking for control of emissions of greenhouse gases and for fuel economy. In the first phase, these standards would apply to passenger cars, light–duty trucks, and medium–duty passenger vehicles built in model years 2012 through 2016. The California Air Resources Board (CARB) has agreed that compliance with EPA's greenhouse gas standards will be deemed compliance with the California greenhouse gas standards for the 2012 through 2016 model years. EPA and the National Highway Traffic Safety Administration (NHTSA), on behalf of DOT, issued their final rule to implement this new federal program on April 1, 2010. We have committed to work with EPA, the SHTSA, the states, and other stakeholders in support of a strong national program to reduce oil consumption and address global climate change.

We are committed to meeting or exceeding these regulatory requirements, and our product plan of record projects compliance with the anticipated federal program through the 2016 model year. We expect that to comply with these standards we will be required to sell a significant volume of hybrid or electrically powered vehicles throughout the U.S., as well as implement new technologies for conventional internal combustion engines, all at increased cost levels. There is no assurance that we will be able to produce and sell vehicles that use such technologies on a profitable basis, or that our customers will purchase such vehicles in the quantities necessary for us to comply with these regulatory programs.

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

In addition, the European Union (EU) passed legislation, effective April 23, 2009, to begin regulating vehicle carbon dioxide emissions beginning in 2012. The legislation sets a target of a fleet average of 95 grams per kilometer for 2020, with the requirements for each manufacturer based on the weight of the vehicles it sells. Additional measures have been proposed or adopted in Europe to regulate features such as tire rolling resistance, vehicle air conditioners, tire pressure monitors, gear shift indicators, and others. At the national level, 17 EU Member States have adopted some form of fuel consumption or carbon dioxide–based vehicle taxation system, which could result in specific market requirements for us to introduce technology earlier than is required for compliance with the EU emissions standards.

Other governments around the world, such as Canada, South Korea, and China are also creating new policies to address these same issues. As in the U.S., these government policies could significantly affect our plans for product development. Due to these regulations, we could be subject to sizable civil penalties or have to restrict product offerings drastically to remain in compliance. Additionally, the regulations will result in substantial costs, which could be difficult to pass through to our customers, and could result in limits on the types of vehicles we sell and where we sell them, which could affect our operations, including facility closings, reduced employment, increased costs, and loss of revenue.

# We may be unable to qualify for federal funding for our advanced technology vehicle programs under Section 136 of the EISA or may not be selected to participate in the program.

The U.S. Congress provided the DOE with \$25.0 billion in funding to make direct loans to eligible applicants for the costs of re-equipping, expanding, and establishing manufacturing facilities in the U.S. to produce advanced technology vehicles and components for these vehicles. Old GM submitted three applications for Section 136 Loans aggregating \$10.3 billion to support its advanced technology vehicle programs prior to July 2009. Based on the findings of the Auto Task Force under Old GM's UST Loan Agreement in March 2009, the DOE determined that Old GM did not meet the viability requirements for Section 136 Loans.

On July 10, 2009 we purchased certain assets of Old GM pursuant to Section 363 of the Bankruptcy Code, including the rights to the loan applications submitted to the Advanced Technology Vehicle Manufacturing Incentive Program (the ATVMIP). Further, we submitted a fourth application in August 2009. Subsequently, the DOE advised us to resubmit a consolidated application including all the four applications submitted earlier and also the Electric Power Steering project acquired from Delphi in October 2009. We submitted the consolidated application in October 2009, which requested an aggregate amount of \$14.4 billion of Section 136 Loans. Ongoing product portfolio updates and project modifications requested from the DOE have the potential to reduce the maximum loan amount. To date, the DOE has announced that it would provide approximately \$8.4 billion in Section 136 Loans to Ford Motor Company, Nissan Motor Company, Tesla Motors, Inc., Fisker Automotive, Inc., and Tenneco Inc. There can be no assurance that we will qualify for any remaining loans or receive any such loans even if we qualify.

### A significant amount of our operations are conducted by joint ventures that we cannot operate solely for our benefit.

Many of our operations, particularly in emerging markets, are carried on by joint ventures such as SGM. In joint ventures, we share ownership and management of a company with one or more parties who may not have the same goals, strategies, priorities, or resources as we do. In general, joint ventures are intended to be operated for the equal benefit of all co-owners, rather than for our exclusive benefit. Operating a business as a joint venture often requires additional organizational formalities as well as time-consuming procedures for sharing information and making decisions. In joint ventures, we are required to pay more attention to our relationship with our co-owners as well as with the joint venture, and if a co-owner changes, our relationship may be materially adversely affected. In addition, the benefits from a successful joint venture are shared among the co-owners, so that we do not receive all the benefits from our successful joint ventures.

#### Our business in China is subject to aggressive competition and is sensitive to economic and market conditions.

Maintaining a strong position in the Chinese market is a key component of our global growth strategy. The automotive market in China is highly competitive, with competition from many of the largest global manufacturers and numerous smaller domestic manufacturers. As the size of the Chinese market continues to increase, we anticipate that additional competitors, both international and domestic, will seek to enter the Chinese market and that existing market participants will act aggressively to increase their market

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

share. Increased competition may result in price reductions, reduced margins and our inability to gain or hold market share. In addition, our business in China is sensitive to economic and market conditions that drive sales volume in China. If we are unable to maintain our position in the Chinese market or if vehicle sales in China decrease or do not continue to increase, our business and financial results could be materially adversely affected.

# Shortages of and volatility in the price of oil have caused and may have a material adverse effect on our business due to shifts in consumer vehicle demand.

Volatile oil prices in 2008 and 2009 contributed to weaker demand for some of Old GM's and our higher margin vehicles, especially our fullsize sport utility vehicles, as consumer demand shifted to smaller, more fuel–efficient vehicles, which provide lower profit margins and in recent years represented a smaller proportion of Old GM's and our sales volume in North America. Fullsize pick–up trucks, which are generally less fuel efficient than smaller vehicles, represented a higher percentage of Old GM's and our North American sales during 2008 and 2009 compared to the total industry average percentage of fullsize pick–up truck sales in those periods. Demand for traditional sport utility vehicles and vans also declined during the same periods. Any future increases in the price of oil in the U.S. or in our other markets or any sustained shortage of oil could further weaken the demand for such vehicles, which could reduce our market share in affected markets, decrease profitability, and have a material adverse effect on our business.

# Restrictions in our labor agreements could limit our ability to pursue or achieve cost savings through restructuring initiatives, and labor strikes, work stoppages, or similar difficulties could significantly disrupt our operations.

Substantially all of the hourly employees in our U.S., Canadian, and European automotive operations are represented by labor unions and are covered by collective bargaining agreements, which usually have a multi-year duration. Many of these agreements include provisions that limit our ability to realize cost savings from restructuring initiatives such as plant closings and reductions in workforce. Our current collective bargaining agreement with the UAW will expire in September 2011, and while the UAW has agreed to a commitment not to strike prior to 2015, any UAW strikes, threats of strikes, or other resistance in the future could materially adversely affect our business as well as impair our ability to implement further measures to reduce soft and improve production efficiencies in furtherance of our North American initiatives. A lengthy strike by the UAW that involves all or a significant portion of our manufacturing facilities in the United States would have a material adverse effect on our operations and financial condition, particularly our liquidity.

### Despite the formation of our new company, we continue to have indebtedness and other obligations. Our obligations together with our cash needs may require us to seek additional financing, minimize capital expenditures, or seek to refinance some or all of our debt.

Despite the formation of our new company, we continue to have indebtedness and other obligations, including significant liabilities to our underfunded defined benefit pension plans. Our current and future indebtedness and other obligations could have several important consequences. For example, they could:

- Require us to dedicate a larger portion of our cash flow from operations than we currently do to the payment of principal and interest on our indebtedness and other obligations, which will reduce the funds available for other purposes such as product development;
- Make it more difficult for us to satisfy our obligations;
- Make us more vulnerable to adverse economic and industry conditions and adverse developments in our business;
- Limit our ability to withstand competitive pressures;
- Limit our ability to fund working capital, capital expenditures, and other general corporate purposes; and
- Reduce our flexibility in responding to changing business and economic conditions.

Future liquidity needs may require us to seek additional financing or minimize capital expenditures. There is no assurance that either of these alternatives would be available to us on satisfactory terms or on terms that would not require us to renegotiate the terms and conditions of our existing debt agreements.

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

# Our failure to comply with the covenants in the agreements governing our present and future indebtedness could materially adversely affect our financial condition and liquidity.

Several of the agreements governing our indebtedness, including the VEBA Note Agreement and other loan facility agreements, contain covenants requiring us to take certain actions and negative covenants restricting our ability to take certain actions. In the past, we have failed to meet certain of these covenants, including by failing to provide financial statements in a timely manner and failing certain financial tests. In addition, the Chapter 11 Proceedings and the change in control as a result of the 363 Sale triggered technical defaults in certain loans for which we had assumed the obligations. A breach of any of the covenants in the agreements governing our indebtedness, if uncured, could lead to an event of default under any such agreements, which in some circumstances could give the lender the right to demand that we accelerate repayment of amounts due under the agreement. Therefore, in the event of any such breach, we may need to seek covenant waivers or amendments from the lenders or to seek alternative or additional sources of financing, and we cannot assure you that we would be able to obtain any such waivers or amendments or alternative or additional financing on acceptable terms, if at all. Refer to Note 13 to the condensed consolidated financial statements for additional information on technical defaults and covenant violations that have occurred recently. In addition, any covenant breach or event of default could harm our credit rating and our ability to obtain additional financing on acceptable terms. The occurred covenant breach or event of default adverse effect on our financial condition and liquidity.

# The ability of our new executive management team to quickly learn the automotive industry and lead our company will be critical to our ability to succeed.

Within the past year we have substantially changed our executive management team. We have elected a new Chief Executive Officer who will start on September 1, 2010 and a new Chief Financial Officer who started on January 1, 2010, both of whom have no outside automotive industry experience. We have also promoted from within GM many new senior officers. It is important to our success that the new members of the executive management team quickly understand the automotive industry and that our senior officers quickly adapt and excel in their new senior management roles. If they are unable to do so, and as a result are unable to provide effective guidance and leadership, our business and financial results could be materially adversely affected.

### We could be materially adversely affected by changes or imbalances in foreign currency exchange and other rates.

Given the nature and global spread of our business, we have significant exposures to risks related to changes in foreign currency exchange rates, commodity prices, and interest rates, which can have material adverse effects on our business. For example, at times certain of our competitors have derived competitive advantage from relative weakness of the Japanese Yen, which has provided pricing advantages for vehicles and parts imported from Japan to markets with more robust currencies like the U.S. and Western Europe. Similarly, a significant strengthening of the Korean Won relative to the U.S. dollar or the Euro would affect the competitiveness of our Korean operations as well as that of certain Korean competitors. As yet another example, a relative weakness of the British Pound compared to the Euro has had an adverse effect on our results of operations in Europe. In addition, in preparing the condensed consolidated financial statements, we translate our revenues and expenses outside the U.S. dollars using the average foreign currency exchange rate at the balance sheet date. As a result, foreign currency fluctuations and the associated translations could have a material adverse effect on our results of operations.

#### Our businesses outside the U.S. expose us to additional risks that may materially adversely affect our business.

The majority of our vehicle sales are generated outside the U.S. We are pursuing growth opportunities for our business in a variety of business environments outside the U.S. Operating in a large number of different regions and countries exposes us to political, economic, and other risks as well as multiple foreign regulatory requirements that are subject to change, including:

- Economic downturns in foreign countries or geographic regions where we have significant operations, such as China;
- Economic tensions between governments and changes in international trade and investment policies, including imposing restrictions on the repatriation of dividends, especially between the United States and China;

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

- · Foreign regulations restricting our ability to sell our products in those countries;
- Differing local product preferences and product requirements, including fuel economy, vehicle emissions, and safety;
- Differing labor regulations and union relationships;
- Consequences from changes in tax laws;
- · Difficulties in obtaining financing in foreign countries for local operations; and
- Political and economic instability, natural calamities, war, and terrorism.

The effects of these risks may, individually or in the aggregate, materially adversely affect our business.

# New laws, regulations, or policies of governmental organizations regarding safety standards, or changes in existing ones, may have a significant negative effect on how we do business.

Our products must satisfy legal safety requirements. Meeting or exceeding government-mandated safety standards is difficult and costly because crashworthiness standards tend to conflict with the need to reduce vehicle weight in order to meet emissions and fuel economy standards. While we are managing our product development and production operations on a global basis to reduce costs and lead times, unique national or regional standards or vehicle rating programs can result in additional costs for product development, testing, and manufacturing. Governments often require the implementation of new requirements during the middle of a product cycle, which can be substantially more expensive than accommodating these requirements during the

### The costs and effect on our reputation of product recalls could materially adversely affect our business.

From time to time, we recall our products to address performance, compliance, or safety-related issues. The costs we incur in connection with these recalls typically include the cost of the part being replaced and labor to remove and replace the defective part. In addition, product recalls can harm our reputation and cause us to lose customers, particularly if those recalls cause consumers to question the safety or reliability of our products. Any costs incurred or lost sales caused by future product recalls could materially adversely affect our business. Conversely, not issuing a recall or not issuing a recall on a timely basis can harm our reputation and cause us to lose customers for the same reasons as expressed above.

### We have determined that our disclosure controls and procedures and our internal controls over financial reporting are currently not effective. The lack of effective internal controls could materially adversely affect our financial condition and ability to carry out our business plan.

Our management team for financial reporting, under the supervision and with the participation of our Chief Executive Officer and our Chief Financial Officer, conducted an evaluation of the effectiveness of the design and operation of our internal controls. At December 31, 2009, because of the inability to sufficiently test the effectiveness of remediated internal controls, we concluded that our internal control over financial reporting was not effective. At June 30, 2010 we concluded that our disclosure controls and procedures were not effective at a reasonable assurance level because of the material weakness in our internal control over financial reporting that continued to exist. Until we have been able to test the operating effectiveness of remediated internal controls and procedures, any material weaknesses may materially adversely affect our ability to report accurately our financial condition and results of operations in the future in a timely and reliable manner. In addition, although we continually review and evaluate internal control systems to allow management to report on the sufficiency of our internal controls, we cannot assure you that we will not discover additional weaknesses in our internal condition or ability to comply with applicable financial reporting requirements and the requirements of the Company's various financial condition or ability to comply with applicable financial reporting requirements.

### Item 5. Part II Other Information

On August 11, 2010 our Board of Directors elected Daniel F. Akerson, age 61, Chief Executive Officer. Mr. Akerson's election will be effective September 1, 2010, when Edward E. Whitacre, Jr. will retire from his current position as Chief Executive Officer.

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

Mr. Akerson will continue to serve on our Board of Directors, which he joined in July 2009. Mr. Whitacre will continue as Chairman and after he retires from the Board, which he intends to do by the end of 2010, Mr. Akerson will become Chairman.

Mr. Akerson has been Managing Director and Head of Global Buyout of The Carlyle Group since July 2009. He served as Managing Director and Co–Head of the U.S Buyout Fund from 2003 to 2009. Prior to joining Carlyle, Mr. Akerson served as Chairman and Chief Executive Officer of XO Communications, Inc. from 1999 to January 2003. XO Communications, Inc. filed a voluntary petition under Chapter 11 of the U.S. Bankruptcy Code in June 2002 and emerged from bankruptcy proceedings in January 2003. Mr. Akerson also served as Chairman of Nextel Communications from 1996 to 2001 and Chairman and Chief Executive Officer from 1996 to 1999. He held the offices of Chairman and Chief Executive Officer of General Instrument Corporation from 1993 to 1995. He is currently a director of American Express Company.

Mr. Akerson has no other reportable relationships with us or our affiliates.

Mr. Akerson's compensation has not been finalized; we will report that information in a Current Report on Form 8-K when it is available.

* * * * *

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

### Item 6. Exhibits

Exhibit <u>Number</u> 31.1	<u>Exhibit Name</u> Section 302 Certification of the Chief Executive Officer	Filed Herewith
31.2	Section 302 Certification of the Chief Financial Officer	Filed Herewith
32.1	Certification of the Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, As Adopted Pursuant to Section 906 of the Sarbanes–Oxley Act of 2002	Filed Herewith
32.2	Certification of the Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, As Adopted Pursuant to Section 906 of the Sarbanes–Oxley Act of 2002	Filed Herewith

* * * * * *

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

### SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

GENERAL MOTORS COMPANY (Registrant)

By: <u>/s/ NICK S. CYPRUS</u> (Nick S. Cyprus, Vice President, Controller and Chief Accounting Officer)

Date: August 16, 2010

### GENERAL MOTORS COMPANY AND SUBSIDIARIES

### EXHIBIT INDEX

Exhibit <u>Number</u> 31.1	<u>Exhibit Name</u> Section 302 Certification of the Chief Executive Officer	Filed Herewith
31.2	Section 302 Certification of the Chief Financial Officer	Filed Herewith
32.1	Certification of the Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, As Adopted Pursuant to Section 906 of the Sarbanes–Oxley Act of 2002	Filed Herewith
32.2	Certification of the Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, As Adopted Pursuant to Section 906 of the Sarbanes–Oxley Act of 2002	Filed Herewith

### CERTIFICATION

I, Edward E. Whitacre, Jr., certify that:

1. I have reviewed this quarterly report for the period ended June 30, 2010 on Form 10-Q of General Motors Company;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the Audit Committee of the registrant's Board of Directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

<u>(s/ EDWARD E. WHITACRE, JR.</u> Edward E. Whitacre, Jr. Chairman and Chief Executive Officer

### CERTIFICATION

I, Christopher P. Liddell, certify that:

1. I have reviewed this quarterly report for the period ended June 30, 2010 on Form 10-Q of General Motors Company;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the Audit Committee of the registrant's Board of Directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ CHRISTOPHER P. LIDDELL Christopher P. Liddell Vice Chairman and Chief Financial Officer

### CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of General Motors Company (the "Company") on Form 10–Q for the period ended June 30, 2010 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Edward E. Whitacre, Jr., Chairman and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes–Oxley Act of 2002, that to the best of my knowledge:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ EDWARD E. WHITACRE, Jr. Edward E. Whitacre, Jr. Chairman and Chief Executive Officer

### CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of General Motors Company (the "Company") on Form 10–Q for the period ended June 30, 2010 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Christopher P. Liddell, Vice Chairman and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes–Oxley Act of 2002, that to the best of my knowledge:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ CHRISTOPHER P. LIDDELL. Christopher P. Liddell Vice Chairman and Chief Financial Officer

# Exhibit 2

From:	Novod, Gordon <gnovod@kramerlevin.com></gnovod@kramerlevin.com>
Sent:	Tuesday, June 23, 2009 9:57 AM
То:	'Matthew.Feldman@do.treas.gov'; 'john.rapisardi@cwt.com'; 'Karotkin, Stephen' <stephen.karotkin@weil.com>; 'Smolinsky, Joseph' <joseph.smolinsky@weil.com></joseph.smolinsky@weil.com></stephen.karotkin@weil.com>
Cc:	'Gietz, Raymond' <raymond.gietz@weil.com>; michele.meises@weil.com; 'Pais, Harsh' <harsh.pais@weil.com>; Mayer, Thomas Moers <tmayer@kramerlevin.com>; Caton, Amy <acaton@kramerlevin.com>; 'Andrew N Rosenberg' <arosenberg@paulweiss.com>; 'Berkovich, Ronit' <ronit.berkovich@weil.com>; 'Gromacki, Joseph P' <jgromacki@jenner.com>; 'Wolf, Michael T.' <mwolf@jenner.com>; 'lawrence.s.buonomo@gm.com'; 'Smith, Zachary' <zachary.smith@cwt.com>; 'ron.hopkinson@cwt.com'; 'greg.patti@cwt.com'</zachary.smith@cwt.com></mwolf@jenner.com></jgromacki@jenner.com></ronit.berkovich@weil.com></arosenberg@paulweiss.com></acaton@kramerlevin.com></tmayer@kramerlevin.com></harsh.pais@weil.com></raymond.gietz@weil.com>
Subject:	RE: Call 10 a.m. ET Tuesday
Attach:	KL2-#2610015-v8-Summary_of_June_19th_Meeting_by_Issue_List.DOC

### All,

In anticipation of our 10 am call, please find a summary of our meeting on Friday, June 19, 2009. It also reflects subsequent discussions with the parties which occurred over the weekend and yesterday. Gordon

From: Berkovich, Ronit [mailto:Ronit.Berkovich@weil.com]
Sent: Monday, June 22, 2009 11:38 PM
To: Gromacki, Joseph P; Wolf, Michael T.; Mayer, Thomas Moers; Caton, Amy; Novod, Gordon; Andrew N Rosenberg; lawrence.s.buonomo@gm.com; john.rapisardi@cwt.com; Smith, Zachary; Matthew.Feldman@do.treas.gov; greg.patti@cwt.com; ron.hopkinson@cwt.com
Cc: Karotkin, Stephen; Smolinsky, Joseph; Gietz, Raymond; michele.meises@weil.com; Pais, Harsh
Subject: Call 10 a.m. ET Tuesday

As discussed at Friday's meeting, we are having a call tomorrow (Tuesday) at 10 a.m. ET. 800-782-1473 4932755 Please forward to anyone else who should be on the call.

Ronit J. Berkovich Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, New York 10153 Tel: (212) 310-8534 ronit.berkovich@weil.com

The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email (postmaster@weil.com), and destroy the original message. Thank you

Please find below the list of issues that were discussed at the June 19th meeting by and among representatives of General Motors Corp., the Creditors' Committee of General Motors and the United States Treasury.

### <u>Part I.</u>

Issue	<b>Initial Committee Position</b>	<b>Report from June 19th Meeting</b>
1. Employee Issues.	There should be a resolution of the IUE and USW OPEB issues that does not create administrative or unsecured claims against Old GM. MPSA should be changed to clarify that New GM, not Old GM, will make changes in salaried retiree benefits.	<u>UST</u> : Talks are ongoing with respect to the IUE and are expected to do so as appropriate until the sale hearing. When asked whether there was a tax credit available, Matt Feldman [US Treasury] replied that the tax credit is available for retirees aged 55-65 and most IUE retirees are over 65 and thus eligible for Medicare. Feldman quantified the decrease in benefits for salaried retirees as a reduction of 67% in the total actuarial [balance sheet] value of their OPEB.
		Compare IUE & USW Objection:
		<b><u>IUE</u></b> : 28% of IUE OPEB relates to IUE retirees under 65, total actuarial [balance sheet] value of IUE OPEB cut by 85%.
		<u>USW</u> :1,000 out of 6,200 retirees are aged 60-64 and will lose all benefits. Total actuarial [balance sheet] value of USW OPEB cut by 87%.
2. Tort Claims.	New GM should assume liability with respect to future products liability and	<u>Products Liability – pre-petition claims</u> : <u>US Treasury</u> : New GM will not assume these liabilities.
	asbestos claims; need resolution of current product liability and asbestos claims.	<u>Products Liability – post-petition claims</u> : <u>US Treasury</u> : New GM will assume liability with respect to future products liability claims <u>arising</u> post-sale. The sale documents will be amended to reflect this.
		<u>Asbestos – pre-petition claims</u> : <u>US Treasury</u> : New GM will not assume these claims.
		<u>Asbestos – future claims</u> : <u>US Treasury</u> : New GM will not assume these liabilities, but acknowledged that once a sale order is entered and people assert claims, then we'll see if they are able to successfully pursue such claims.
a. Pool of 2%.	Subject to agreement of bondholders, "additional 2%" of stock of New GM should be available to fund global settlement with existing tort claimants.	<u>Kramer Levin</u> : suggested the possibility of offering the additional 2% of equity to satisfy tort claims, if the IUE/USW issues are resolved and the bondholders didn't object. US Treasury indicated that it would think about it. Feldman for US Treasury asked what New GM would get for the 2%; we suggested that if 2% New GM Equity, valued by Houlihan at \$600mm, was left behind for tort claims, the Bankruptcy Court could issue a "channeling injunction" requiring current and future tort claimants to seek recovery from the 2% before trying to collect from New GM. Feldman suggested that he was "open to creative" settlements for tort claimants, but wanted concrete proposals. Paul Weiss and Houlihan seemed receptive to solving tort issues with the incremental 2% of New GM.
3. Administrative Solvency/Ability to Confirm Chapter 11 Plan.	The Sale Order should contain a finding that the estate can pay its administrative and priority claims in full from the \$950mm wind-down monies and other asset sales (i.e., other than from the stock and warrants being left for Old GM). Alix Partners should be prepared	<u>Debtors</u> : Steve Karotkin of Weil Gotshal said AlixPartners would testify the wind-down DIP Loan of \$950mm would provide enough cash to cover both administrative and priority claims, leaving the New GM shares and warrants for distribution to unsecured creditors. Paul Weiss and Houlihan were concerned that the shares and warrants would be invaded to pay for administrative and

		and the state of the second
	to testify and make a record on this issue. In addition, the sale order should	priority claims.
	commit that the \$950mm in cash being left behind will not be used to repay the Treasury DIP (or Wind-Down DIP) unless and until monies are clearly left over after a chapter 11 distribution plan is confirmed. Section 506(c) waiver should be conditioned on this.	US Treasury: \$950mm will be available for the "wind-down" to satisfy all administrative expense and priority claims. The \$950mm would be payable out of all assets of Old GM other than New GM shares and warrants. Note: the current wind-down budget by Alix uses \$92mm of estimated asset sale proceeds to pay wind- down expenses, so the wind-down budget will need to be recalculated. US Treasury reluctant to allow any of \$950mm to be distributed to Old GM unsecured creditors.
		The wind-down budget will be refined over the next week as the UST, the Debtors and the Committee professionals get their arms around the claims.
		* The UST will provide a wind-down DIP term sheet this weekend.
		* The budget will allow for flexibility between categories. Certain taxes are going to New GM, while certain claims for income taxes and others are left behind and will be funded out of the wind-down budget.
		New GM will fund the costs related to its properties and to pay the carrying costs of running the plants.
4. Wind-Down Budget	Need resolution on what expenses are being paid from the \$950mm.	See Part I, #3 above.
5. Avoidance Actions and Banks' Liens.	The Committee should be granted a 60 day investigation period to review the prepetition lenders' liens. The cash	<u>Debtors</u> : Indicated that if the pre-petition term and revolver lenders are not paid within 45 days (i.e., by July 15 th ), they will ask for default rate interest for the postpetition period.
	collateral orders should be amended to provide that the prepetition lenders are not receiving indefeasible payment, and by accepting distributions from GM, are submitting to bankruptcy court jurisdiction. In addition, avoidance actions under Sections 547, 548, 550 and 553 should be carved out from Treasury's liens.	<u>US Treasury</u> : Will retain liens on avoidance actions other than actions against banks; agrees that Committee is reasonable when asking for 60 days (July 30) to review Banks' liens.
6. Delphi Claims.	Any deal with Delphi must not result in claims against Old GM.	<u>US Treasury</u> : Agrees that Delphi deal will result in no claims against Old GM's estate; all costs will be borne by New GM.
7. Supplier Issues.	New GM has reserved 30-days post- closing to determine which contracts to assume or reject. That period should be eliminated; New GM should have a definitive list as of the closing date.	<u>Debtors</u> : Agreed that once contracts are assumed, they are assumed. When asked about tooling and shipping on contracts that may not be assumed, Weil encouraged suppliers to call the Debtors call center, who can address these questions. The Debtors indicated that 99.9% of direct suppliers are assumed. Of the 497 cure objections filed, 307 have been resolved and the remainder are being contacted via telephone.
		<u>US Treasury</u> : Agreed to consider whether there is a group of contracts which will be listed as definitively assumed on a rolling basis prior to closing. The UST commented that they are not trying to acquire tooling free and clear of claims and encumbrances and agreed that the order will be amended accordingly.
8. Dealer Issues.	Need to scale back "preemption" language of states' dealer laws in any	<u>Weil</u> : indicated that like the suppliers, once dealers sign their dealer agreement, they are assumed.
	order.	Kramer Levin: argued that the order should not contain a decretal

		paragraph regarding waiver of state law rights. Kramer Levin to provide comments on the order.
9. Corporate Governance for	Corporate governance structure for Old GM should be proposed, with Creditors'	<u>Weil</u> : AlixPartners is looking for someone with industry experience to serve on Old GM's board.
Old GM.	Committee playing role in corporate governance going forward.	US Treasury: Remains interested in how Old GM is managed.
		Kramer Levin: Will provide a post-sale corporate governance proposal for board membership.
		Paul Weiss: Will provide input.
10. Listing of the Consideration Shares and Warrants. (Moved up from below)	New GM should report under the '34 Act following closing and New GM common stock and Warrants should be listed on the NYSE at the time of any 1145 distribution.	<u>US Treasury</u> : Old GM and New GM are negotiating with SEC over continued financial reporting. Old GM wants to stop '34 Act reports; New GM intends to voluntarily report under '34 Act but does not believe it can report in full compliance with '34 Act for any period prior to Q4 2009. Weil and US Treasury expect to have something to report on this next week.
		Regarding listing the common/warrants, US Treasury is considering a date as of which New GM could undertake to have its securities listed on NYSE or NASDAQ if distributed under §1145. Paul Weiss asked for 1/1/10.
11, Warrant Issues		<u>US Treasury</u> : Warrants to be like non-TARP, commercial warrants.
11A. Exercise Price Adjustments.	New GM warrants should include exercise price adjustments for (i) issuances of capital stock below fair market value, (ii) repurchases of capital stock, and (iii) adjustments to, repurchases of or distributions on the VEBA warrant or VEBA preferred.	These proposed exercise price adjustments are under consideration by the US Treasury.
11B. Black- Scholes Protection.	The current version of the New GM warrant only provides Black-Scholes protection for cash-out mergers below the then-current exercise price of the warrants.	US Treasury is considering a proposal that Black-Scholes protection would apply to any transaction to the extent the common stock in any change of control transaction would receive consideration that does not consist of registered/listed common stock.
11C. Black- Scholes Value.	We have proposed that the calculation of Black-Scholes value include either a floor amount (50%) or fixed value for assumed volatility.	The US Treasury resisted this proposal and proposes instead to implement a balanced process for determination of Black-Scholes value (e.g., Warrant Agent participation in banker selection process, etc).

<u>Part II. Issues concerning the Master Sale and Purchase Agreement and associated documents</u>. In addition, we have assembled a primary issues list for discussion concerning the Master Sale and Purchase Agreement ("<u>MSPA</u>"), and the form of Registration Rights Agreement, Warrants, Transition Services Agreement and the Master Lease Agreement (the "<u>MLA</u>") attached to the MSPA. Following these is a list of drafting points and points for confirmation.

Issue	Initial Committee Position	<u>Report from June 19th</u> <u>Meeting</u>
1. Taxes.	Old GM retains pre-closing tax liabilities; therefore Old GM should retain the right to refunds for those periods. Old GM also needs greater rights with respect to tax matters (including tax returns and audits or other proceedings) that could materially affect taxes payable by Old GM.	<u>Weil/Jenner &amp; Block</u> : New GM takes the obligations existing at the time of closing for franchise, real and personal

		property taxes, but not income taxes. (Documents need to be amended to reflect Weil/Jenner & Block position.)
2. Product Liability.	We are aware that there are on-going discussions regarding the extent to which Old GM will retain asbestos liabilities and product liabilities. To the extent that Old GM retains such liabilities, Old GM should retain insurance policies providing coverage with respect to such liabilities.	
3. Survival of Representations.	No representations or warranties should survive the closing under the MSPA.	<u>US Treasury</u> : Reps/Warranties will not survive post closing.
Registration Right	s	I
1. Listing of the Consideration Shares and Warrants.	New GM should report under the '34 Act following closing and New GM common stock and Warrants should be listed on the NYSE at the time of any 1145 distribution.	See Part I, #10 above.
2. Most Favored Nations Clause.	Old GM should have the benefit of the MFN provision in the Registration Rights Agreement provided to the other parties.	US Treasury: OK. Will circle back.
3. Indemnifica- tion.	Old GM should be exempted from the indemnification obligation on the same basis as the other holders of Registrable Securities.	<u>US Treasury</u> : Will consider our request.
Transition Services	s Agreement	Kramer Levin to provide a mark-up.
1. Remedies.	Old GM should be entitled to require specific performance of the services under the TSA.	
2. Cap.	There should not be a \$15mm cap on damages under the TSA. Gross negligence and intentional breach should not be subject to any cap.	
3. Term.	New GM should not be allowed to terminate service due to a non-monetary breach by Old GM.	
4. Scope of Service.	Old GM should be able to obtain additional services reasonably required for its wind-down. Services should include legal of the type previously provided in-house.	
Master Lease Agre	ement; Use of Properties under TSA	Kramer Levin to provide a mark-up.
1. Creditworthiness.	The tenant under the MLA is a shell entity. New GM should guaranty these obligations.	
2. Taxes and Repairs.	New GM should be responsible under the MLA (or the MLA guaranty) for taxes imposed on the real estate, fixtures and personal property and for repairs (other than major structural repairs) on a customary triple net lease basis.	
3. Abandonment of Tenancy By New GM.	New GM should be required to give Old GM notice of at least 6 months before it (or any of its affiliates) vacates any property covered by the MLA or Schedule C- 3 of the TSA.	
4. Holdover Rent.	If New GM (or any of its affiliates) holds over at a property under the MLA, then holdover rent, at a customary premium to market rent, should accrue during the holdover and such party should remain responsible for the costs of operating such property.	
5. Landlord	New GM should be responsible for all liability incurred by Old GM by reason of the failure to obtain landlord consents in connection with the use	

Consents.	and occupancy rights granted under the TSA.	
6. Environmental Liabilities.	Each New GM Party should be responsible for the cost of remediating, in accordance with applicable law, any contamination caused by it at or in connection with any property that is covered by the MLA or the TSA. This should not be limited to circumstances where the liability is subject to a non-appealable decision that it was caused by tenant's gross negligence or willful misconduct. In addition, New GM should be responsible for providing all environmental services on Schedule A-2.	

# Part III. DRAFTING POINTS/POINTS TO BE CONFIRMED

Kramer Levin participated in a conference call with Jenner & Block on June 19th, during which Kramer Levin raised each of the issues found below.

Issue	Initial Committee Position	<u>Report from June 19th Meeting</u>
MSPA	1	
1. Adjustment Shares.	The Adjustment Shares should be excluded from the assets of Old GM which secure the Wind Down Facility.	US Treasury: agreed to fix.
2. UST Credit Facilities.	The definition of "UST Credit Facilities" should capture any amendments thereto.	Debtors' counsel agreed to fix.
3. Assumed Plans.	Section 2.2(a)(xvi) provides for the acquisition by New GM of all Assumed Plans to the extent described in Section 6.17(e). Section 2.3(a)(xiii), however, provides only for the assumption of Liabilities under the Assumed Plans to the extent that such Liabilities relate to an Employee covered by the UAW Collective Bargaining Agreement. The assumption of liabilities under Assumed Plans should be consistent with the acquisition of the Assumed Plans and with Section 6.17(e).	Debtors' counsel agreed to look at the language together with Employee Benefits counsel and get back to us.
4. Employee Related Obligations.	Section 2.3(a)(xiii) limits New GM's assumption of Employee Related Obligations to those relating to Employees who are covered by the UAW Collective Bargaining Agreement. We would like to understand the basis for this provision since the MSPA specifically contemplates taking on Employees who are not covered by the UAW Collective Bargaining Agreement (e.g. salaried Employees of Old GM). We would also like to understand the proposed treatment of Employee Related Obligations for other Employees who accept employment offers even though they are not required to receive such offers under the terms of the MSPA.	Debtors' counsel indicated that it is the intention that New GM will pick up more Employee Related Obligations for UAW employees, as compared to non-UAW employees. This is not intended to change.
5. Purchased Assets.	It should be clarified that the definition of "Personal Property" does not include fixtures located at the Excluded Real Property.	Debtors' counsel indicated that the Purchased Assets include fixtures to the extent set forth in the MPA schedules.
6. Intercompany Obligations.	The provisions in the MSPA relating to the assumption and retention of Intercompany Obligations (see Sections 2.3(a)(iii) and 2.3(b)(ii)) do not appear to work in parallel. In particular, the provision relating to the assumption of Intercompany Obligations by Purchaser references "Excluded Entities" while the provision relating to the retention of Intercompany Obligations references "Excluded Subsidiaries". We would like to understand the basis for this disjunction.	Debtors' counsel clarified that it was intentional that amounts owed from Retained Entities to Sellers are Purchased Assets, while amounts owed by Sellers to Retained Entities are not Assumed Liabilities. This will not change.
7. Contingent Liabilities.	We understand that FTI has asked GM to provide estimates of Old GM's liability with respect to contingent liabilities including product liability claims, retained benefit plans, taxes, litigation, employees who are not	This process is ongoing.

	hired by New GM (e.g., employees of Saturn of Harlem) and other contingent liabilities to be retained by Old GM. What is the status of these estimates?	
8. Existing VEBA Assets.	What are the assets of the Existing Internal VEBA and any existing external VEBA? Specifically, are any of the assets of the Existing Internal VEBA or any existing external VEBA or notes or other indebtedness of Old GM or the other Sellers?	Debtors' counsel confirmed to FTI that the Existing Internal VEBA does not include any obligations of Old GM (e.g., notes from Old GM) to the VEBA. We are awaiting confirmation of this. We also are awaiting information regarding the assets and liabilities relating to the Existing External VEBA.
9. Treatment of OPEB/Other Liabilities.	The relevant documents should clearly state that Old GM is being affirmatively released from OPEB liabilities with respect to (i) UAW current, former and retired employees, (ii) salaried current, former and retired employees and (iii) current, former and retired employees who are or were members of other unions. The relevant documents should also clearly state that New GM is (i) assuming accrued but unpaid liabilities outstanding at the time of closing with respect to assumed OPEB liabilities and (ii) assuming liability for all incurred but unpaid health claims for all current, former and retired GM employees and their dependants, whether incurred before or after closing.	Debtors' counsel confirmed to FTI as follows: The UAW Settlement Agreement contains a release of Old GM from these liabilities. The agreements with 4 of the 5 other unions with whom an agreement was reached also include this release. The arrangements relating to the non- union employees will not include such a release. Debtors' counsel also confirmed to FTI that accrued and unpaid liabilities as of the closing with respect to Assumed Plans will be assumed by New GM. We are requesting copies of the agreements to confirm these points.
10. Liabilities of Selling Subsidiaries.	Will there be any remaining liabilities at the subsidiaries which are Sellers under the MSPA Saturn LLC, Saturn Distribution Corporation, Chevrolet-Saturn of Harlem, Inc.?	Debtors' counsel indicated that the remaining liabilities in these entities are de minimis.
11. Third Party Consents.	Please confirm that the Debtors do not believe that any consents will be required for Closing.	Debtors' counsel indicated that no third party consents are anticipated to hold up a closing. We will continue to monitor this issue.
12. Employees.	Please confirm that the only employees of GM and its subsidiaries not assured of offers at New GM are those at Chevrolet-Saturn of Harlem, Inc.	Debtors' counsel indicated that substantially all the employees of Old GM will be offered employment with New GM.
13. Saab.	Please confirm whether the intellectual property relating to the Saab brand will be transferred to New GM and, if so, we would like to understand why such intellectual property is being transferred without the Saab-related subsidiaries.	Debtors' counsel indicated that much of the IP is used throughout various divisions of Old GM. This applies to Saab-related IP and such IP would be transferred to New GM. To the extent that Saab is eventually sold, the purchaser would need to enter into license agreements with New GM

		with respect to the IP.
Registration Right	5	
Indemnification.	The reference to "underwriters" in Section 2.9.2 should be removed.	
Transition Service	5	
1. Standard of Care.	New GM should provide all services using reasonable care, skill and diligence, in a manner consistent with past practice, including with respect to nature, quality and timeliness.	
2. Third Party Service Providers.	New GM should be primarily liable for breach of TSA by third party providers. Also, if a consent from a third party provider cannot be obtained, New GM should provide a substantially equivalent service.	
3. Service Managers.	Each party should appoint a point person/liaison under the TSA.	
4. Extension of Term.	Old GM should have the right to reasonably extend the term of any service provided by New GM for up to 1 year.	
5. Personnel.	New GM should afford Old GM the benefit of the background, skill, expertise, information and institutional knowledge of employees of New GM.	

# Part IV. Master Lease Agreement; Use of Properties under TSA

Issue	Initial Committee Position	<b>Report from June 19th Meeting</b>
1. Governing Law.	The MLA should, as to each property, be governed by the laws of the state in which such property is located.	
2. Remedies.	The TSA should provide Old GM with traditional real estate remedies such as the right to recover possession of any property following a New GM default under the TSA relating to such property.	

# Part V. DIP Credit Agreement and Order

See discussion above.

Issue	Initial Committee Position	<b>Report from June 19th Meeting</b>
1. Consent / Review Rights.	The Committee should be granted consultation rights over the Final Budget and any wind-down Budget (as referenced in Section 2.14 of the DIP loan agreement), with at least a 5 day notice period and opportunity to object. In addition, the Committee should receive the same reports from the Company that the Company is providing to the DIP lender under Section 5.2 of the DIP loan agreement or Final DIP Order.	
2. Excluded Collateral.	Definition of "Excluded Collateral" should specifically include stock and warrants being left for Old GM and avoidance actions.	US Treasury is retaining lien on avoidance actions other than actions against prepetition lenders.
3. Wind-Down Budget and Costs.	Before any Section 506(c) waiver is granted, Final DIP order should provide that the DIP Lender is committing to fund the Wind-Down Budget and the expenses contained therein by no more than \$950 million. The \$950 million shall not be used to prepay the DIP loan after an Event of Default without an order of the Bankruptcy Court.	
4. Investigation	The Committee should be granted a 60 day investigation period to review	Current proposal from Weil is 45 days. Feldman for US Treasury

	Period.	the prepetition lenders' liens.	thought 60 days was reasonable.
- 1			

# Exhibit 3

```
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 09-50026
 In the Matter of:
GENERAL MOTORS CORPORATION, et al.,
 Debtors.
 United States Bankruptcy Court
 One Bowling Green
 New York, New York
 June 25, 2009
 9:03 AM
BEFORE:
HON. ROBERT E. GERBER
U.S. BANKRUPTCY JUDGE
```

2 1 2 HEARING re Motion of Debtors for Entry of an Order Pursuant to 3 11 U.S.C. §§ 361, 362, 363, and 364 (i) Authorizing the Debtors to Obtain Post-petition Financing, Including on an Immediate, 4 Interim Basis; (ii) Granting Superpriority Claims and Liens; 5 (iii) Authorizing the Debtors to Use Cash Collateral; (iv) 6 Granting Adequate Protection to Certain Prepetition Secured 7 Parties; (v) Authorizing the Debtors to Prepay Certain Secured 8 Obligations in Full Within Forty-Five Days; and (vi) Scheduling 9 a Final Hearing Pursuant to Bankruptcy Rule 4001 10 11 12 HEARING re Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. Sections 105, 363, and 364 Authorizing Debtors to (i) Pay 13 Pre-petition Claims of Certain Essential Suppliers, Vendors and 14 Services Providers; (ii)Continue Troubled Supplier Assistance 15 Program; and (iii)Continue Participation in the United States 16 Treasury Auto Supplier Support Program 17 18 19 HEARING re Motion of Debtors for Entry of Order Pursuant to 11 20 U.S.C. §§ 105(a) and 366 (i)Approving Debtors Proposed Form of 21 Adequate Assurance of Payment; (ii)Establishing Procedures for Resolving Objections By Utility Companies; and (iii) Prohibiting 22 23 Utilities from Altering, Refusing, or Discontinuing Service 24 25

3 1 2 HEARING re Motion of Debtors for Entry of Orders Pursuant to 11 3 U.S.C. §§ 105, 361, 362, 363, and 507 (i)Authorizing Use of Cash Collateral; (ii)Granting Adequate Protection to the 4 Revolver Secured Parties; (iii) Granting Adequate Protection to 5 the Term Loan Secured Parties, and (iv) Scheduling a Final 6 Hearing Pursuant to Bankruptcy Rule 4001 7 8 HEARING re Application For An Order Pursuant To Sections 327(a) 9 And 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a) 10 11 Authorizing the Employment and Retention of Evercore Group 12 L.L.C. as Investment Banker and Financial Advisor for the Debtors Nunc Pro Tunc to the Petition Date 13 14 HEARING re Motion of the Debtors Pursuant to 11 U.S.C. § 363 15 16 for an Order Authorizing the Debtors to Employ and Retain AP Services, LLC As Crisis Managers and to Designate Albert A. 17 Koch as Chief Restructuring Officer, Nunc Pro Tunc to the 18 19 Petition Date 20 21 HEARING re Motion to Appoint Committee Motion of Ad Hoc Committee of Consumer Victims of General Motors for Appointment 22 of Official Committee of Tort Claimants Pursuant to 11 U.S.C. 23 24 §1102(a)(2) 25

4 1 2 HEARING re Motion to Appoint Committee Motion for an Order 3 (i) Appointing a Legal Representative for Future Asbestos Personal Injury Claimants; and (ii) Directing the United States 4 Trustee to Appoint an Official Committee of Asbestos Personal 5 Injury Claimants 6 7 HEARING re Application of the General Motors Retirees 8 Association for Order to Appoint a Retiree Committee Pursuant 9 to 11 U.S.C. Section 1114(d) 10 11 12 HEARING re Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. Sections 105(a) and 363(b) (i)Authorizing Debtors to Pay 13 Prepetition Obligations to Foreign Creditors; and 14 15 (ii) Authorizing and Directing Financial Institutions to Honor and Process Related Checks and Transfers 16 17 HEARING re Motion of the Debtors Pursuant to 11 U.S.C. Sections 18 19 105(a) and 362 for Entry of (i) Interim and Final Orders 20 Establishing Notification Procedures Regarding Restrictions on 21 Certain Transfers of Interests in the Debtors; and (ii)Orders Scheduling a Final Hearing 22 23 24 25

VERITEXT REPORTING COMPANY

516-608-2400

5 1 2 HEARING re Motion of Debtors for Entry of Order Pursuant to 11 3 U.S.C. Sections 105(a), 345(b), 363(b) and 363(c) and 364(a), and Fed. R. Bankr. P. 6003 and 6004 (A)Authorizing Debtors to 4 (i) Continue Using Existing Cash Management System; (ii) Honor 5 Certain Pre-petition Obligations Related to Use of Cash 6 Management System; and (iii) Maintain Existing Bank Accounts and 7 Business Forms; (B) Extending Time to Comply with 11 U.S.C. 8 Section 345(b); and (C)Scheduling a Final Hearing 9 10 11 HEARING re Debtors' Motion Pursuant to Section 363 of the 12 Bankruptcy Code for Authority to Exercise Put Rights 13 14 HEARING re of Debtors for Entry of Order Granting Additional 15 Time to File Reports of Financial Information or to Seek 16 Modification of Reporting Requirements Pursuant to Bankruptcy Rule 2015.3 17 18 19 HEARING re Application of the Debtors Pursuant to 11 U.S.C. §§ 20 327(a) and 328(a) and Fed. R. Bankr. P. 2014(a) for Authority 21 to Employ Weil, Gotshal & Manges LLP as Attorneys for the Debtors, Nunc Pro Tunc to the Commencement Date 22 23 24 25

HEARING re Application of the Debtors Pursuant to Section 327(e) of the Bankruptcy Code and Rules 2014(a) and 2016(b) of the Federal Rules of Bankruptcy Procedure for Authorization to Employ and Retain Jenner & Block LLP as Attorneys for the Debtors, Nunc Pro Tunc to the Commencement Date HEARING re Application Under 11 U.S.C. §§327(e) And 328(a) Authorizing Debtors to Employ and Retain Honigman Miller Schwartz And Cohn LLP as Special Counsel for the Debtors, Nunc Pro Tunc to the Petition Date HEARING re Application Of Debtors for Entry of Order Pursuant to 28 U.S.C. § 156(c) Authorizing Retention and Employment of The Garden City Group, Inc. as Notice and Claims Agent Nunc Pro Tunc to the Commencement Date Transcribed by: Lisa Bar-Leib

A P P E A R A N C E S: WEIL, GOTSHAL & MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153 BY: HARVEY R. MILLER, ESQ. STEPHEN KAROTKIN, ESQ. JOSEPH H. SMOLINSKY, ESQ. JENNER & BLOCK LLP Proposed Special Counsel for GM 919 Third Avenue 37th Floor New York, NY 10022 BY: PATRICK J. TROSTLE, ESQ. 

JENNER & BLOCK LLP Proposed Special Counsel for GM 330 North Wabash Avenue Chicago, IL 60611 BY: DANIEL MURRAY, ESQ. (TELEPHONICALLY) KRAMER LEVIN NAFTALIS & FRANKEL LLP Attorneys for Official Committee of Unsecured Creditors 1177 Avenue of the Americas New York, NY 10036 BY: LAUREN M. MACKSOUD, ESQ. THOMAS MOERS MATER, ESQ. AMY CATON, ESQ. 

1 2 UNITED STATES DEPARTMENT OF JUSTICE 3 Office of the United States Trustee 33 Whitehall Street 4 21st Floor 5 New York, NY 10004 6 7 8 BY: BRIAN S. MASUMOTO, ESQ. 9 10 UNITED STATES DEPARTMENT OF JUSTICE 11 U.S. Attorney's Office 12 86 Chambers Street New York, NY 10007 13 14 15 BY: DAVID S. JONES, AUSA MATTHEW L. SCHWARTZ, AUSA 16 17 BINGHAM MCCUTCHEN LLP 18 Attorneys for Deutsche Bank AG 19 20 399 Park Avenue New York, NY 10022 21 22 23 BY: ERIN H. MAUTNER, ESQ. JEFFREY S. SABIN, ESQ. 24 25

1 2 CADWALADER, WICKERSHAM & TAFT LLP 3 Attorneys for U.S. Treasury Auto Task Force One World Financial Center 4 New York, NY 10281 5 6 7 BY: LESLIE W. CHERVOKAS, ESQ. 8 9 CADWALADER, WICKERSHAM & TAFT LLP 10 Attorneys for U.S. Treasury Auto Task Force 11 1201 F Street, N.W. 12 Washington, DC 20004 13 14 BY: DOULAS S. MINTZ, ESQ. 15 FARELLA BRAUN & MARTEL LLP 16 17 Attorneys for 18 Russ Building 19 235 Montgomery Street 20 San Francisco, CA 94104 21 22 BY: NEIL A. GOTEINER, ESQ. 23 24 25

11 1 2 HONIGMAN MILLER SCHWARTZ AND COHN LLP 3 Attorneys for Debtor/Defendant General Motors Corporation 2290 First National Building 4 660 Woodward Avenue 5 Detroit, MI 48226 6 7 BY: ROBERT B. WEISS, ESQ. 8 9 10 KELLEY DRYE & WARREN LLP 11 Attorneys for Law Debenture; LBA Realty 12 101 Park Avenue New York, NY 10178 13 14 15 BY: JENNIFER A. CHRISTIAN, ESQ. 16 17 MCGUIREWOODS LLP Attorneys for Dominion Retail, Inc. 18 19 1345 Avenue of the Americas 20 Seventh Floor New York, NY 10105 21 22 23 BY: SHAWN R. FOX, ESQ. 24 25

1 2 MORGAN, LEWIS & BOCKIUS LLP 3 Attorneys for JPMorgan Chase Bank 101 Park Avenue 4 New York, NY 10178 5 6 7 BY: RICHARD S. TODER, ESQ. 8 ANDREW GOTTFRIED, ESQ. 9 ORRICK, HERRINGTON & SUTCLIFFE LLP 10 11 Attorneys for Ad Hoc Dealer Committee 12 666 Fifth Avenue New York, NY 10103 13 14 15 BY: ALYSSA D. ENGLUND, ESQ. 16 17 SIMMONSCOOPER LLC 18 Attorneys for 707 Berkshire Blvd. 19 20 East Alton, IL 62024 21 22 BY: ROBERT W. PHILLIPS, ESQ. 23 24 25

13 1 2 SIMPSON THACHER & BARTLETT LLP 3 Attorneys for Citicorp USA, Inc., as Agent 425 Lexington Avenue 4 5 New York, NY 10017 6 7 BY: PETER V. PANTALEO, ESQ. 8 ANNE L. KNIGHT, ESQ. 9 10 STUTZMAN, BROMBERG, ESSERMAN & PLIFKA, P.C. 11 Attorneys for Ad Hoc Committee of Unsecured Creditors 12 2323 Bryan Street Suite 2200 13 Dallas, TX 75201 14 15 16 BY: SANDER L. ESSERMAN, ESQ.) 17 VEDDER PRICE P.C. 18 19 Attorneys for Export Development Canada 20 1633 Broadway 47th Floor 21 22 New York, NY 10019 23 24 BY: MICHAEL L. SCHEIN, ESQ. 25

VINSON & ELKINS LLP Attorneys for Mason Capital 666 Fifth Avenue 26th Floor New York, NY 10103 BY: DENIS F. CRONIN, ESQ. CRAIG KORNREICH, ESQ. WHITE AND WILLIAMS LLP Attorneys for Nicor Gas One Penn Plaza 250 West 34th Street Suite 4110 BY: KAREL S. KARPE, ESQ. 

15 1 2 ALLARD & FISH, P.C. 3 Attorneys for Creditor Severstal North America, Inc. 535 Griswold 4 Suite 2600 5 6 Detroit, MI 48226 7 BY: DEBORAH L. FISH, ESQ. 8 9 (TELEPHONICALLY) 10 11 ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP 12 Attorneys for LBA Realty Fund III; PruSKS Brannan Associates 13 Three Embarcadero Center 14 15 12th Floor San Francisco, CA 94111 16 17 18 BY: IVAN M. GOLD, ESQ. 19 (TELEPHONICALLY) 20 21 22 23 24 25

212-267-6868

DAVIS POLK & WARDWELL Attorneys for Interested Party Ford Motor Company 450 Lexington Avenue New York, NY 10017 BY: BRIAN M. RESNICK, ESQ. (TELEPHONICALLY) DLA PIPER LLP U.S. Attorneys for Creditor Hewlett Packard 550 South Hope Street Suite 2300 Los Angeles, CA 90071 BY: KAROL K. DENNISTON, ESQ. (TELEPHONICALLY) 

VERITEXT REPORTING COMPANY

1 2 FROST BROWN TODD LLC 3 Lexington Financial Center 250 West Main 4 Suite 2800 5 6 Lexington, KY 40507 7 BY: ROBERT V. SARTIN, ESQ. 8 9 (TELEPHONICALLY) 10 11 HANGLEY ARONCHICK SEGAL & PUDLIN 12 Attorneys for NCR Corporation One Logan Square 13 18th & Cherry Streets 14 15 27th Floor 16 Philadelphia, PA 19103 17 18 BY: MATTHEW A. HAMERMESH, ESQ. 19 (TELEPHONICALLY) 20 21 22 23 24 25 VERITEXT REPORTING COMPANY

18 1 2 MOTLEY RICE, LLC 3 28 Bridgeside Blvd. Mt. Pleasant, SC 29464 4 5 6 BY: JEANETTE M. GILBERT, ESQ. 7 (TELEPHONICALLY) 8 9 SCHIFF HARDIN LLP Attorneys for Columbia Gas of Ohio; Columbia Gas of 10 11 Virginia 12 233 South Wacker Drive Suite 6600 13 Chicago, IL 60606 14 15 16 BY: JASON TORF, ESQ. 17 (TELEPHONICALLY) 18 19 SIDLEY AUSTIN LLP Attorneys for Multiple Lenders 20 One South Dearborn 21 Chicago, IL 60603 22 23 24 BY: KENNETH P. KANSA, ESQ. 25 (TELEPHONICALLY)

STAHL COWDEN CROWLEY ADDIS LLC Attorneys for GM National Retiree Association 55 West Monroe Street Suite 1200 Chicago, IL 60603 BY: JON D. COHEN, ESQ. (TELEPHONICALLY) VERITEXT REPORTING COMPANY

	20
1	PROCEEDINGS
2	THE COURT: Good morning.
3	ALL: Good morning, Your Honor.
4	THE COURT: GM. Mr. Miller, good morning. You want
5	to come on up and give me your recommendation as to how you
6	believe we should proceed both with the DIP which we have on
7	for 9:00 and also for the 9:45 calendar matters?
8	MR. MILLER: Yes, Your Honor. Harvey Miller, Weil
9	Gotshal & Manges for the debtors. Your Honor, there is one
10	matter on the 9:00 calendar, as you pointed out, which is the
11	motion for a final approval of the DIP financing. I believe,
12	Your Honor, all issues with respect to that have been resolved.
13	And Mr. Karotkin will explain that as we go on.
14	As to the 9:45 calendar, Your Honor, there are listed
15	nine uncontested matters and eight contested matters. As to
16	those contested matters, Your Honor, essentially, most of them
17	have been resolved with the exception, Your Honor, of the
18	motion for the appointment of an ad hoc committee of asbestos
19	claimants and the motion for the appointment of a retiree
20	committee. Those two matters are still open, Your Honor, and
21	would be heard at Your Honor's convenience after the 9:45
22	calendar call.
23	The motion, Your Honor, with respect to the retention
24	of Evercore Group LLC, we are requesting, Your Honor, that that
25	matter be adjourned until the hearing scheduled for July 2,

# VERITEXT REPORTING COMPANY

	21
1	2009. We're hopeful to resolve that matter, Your Honor. We
2	have scheduled tentative meetings with the U.S. trustee's
3	office in an effort to resolve that application.
4	So, Your Honor, basically, there are two matters
5	which will be submitted today for Your Honor's determination
6	with respect to the additional creditors' committees, the
7	request for the appointment of a future representative for
8	future asbestos claimants and the motion for the appointment of
9	a retirees' committee under Section 1114(b) of the Bankruptcy
10	Code.
11	THE COURT: Okay. Fair enough. Do we want to go
12	straight then into DIP financing?
13	MR. MILLER: Yes.
14	THE COURT: You're going to hand off to your partner,
15	Mr. Karotkin, on that?
16	MR. MILLER: I certainly want to, Your Honor.
17	THE COURT: All right. Mr. Karotkin, come on up,
18	please? Good morning.
19	MR. KAROTKIN: Good morning, Your Honor. Stephen
20	Karotkin, Weil Gotshal & Manges for the debtors. As Mr. Miller
21	indicated, Your Honor, we're pleased to report that in
22	connection with the motion to approve the debtor-in-possession
23	financing on a final basis, we have reached a consensus with
24	all of the objecting parties as well as with the creditors'
25	committee and the secured lenders. And that is embodied in a

# VERITEXT REPORTING COMPANY

22 revised order which I have a blackline copy of which I'm please 1 2 to hand up to the Court. 3 THE COURT: That would be very helpful. Thank you. MR. KAROTKIN: May I approach, sir? 4 THE COURT: Yes, sir. 5 MR. KAROTKIN: Your Honor, the proposed order 6 7 resolves the four objections that were raised which are, basically, categorized in four categories. One was by various 8 governmental entities with respect to liens they have as to 9 personal property and real property. One is with respect to 10 11 NCR as to their assertion of a constructive trust. There was another objection by Deutsche Bank with respect to the payment 12 of hedging obligations under the outstanding revolving credit 13 facility. And the final objection related to a landlord which 14 wanted its lease hold interests -- the debtors' lease hold 15 16 interests with respect to its property carved out of the collateral grant. And all of those issues have been addressed 17 in the order. 18 19 THE COURT: All right. Do you want to pause and give 20 any counterparties to those objections a chance to confirm that 21 they're satisfied with the way by which you resolved them? MR. KAROTKIN: Sure. 22 23 THE COURT: Mr. Sabin, you coming up? MR. KAROTKIN: Before Mr. Sabin speaks, in 24 25 anticipation of what he's going to say, hopefully to truncate

## VERITEXT REPORTING COMPANY

516-608-2400

the hearing, Your Honor, we have agreed -- and I actually think 1 2 the DIP order is clear that in connection with the payment of 3 the pre-petition secured obligations to the JPMorgan group, the Citigroup group and with respect to the hedging obligations, 4 the order provides they will be paid three business days after 5 the approval of the DIP loan on a final basis. And we will 6 confirm on the record that when we pay the Citibank group and 7 the JPMorgan group, we will also pay the hedging obligations at 8 the same time. 9

THE COURT: Okay. Mr. Sabin, good morning. 10 MR. SABIN: Good morning, Your Honor. Jeff Sabin 11 from Bingham McCutchen on behalf of Deutsche Bank AG. 12 Paragraph 19 of the revised proposed order that's in front of 13 you reflects the agreement, resolves in full the obligations. 14 My thank you to Mr. Karotkin and everyone else for bearing with 15 16 us as we work through the resolution. And I think that if this 17 Court were to enter it with those words in it, it resolves in full the objections. 18

19 THE COURT: Okay. Fair enough. Anyone else? All 20 right. Given that the objections have been resolved and given 21 the showings that were made at the outset of the case, I'm not 22 going to make extensive findings on the record now, Mr. 23 Karotkin. I think they're set forth in your proposed order. 24 MR. KAROTKIN: They are, Your Honor. And I would 25 like to point out one of the proposed findings which is in

1 paragraph (f) on page 12 which has been requested by the United 2 States Treasury. And they are here to address that if you have 3 any questions with that.

THE COURT: Okay. Also, I realize -- and I see Ms.
Caton, you came up perhaps to speak. I gather there was a
dialogue going on with the creditors' committee. And if
there's anything that is desirable for the creditors' committee
to put on the record, I certainly want to give it that
opportunity. Ms. Caton, good morning.

MS. CATON: Thank you, Your Honor. Amy Caton from Kramer Levin Naftalis & Frankel on behalf of the creditors' committee. As you noted, there were a number of modifications that were made with the order at the request of the creditors' committee. And I just want to highlight a couple of those. THE COURT: Of course.

MS. CATON: The first one is that one of the 16 17 creditors' committee's main concern here is what happens to be the state after the sale closes. And I think the parties' 18 19 intent from the beginning is then that 950 millions or an 20 amount up to -- well, potentially greater than but, likely, 950 21 million dollars, will be left behind to fund the wind down of these estates and pay administrative and priority claims. 22 23 However, when we started the negotiation of the DIP order, I don't believe that these provisions were really made clear. 24 And that's one of the things that we have done in the DIP 25

#### VERITEXT REPORTING COMPANY

516-608-2400

1 order. And that's highlighted in paragraph 21.

I think that the new provisions in here will allow us to hopefully confirm a Chapter 11 plan of distribution and make sure that the new GM stock and warrants are distributed to unsecured creditors.

6 The second point that I would like to make clear is 7 that in paragraphs 5 and 6 of the DIP order that administrative 8 and priority claims are now senior in right of payment of 9 repayment to the DIP and that the DIP is non-recourse to the 10 new GM stock and warrants because this is, as we believe, 11 intended for distribution to unsecured creditors.

12 We still think that we have a ways to go before we get to a final wind down to make this -- I guess, the budgets 13 clear. We're still negotiating the wind down budget. We need 14 to negotiate an amendment to the DIP credit facility to make it 15 16 appropriate for a wind down. Right now, there are a number of covenants and events of default that are a little stricter than 17 what we would like to see on a going forward basis. And it's 18 19 our understanding that the parties intend to do this prior to 20 closing of the sale. And paragraph 21 sets out specifically 21 that the committee is to be included in the negotiations in this process. 22

Lastly, we did make a few changes to the order vis-avis the committee's rights with respect to the pre-petition lenders. The highlight of these are that the committee's

26 investigation period of certain claims against the pre-petition 1 2 lenders has been extended till July 31st. And secondly, any 3 claims by the agent on a going forward basis after it's paid next week for reimbursement of the fees is now nonrecourse to 4 the new GM stock and warrants.. 5 And with those changes, Your Honor, the committee 6 7 supports the entry of the DIP order. THE COURT: Okay. Fair enough. Thank you. Good 8 morning, Mr. Schein. 9 MR. SCHEIN: Good morning, Your Honor. Michael 10 11 Schein, Vedder Price, on behalf of Export Development Canada. 12 Just one clarification made by committee counsel, the carve-out in paragraph five with respect to the admin claims of the case 13 and the DIP to priority claim come into effect after a closing 14 of the 363 sales transaction, not prior to it. 15 16 THE COURT: Okay. And you're merely helping me better understand what's in this document? 17 MR. SCHEIN: Correct. 18 19 THE COURT: Okay. Anybody else? All right. Forgive 20 me. Mr. Schwartz, United States Attorney's Office. 21 MR. SCHWARTZ: Good morning, Your Honor. Matthew Schwartz for the United States of America. As the debtors' 22 23 papers amply demonstrate, the credit that's being extended by the government and other lenders in this case was the only 24 credit that was available to the debtors and the deal was 25

27 negotiated at arm's length between experienced professionals. 1 2 Nonetheless, the source of the DIP funds in this case is 3 somewhat unusual and so we've asked for the finding that's in paragraph F of the redline order before you that speaks to the 4 authority of the United States to expend TARP funds to make the 5 DIP loan. I think that the language in the paragraph speaks 6 for itself and the basis for the finding was set forth at 7 length in the government's opening statement that was filed on 8 the first day in these cases --9 THE COURT: Yes. I remember that. 10 MR. SCHWARTZ: -- as well as the documents that were 11 attached to it and the other document that we asked that the 12 13 Court take judicial notice of yesterday. THE COURT: Okay. Fair enough. I see no reason not 14 to include that. It'll be included. 15 16 MR. SCHWARTZ: Thank you, Your Honor. THE COURT: Anything else? Anyone? All right. 17 Mr. Karotkin, for the reasons set forth in the opening papers, as 18 19 supplemented by the submission of the United States and 20 revisions made to deal with other parties' needs and concerns, 21 the final DIP financing is approved on the form of the order in which it's been presented to me and subject to the need to get 22 23 other stuff done today, it will be entered sometime today. MR. KAROTKIN: Thank you, sir. 24 25 THE COURT: Thank you. Have a good day. Now --

28 MR. KAROTKIN: Could I make a suggestion, Your Honor? 1 2 THE COURT: Yes. 3 MR. KAROTKIN: I'm sorry to interrupt. The matter number 1 on the agenda on page 4, which is -- it relates to two 4 proposed orders for use of cash collateral and adequate 5 protection, those are related to the DIP and those also have 6 been resolved among the parties. The same issues were raised 7 by the landlords, the state taxing authorities, with respect to 8 those proposed orders. Again, they have been resolved on the 9 same basis. The committee raised the same issues that Ms. 10 11 Caton addressed as to their time to challenge the liens and 12 claims of those parties in the same language -- virtually the same language including -- included in the final DIP order has 13 been included in those proposed final cash collateral orders as 14 well. And I do have marked copies from the interim orders 15 16 which I can hand up to you, sir. 17 THE COURT: You are reading my mind, Mr. Karotkin. So long as nobody is prejudiced by their not being here yet, 18 19 I'd like to go right into those matters and the one you 20 suggested is most logically connected. So far as you're aware, 21 anybody who was going to be here at 9:45 is either here or told you they wouldn't be here? 22 23 MR. KAROTKIN: That's my understanding, sir. We circulated copies to the taxing authority's lawyers, to the 24 landlord last night and they were -- they were comfortable with 25

## VERITEXT REPORTING COMPANY

516-608-2400

29 the language. In fact, they agreed to the language, so they 1 2 are on board, sir. 3 THE COURT: Okay. Fair enough. MR. KAROTKIN: May I approach? 4 THE COURT: In a half a second, you may. I just want 5 to be sure that the creditors' committee doesn't want to be 6 7 heard in any way on this. Ms. Caton? MS. CATON: No, Your Honor. 8 THE COURT: Okay. Yes, Mr. Karotkin -- well 9 actually, I'm going to ask for a variant of that. I'm going to 10 11 ask that you or one of your folks provide all the orders to my 12 courtroom deputy at a convenient break. You can hand up the cash collateral to me now but the mechanics of entry will be 13 separately handled. Am I right that this -- aside from the 14 15 fact that of course it's a final -- principally papers the 16 understandings with the folks who entered those limited objections? 17 MR. KAROTKIN: Yes, sir. 18 19 THE COURT: Okay. All right. It's approved and 20 we're going to deal with this the same way we dealt with the final DIP. 21 22 MR. KAROTKIN: Thank you, sir. 23 THE COURT: Thank you. Mr. Miller? MR. MILLER: Your Honor, may I make a suggestion at 24 25 this time?

516-608-2400

30 THE COURT: Yes, please. 1 2 MR. MILLER: That we could take the uncontested matters that's on the 9:45 calendar. 3 THE COURT: Yes. Certainly. And if you know that 4 your counterparties or folks who want to be heard on further 5 matters are already here, we can move into that as well. Do 6 you want to handle the uncontested ones or put them on one of 7 your folks? 8 MR. MILLER: I'll handle them, Your Honor. 9 10 THE COURT: Okay. 11 MR. MILLER: They start at number 9 on the agenda for 9:45. The first motion, Your Honor, is the motion to get a 12 final order authorizing the debtors to pay for pre-petition 13 obligations to foreign creditors and authorizing and directing 14 financial institutions to honor and process related checks and 15 16 transfers. This was heard, Your Honor, on June 1 and Your 17 Honor entered an interim order. There are no objections to the entry of the final order. 18 19 THE COURT: Okay. Given that and the provisions of 20 my case management order, motion granted. 21 MR. MILLER: Thank you, Your Honor. Number 10, Your Honor, is the motion for final orders establishing notification 22 23 procedures regarding restrictions on certain transfers of interest in the debtor. This is the NOL motion, Your Honor. 24 25 THE COURT: I remembered my dialogue with Mr.

## VERITEXT REPORTING COMPANY

516-608-2400

31 Karotkin on this. 1 2 MR. MILLER: Yeah. He refused to take the lectern 3 this at this point, Your Honor. THE COURT: Understandably. Granted. 4 MR. MILLER: Thank you, Your Honor. Number 11 is the 5 order to -- a final order. You entered an interim order, Your 6 Honor, on cash management. There are no objections to the 7 final proposed order. 8 THE COURT: Granted. 9 MR. MILLER: Number 12, Your Honor, is the motion of 10 11 the debtors to -- for authority to exercise a put. This 12 relates, Your Honor, to the claims which Your Honor approved the rejection some time ago at a hearing. One the claims we 13 have a twenty-five percent interest in and a right to put our 14 interest to the other party. As a result of this put, Your 15 Honor, the estate will recover approximately 350,000 dollars. 16 THE COURT: Granted. 17 MR. MILLER: Thank you. Number 13, Your Honor, is 18 19 the motion to grant additional time to file reports of 20 financial information or to seek modification of reporting 21 requirements pursuant to Bankruptcy Rule 2015.3. There are no objections to that Your Honor. 22 23 THE COURT: Granted. MR. MILLER: Number 14, Your Honor, is the 24 25 application of the debtors to engage Weil Gotshal & Manges

32 under a general retainer as attorneys for the debtor nunc pro 1 2 tunc to the commencement date. This order, that will be 3 proposed, Your Honor, was negotiated with the Office of the 4 United States Trustee. There are no objections to this matter. THE COURT: Granted. 5 MR. MILLER: Number 15, Your Honor, is the 6 application of the debtors to engage the law firm of Jenner & 7 Block LLP as attorneys for the debtors, pursuant to Section 8 327(e). Jenner & Block, Your Honor, will be serving, Your 9 Honor, as conflicts counsel and special corporate counsel. 10 11 There is a supplemental declaration of Mr. Murray in connection with the application and there are no objections to this 12 application, Your Honor. 13 THE COURT: Granted. 14 MR. MILLER: Number 16, Your Honor, is the 15 application to engage under Section 327(e) the law firm of 16 Mr. 17 Honigman, Miller, Schwartz & Cohn, LLP as special counsel. Weiss appeared before you, Your Honor, in connection with a 18 19 suppliant matter two weeks ago. There are no objections to this application, Your Honor. 20 21 THE COURT: Granted. MR. MILLER: The last uncontested matter in this part 22 23 of the calendar, Your Honor, is the application authorizing the retention and employment of the Garden City Group, Inc. as 24 25 notice and claims agent nunc pro tunc to the commencement date.

33 There are no objections to that, Your Honor. 1 2 THE COURT: Granted. 3 MR. MILLER: I would also note, Your Honor, that item on the contested calendar motion, item number -- let me get to 4 it. I think it's item number 6, Your Honor, which was the 5 motion of the consumer -- ad hoc consumer victims committee for 6 the appointment of an additional committee of unsecured 7 creditors to represent consumer victims was withdrawn without 8 prejudice. 9 10 THE COURT: Okay. 11 MR. MILLER: We could do some other motions, Your Honor. I don't know if --12 13 THE COURT: It's all right. MR. MILLER: Subject to Your Honor's ruling that if 14 somebody shows up at 9:45, we can always go back. 15 16 THE COURT: Okay. Do you know whether anybody has indicated to you that they're going to wish to show up on the 17 motion to pay essential suppliers and all that? 18 19 MR. MILLER: Mr. Smolinsky, Your Honor. 20 THE COURT: If you're in doubt, I think I need to 21 wait till 9:45 but I would prefer to deal with the easier ones most quickly. 22 MR. SMOLINSKY: Your Honor, everything is resolved. 23 I did represent that I would put one thing on the record and as 24 25 long as I do that, I think we're fine to go forward.

34 THE COURT: Sure. Go ahead, Mr. Smolinsky. 1 2 MR. SMOLINSKY: Your Honor, we're here today seeking 3 entry of a final order with respect to the debtors' essential supplier programs. There were two objections filed. One was 4 filed by Panasonic Electric Works Corporation. The other by 5 Clements (ph.) Inc. Both objections have been voluntarily 6 7 withdrawn but I did agree to clarify on the record -- Your 8 Honor, you may recall that we attached to our motion a trade 9 agreement and it was the debtors' intent to require critical 10 vendors to sign a trade agreement and return it. These two 11 objections were related to that agreement. They had some issues with it. I think they understand --12 13 THE COURT: They didn't want to give you everything you were looking for, for the benefit of the estate? 14 15 MR. SMOLINSKY: That's right, Your Honor. But the 16 answer was easy. You don't have to sign it and you're not a 17 critical vendor. 18 THE COURT: You anticipated the first question I 19 would be asking in the argument, if there had been one. 20 MR. SMOLINSKY: But Your Honor, I think they wanted 21 me to clarify that because they did not sign the trade 22 agreement, they're not bound by any of the terms contained in 23 that trade agreement. 24 THE COURT: If they don't sign an agreement, they're 25 not bound by it?

35 MR. SMOLINSKY: That's right, Your Honor. And with 1 2 that, Your Honor, the objections are resolved. The creditors' 3 committee did engage us in some dialogue about the form of the final order. We did add some clarifying language to make 4 certain that we would provide the creditors' committee with the 5 information that they need to be up to speed on how we 6 implemented that order and I'm happy to report that I don't 7 think there are any issues with respect to that. 8 THE COURT: All right. Fair enough. I do want to 9 give the creditors' committee a chance to comment if it wants 10 11 to. Mr. Mater, good morning. MR. MATER: Good morning, Your Honor. Thomas Moers 12 Mater for Kramer, Levin, Naftalis & Frankel representing the 13 committee. We have no issues. We have certain supplier 14 matters that are referenced in our limited objection to the 15 16 general transaction but we're working those through and with 17 respect to what Mr. Smolinsky put on the record, we have nothing further to add. 18 19 THE COURT: Fair enough. Then with the 20 clarifications and anything that you arranged for, Mr. 21 Smolinsky, the motion's granted. MR. MILLER: Your Honor, I think we could proceed 22 with the utilities motion which is item 2. 23 THE COURT: Fair enough. 24 25 MR. SMOLINSKY: Thank you, Your Honor. Your Honor

36 entered a final order with respect to the utility motion on 1 2 June 1st. The procedures provided that objections could be 3 filed to the form of adequate assurances by the 15th of June. We received -- of the 261 utilities that were noticed in 4 connection with the order, we received objections from 35 5 utilities. We have finally resolved all of the objections 6 except for a very few, I believe two objections, and we believe 7 that we have agreements in principle with respect to those two. 8 What I'd like, Your Honor, and I could share it with chambers 9 so that the docket accurately reflects the resolution of these 10 11 matters is that two of the objections, it's docket number 764 12 and 915, will be adjourned until the 30th of June so that we can presumably deliver final resolutions of those matters. 13 THE COURT: Pause, please, Mr. Smolinsky. On those 14 adjournments, you have comfort that they're not going to turn 15 16 off the lights on you between now and then? 17 MR. SMOLINSKY: Yes, Your Honor, we're still within the thirty days so I don't think that that would be an issue. 18 19 THE COURT: Okay. 20 MR. SMOLINSKY: With respect to the remaining 21 motions, they are resolved and I believe they can be marked off calendar and we could provide Your Honor with the docket 22 23 numbers. THE COURT: Okay. Are there folks who are waiting to 24 25 be heard on this? Would you come up please? And,

unfortunately, I don't know everybody. If you could identify
 yourself on the record.

MS. KARPE: Apologize, Your Honor. Karel Karpe, White & Williams for Nicor Gas. Your Honor, I have spoken to Mr. Smolinsky and we do have an agreement in principle. But I noticed that there was a first supplemental list filed sometime very early this morning. And it looks like there's the Nicor Gas accounts have been transferred to that notice. But it does look like there may be an additional one.

So just to preserve my client's rights, Your Honor, 10 11 we filed an objection at docket number 1099 which I didn't hear 12 referenced this morning. And all I want to do is just get some assurance on the record that the objection that we previously 13 filed and any other accounts that Nicor and the debtor may have 14 are all rolled over to that next one. We believe that we will 15 have an agreement in the next day and so I don't think that 16 17 this is going to prejudice either the debtor and we do not plan on turning off any utility. 18

19 THE COURT: Okay. Mr. Smolinsky?
20 MR. SMOLINSKY: Your Honor, just to clarify, an
21 additional list was filed this morning, as we're entitled to do
22 under the order. The purpose of the list was not to add any
23 contracts or any utilities. The purpose was to actually
24 eliminate certain utilities that had claims that their
25 contracts were forward contracts and not utilities. And that

38 was the agreement by which certain of the objections were 1 2 resolved. So I'll work with Nicor to make sure that they're 3 comfortable, but we did not have any utility companies to that list. 4 THE COURT: Okay. You okay with that, Ms. Karpe? 5 MS. KARPE: Yeah, Your Honor. The only difference 6 that I noted this morning is that there was a difference in the 7 account numbers. I'm sure that Mr. Smolinsky and I can work 8 our issues at and we should have a resolution, we hope, by 9 10 tomorrow. 11 THE COURT: Very good. Thank you. Mr. Fox? MR. FOX: Good morning, Your Honor. Shawn Fox from 12 McGuireWoods on behalf of the Dominion Retail, Inc. With the 13 debtors' representation that they're not seeking to treat 14 Dominion Retail as a utility, our objection is resolved. 15 THE COURT: Very good. Thank you. All right. 16 Anybody else on 366 issues, utility issues? There being no 17 response, your mechanism is fine, Mr. Smolinsky. So we'll be 18 19 locked in for all of those that have been resolved and it'll be 20 continued for the couple that haven't been? 21 MR. SMOLINSKY: That's right, Your Honor. THE COURT: Very good. Okay. Thank you. 22 23 MR. MILLER: If Your Honor please, item number 3 has been resolved. Mr. Karotkin -- that's the use of cash 24 25 collateral and the explanation that Mr. Karotkin gave.

	39
1	Item 4, which is the Evercore Group LLC, as stated,
2	Your Honor, we request that be adjourned to July 2nd.
3	In connection with item number 5, Your Honor, which
4	is the motion of the debtors to employ and retain AP Services
5	LLC as crisis managers and to designate Albert A. Koch as chief
6	restructuring officer nunc pro tunc to the commencement date,
7	we have reached an agreement, Your Honor, with the Office of
8	the United States Trustee and we have a statement to put on the
9	record.
10	(Pause)
11	MR. MILLER: Your Honor, I am just informed by Mr.
12	Karotkin that we have to meet with the Office of the U.S.
13	Trustee during break.
14	THE COURT: Okay.
15	MR. MILLER: So we'll put that off.
16	THE COURT: We'll defer that one, then.
17	MR. MILLER: Item 6 is a report, Your Honor, has been
18	withdrawn without prejudice. And that leaves, Your Honor,
19	items 7 and 8, 7 being the motion of the ad hoc committee of
20	asbestos personal injury claimants for an order appointing a
21	legal representative, a future asbestos personal injury
22	claimant and directing the United States trustee to appoint an
23	official committee of asbestos personal injury claimants.
24	THE COURT: Okay. Mr. Esserman here?
25	MR. ESSERMAN: Yes, Your Honor.

# VERITEXT REPORTING COMPANY

40 THE COURT: You want to come on up, please. Somebody 1 2 give Mr. Esserman a place to sit at the counsel table? 3 Although, Mr. Esserman, after my preliminary remarks I'm going to want you to speak first. And when you do, you'll be at the 4 main counsel lectern. 5 Give me a moment, please. 6 7 (Pause) THE COURT: All right. Folks, make your 8 presentations as you see fit but, Mr. Esserman, when it's your 9 turn, I'm going to need you to address not just the matters 10 11 that were set forth in the papers but the terrain as it now exists as a consequence of my ruling on Tuesday. 12 We have, as I understand it, in your motion, the 13 regular tort litigants motion having been withdrawn, double 14 barreled issues and of course the future claims rep is a little 15 16 different then me forming another official committee. But on 17 the matter of the official committee, in addition to the things that you've briefed, I would appreciate it if by the time that 18 19 you're done you help me understand how it would be, if it is in 20 fact the case, that your request is different than the one for 21 the bondholders that I addressed on Tuesday. On the future claims rep portion, the debtors told us 22 23 that it's not looking for a channeling injunction and that we're going to have a liquidation here and that the debtor 24 25 isn't going to be looking for a discharge. And I need your

41 help in understanding why those aren't some pretty important 1 2 facts. 3 I also want you to address, before you're done, what seemingly is the case, I forgot which of the briefs I saw said 4 that, which focus on the fact that this, unlike the other case 5 in which you've been before me, is hardly an asbestos driven 6 case and that asbestos claims, compared to the totality of the 7 claims of all the other creditors in this case, are very, very 8 small percentage. 9 So, Mr. Esserman, come on up, please. Good to see 10 11 you again. Came in from Texas? MR. ESSERMAN: I did, Your Honor. Nice to see you. 12 Sandy Esserman of Stutzman Bromberg Esserman & Plifka in 13 Dallas, movant today, and I will address all the questions that 14 15 Your Honor asked. First I'd like to say that on behalf of the ad hoc committee, and we have filed a 9019 --16 17 THE COURT: You said a 9019. Did you mean that or a 2019? 18 19 MR. ESSERMAN: A 2019; sorry. 20 THE COURT: I would have been delighted to hear it 21 was a 9019 but I didn't think we were quite there yet. MR. ESSERMAN: No. I guess I was anticipating the 22 23 future, hopefully. Anyway, Your Honor has raised the significant issues, I think, that I will address, each one of 24 those issues. I'd like to address them in this context, in 25

1 light of the paper filed by the creditors' committee yesterday, 2 which was, I thought, a very significant paper in which the 3 creditors' committee filed what they called a limited objection 4 to the sale but in fact was a statement by the creditors' 5 committee and a full objection that provided that any sale that 6 does occur in this case cannot bond future claimants and should 7 not bond future claimants.

In light of the position taken by that committee and 8 in light of where we are, I no longer wish to proceed and would 9 adjourn a portion of our motion with regard to seeking a 10 separate committee at this time. We will continue to be active 11 12 in the case; the ad hoc committee is not going away. We are not seeking official status. This case and the context it was 13 filed, the motion was filed, coming off the Chrysler situation, 14 gave us great pause, gave the ad hoc committee great pause. 15 Just to give Your Honor a context of what I'm referring to, in 16 17 the Chrysler case the committee was -- had a lot of creditors on it which wound up being assumed and paid in full after the 18 19 sale was approved, which caused wholesale resignations from the 20 creditors' committee. In fact, I think a majority of the 21 creditors' committee in Chrysler had resigned after the sale was approved because they were paid in full. And that was a 22 23 difficult situation for those creditors that were "left behind" in Chrysler. Hopefully that is not going to be the case in the 24 25 GM case or the GM committee, which would, in great part,

## VERITEXT REPORTING COMPANY

516-608-2400

1 alleviate the necessity for a separate committee.

I would like to distinguish or answer -nevertheless, I'd like to answer some of your questions very briefly. For instance, how is this any different from, say, a Dana which has been referenced in many of the papers, in which asbestos claims were a relatively small percentage of the population of claims versus the situation -- similar situation in Chrysler.

In Dana, the asbestos claims -- and I moved for -- it 9 was pointed out that I moved for a separate committee and I did 10 11 and we were very active in that case. But in Dana, they passed 12 the asbestos claims through. They passed them through as unimpaired and there was testimony in Dana that asbestos claims 13 were not only passed through to the entity but any successor 14 liability claims that anyone wanted to bring against New Dana 15 16 could be brought. There was no concession that, in fact, they were good claims or that they should succeed. But that they 17 could survive the reorganization. 18

19 There was also extensive testimony that there was 20 adequate assets and insurance to pay asbestos claims in full, 21 in full. So there was a lot of testimony there that, one, 22 asbestos claims were a very small piece of that puzzle; and 23 two, they were passed through. Three, there was adequate 24 provision made for their compensation. And to the extent 25 people look to Dana as a model case of how to deal with this

and how to dispose of not having a futures rep and a 1 2 committee -- I'm not necessarily endorsing that. We still 3 disagree with those decisions, but that example does stand. 4 And as far as I know, post confirmation, has worked. In this case, if, in fact, those situations --5 situation is going to hold true and future claims, as the 6 creditors' committee has pointed out in their paper filed 7 yesterday, and I would urge Your Honor to read it at his 8 convenience, are going to be able to be asserted against what 9 will be called the New GM. And GM does not seek to channel or 10 11 restrict in any way those claims. Perhaps a futures 12 representative may not be needed. Perhaps a, what I'll call a future tort czar, future claims tort czar, not just for 13 asbestos claims but in thinking about this last night you've 14 got future damage claims, future rollover claims, future design 15 defect claims, future gas tank explosion claims for GM cars out 16 17 there in the public that have not yet occurred. And as long as those claims are not impaired in any sense and can be brought 18 19 against the surviving entity, then I think we need to rethink 20 this whole -- the direction that I was trying to push the pile, 21 so to speak. On the other hand, if GM's position is no, Mr. 22 23 Esserman, we are absolutely taking this issue on dead square and we are going to eliminate those claims and leave them 24 25 behind with no compensation or no special pot or no trust or no

## VERITEXT REPORTING COMPANY

516-608-2400

1 whatever, I think that's a different situation. And I think we 2 need to then think about how we can protect the public and how 3 we can protect the future claimants and the people that are 4 going to be damaged in the future, be it asbestos, be it 5 consumers, be it rollover victims, be it gas tank explosions, 6 etcetera. So perhaps this is yet to play out.

7 The way I read GM's papers, and hopefully I'm wrong, 8 is they intend to constrict those claims. They intend not to 9 pass those claims through. They intend to, through a 363 10 device, eliminate those claims for the "New GM" whether they 11 gave good or bad publicity on that in the future.

So, I think, to a certain extent, we sort of need to see where GM's going to take us on this ride. And see if, in fact, they're willing to accede to the issues raised by the creditors' committee and frankly raised first by me in our papers in the objection to the sale. And in fact, if you will, pass those claims through the estate.

I would note that one comment on appointing of an FCR 18 19 that the debtor made was the ad hoc committee -- ad hoc 20 asbestos claimants request to appoint an FCR at this early 21 stage of these cases should be denied. Well, I know that if it had been made later it would have been too late. And I think, 22 23 in fact, you need to address this issue up front in a case and early. And if Your Honor decides to or GM is going to decide 24 25 to severely restrict future consumer claims, future tort

## VERITEXT REPORTING COMPANY

1 claims, future asbestos claims, it needs to decide which 2 direction to go. And if that's the case I think it'd be only 3 prudent and a protection of the public to appoint somebody to 4 protect those interests and make sure those interests are 5 protected.

If not, I think the Supreme Court, as recently as 6 last week, in the Travelers vs. Bailey decision, which I was 7 involved in from the trial court all the way to the Supreme 8 Court; and lost, I might add, ultimately. But I think that 9 it's sort of in the eye of the beholder whether the case is a 10 11 loss or a win because you have to look at what the Court said. 12 And the Court, sort of, said it wasn't -- it said you can't collaterally attack orders. You can't collaterally attack, 13 say, a 1986 order in 2004. 14

But on the other hand, it left open the question as 15 16 to who's bound by those orders. Were my clients, in that case, 17 Pearly Bailey -- Pearly Lee Bailey, a widow of a Mizo (ph.) victim, was she bound by that order? And the Court remanded it 18 19 to the Second Circuit to decide whether or not, in fact, she 20 was bound because she was not present before the Court, didn't 21 have notice, etcetera. Those issues all remained open, which is why I say there's a lot of legs left in that case and a lot 22 23 of legs left after that decision for me in the Second Circuit and in the bankruptcy court. 24

But what we can learn from that case is, and what the

## VERITEXT REPORTING COMPANY

25

Supreme Court I think was telling the public and telling the 1 2 Court was, you need to protect your rights at the time. You 3 need to have your rights protected at the time. And Congress, through 524(g) has in fact; set forth a mechanism to protect 4 future unknown claims in an asbestos situation. And is 5 specifically referenced that protection and it said -- the 6 Court said we do not decide whether any particular respondent 7 is bound by the 1986 orders. They assumed that everyone was 8 bound and that relates very much to this case. I think it's 9 almost dead-on this case. 10

11 If GM is trying to bind everybody and all the 12 futures, I think Congress has set forth in the asbestos context and the Supreme Court affirmed last week, how that's done. 13 And that's done through a 524(q) situation. Or I could analogize 14 to that and say that a future tort czar, to protect the 15 futures. And if not, then due process provides that those 16 17 people are not bound. And I'm willing to, frankly, live with either result. I'm willing, if GM says it wants to go the Dana 18 19 route, I think that's a mistake but they can go the Dana route. If GM wants to proceed a different route, I'm fine with that. 20 21 So in many respects, I punt this to GM. If GM is in fact going to try and cut everyone off at the knees for future 22 23 claims, I think they need to take this podium and say that.

And then I think they need to either live with the consequences of not having a future claims tort czar or future claims rep or

	48
1	not. And also risk whether or not the order that they want
2	gets entered by this Court. Thank you.
3	THE COURT: All right. Thank you. Mr. Miller?
4	(Pause)
5	MR. MILLER: Harvey Miller for the debtors. Your
6	Honor, I wish Mr. Esserman had called last evening, I might
7	have gotten another hour of sleep. As I understand his
8	presentation, the motion for the appointment of additional
9	committee of asbestos claimants is withdrawn without prejudice.
10	THE COURT: That's my understanding as well. Mr.
11	Esserman?
12	MR. ESSERMAN: We would prefer to adjourn it.
13	MR. MILLER: We would prefer to have it withdrawn
14	without prejudice. We don't need it on the calendar, Your
15	Honor.
16	THE COURT: All right. Gentlemen, one of the things
17	I would like to do is to get more money into the pockets of
18	creditors. I don't want to make people file more pieces of
19	paper then have already been filed in this case. I'm sure you
20	got less sleep than I did, Mr. Miller, but the goal is the
21	same.
22	That portion can be continued but, frankly, I'm going
23	to set it for a date pretty far out, Mr. Esserman, without
24	prejudice for you to advance it on the calendar. We keep them
25	on calendar so they don't fall between the outfielders but this

# VERITEXT REPORTING COMPANY

is really a distinction without a difference, gentlemen.
 Continue, Mr. Miller.

3 MR. MILLER: So that leaves, Your Honor, the question of the future representative. As Your Honor pointed out in 4 your opening remarks, 524(g) is a section of the Bankruptcy 5 Code which relates to a debtor proposing a plan of 6 reorganization that incorporates a channeling order where 7 asbestos claims are going to be channeled to a particular fund 8 for satisfaction, which is derivative out of the Johns Mandel 9 10 (ph.) case.

11 As we have said in our papers, Your Honor, there is no intention on the part of GM to propose a channeling order. 12 And since we are proposing to do a plan of liquidation there 13 will be no discharge. In that context, Your Honor, there is no 14 justification for the appointment of a future claimant 15 representative. And I would direct Your Honor's attention to 16 the case of Locks vs. U.S. Trustee at 157 B.R. 89, a decision 17 of the United States District Court for the Western District of 18 19 Pennsylvania which held that in a case of a liquidation, rather 20 than a reorganization, there is no mandatory requirement for a 21 future claimant representative.

We are not proposing, in any way Your Honor, a channeling order. And as Mr. Esserman has pointed out, there are negotiations going on with the official creditors' committee as to the scope of the order which will be requested

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

in connection with the 363 transaction. Where those
 negotiations come out at this point, Your Honor, we're not
 prepared to say. There is active negotiation on all of the
 issues that Mr. Esserman referred to. They will be before Your
 Honor on the hearing on June 30th.

In the context of where we are today, 524(g) is 6 simply not applicable and there is no basis here, today, for 7 the appointment of a future representative for future asbestos 8 victims. Which, and also, as the Court pointed out in Locks 9 vs. U.S. Trustee, there is an inherent conflict between the 10 11 current asbestos claimants and the future claimants that may 12 have to be considered at a future date. But in the 13 circumstances where we find ourselves today, Your Honor, there is no basis for the appointment of a future representative. 14 And I say that, Your Honor, without prejudice to a future 15 16 application if that becomes appropriate.

17THE COURT: Okay. Thank you. Mr. Esserman, any18reply? Oh, forgive me. Mr. Mayer, come on up, please.

19 MR. MAYER: Thank you, Your Honor. Tom Mayer, again, 20 for the official committee. And our limited objection is 21 exactly what it states to be. But Mr. Esserman is correct that 22 certain of the issues that he raised we decided to raise 23 ourselves. And it was no mean fete getting a fifteen-member 24 committee to agree to take that position. We have on that 25 committee; I think I can do this from memory, two indentured

trustees representing approximately twenty-seven billion dollars of debt. We have the PBGC whose contingent liability dwarfs that of the bonds. We have three unions who are receiving quite disparate treatment. We have three dealers who are receiving quite disparate treatment. Two suppliers, one advertising agency, two product liability claimants and an asbestos representative. I think I got to fifteen.

8 And the issues that Mr. Esserman raised were debated 9 at considerable length by what is not even so much a model 10 United Nations and we took the position we took in our papers 11 with respect to future claims.

We agree with Mr. Miller that there is no call for a 12 futures representative at this time. If it becomes necessary, 13 we can deal with it at a future time. But it is our position, 14 as set forth in the papers as Mr. Esserman noted, that we don't 15 16 believe that an order entered by this Court can bond future 17 claimants. We don't believe 524 is applicable here. We don't think 524 is mandatory and there was no conceivable stretch 18 19 under which a 524(g) plan could possibly be confirmed in this 20 case. It will never be a case where the asbestos claimants are 21 getting a majority of an operating company and no discharge is being sought for it. 22 23 So if at some point in the future it becomes

necessary to deal with a futures claim issue, we can deal with it at this time. And at this point we see no basis for either

## VERITEXT REPORTING COMPANY

52 the appointment of a committee or the appointment of futures 1 2 representatives. If you have questions, I'm happy to answer. 3 THE COURT: No, I really don't. Thank you. MR. MAYER: Thank you, Your Honor. 4 THE COURT: Okay. Mr. Esserman, I'll take any reply. 5 MR. ESSERMAN: Future claims are being passed through 6 7 the estate unimpaired. I see no reason for an appointment either at this time, Your Honor. Thank you. 8 THE COURT: All right. Everybody sit in place for a 9 second. 10 11 (Pause) THE COURT: Folks, the motion is denied without 12 prejudice to renewal if either the debtor proposes a channeling 13 injunction in the future or decides to propose a standalone 14 plan. 15 16 Mr. Esserman, if you want to take this up on appeal, I'll give you full findings of fact and conclusions of law at 17 the end of the day today, but I don't want so many people in 18 19 the courtroom to have to await a recess for me to deliver those 20 findings which would likely be as long as they were on Tuesday. 21 MR. ESSERMAN: Unnecessary, Your Honor. THE COURT: All right. Thank you. Is our next 22 matter the retirees committee? 23 MR. MILLER: Yes, Your Honor. 24 25 THE COURT: Do you folks want to go straight into it

	53
1	or do you think anybody would want or need a five or ten minute
2	break?
3	MR. MILLER: I would ask Your Honor for a five minute
4	break. I would like to have that opportunity to meet with the
5	U.S. trustee.
6	THE COURT: Certainly. Okay. We're in recess for
7	until would an extra five minutes be prudent, Mr. Miller?
8	MR. MILLER: Absolutely, Your Honor.
9	THE COURT: Let's resume at 10:15. We're in recess.
10	(Recess from 9:56 a.m. until 10:15 a.m.)
11	THE COURT: Mr. Miller?
12	MR. MILLER: Harvey Miller for the debtors. Your
13	Honor, may we go back to the motion to engage AP Services?
14	THE COURT: Certainly.
15	MR. MILLER: Mr. Karotkin, please?
16	THE COURT: Mr. Karotkin.
17	MR. KAROTKIN: Thank you, Your Honor. Stephen
18	Karotkin, Weil Gotshal & Manges, for the debtors. In
19	connection with the application of the debtors to retain AP
20	Services, Your Honor, there was only one substantive objection
21	filed by the Office of the United States Trustee. I believe
22	that the unsecured creditors' committee either filed a pleading
23	or requested certain clarification in any proposed order, which
24	were are more than willing to address.
25	With respect to the objection raised by the Office of

# VERITEXT REPORTING COMPANY

1 the United States Trustee, we have reached a resolution of that 2 dispute which we propose to embody in a revised proposed order, 3 which we will circulate with Ms. Adams as well as with the 4 unsecured creditors' committee. But I would like to state on 5 the record the resolution that's been agreed to, if I might? 6 THE COURT: Yes. Go right ahead.

7 MR. KAROTKIN: Thank you, sir. I'm just going to go to the substantive points. With respect to the success fee 8 described and contained in their retention agreement, there 9 would be no objection to payment of fifty percent of the 10 11 success fee as provided in the retention agreement, on the closing of the sale transaction, subject to AP Services filing, 12 prior to such payment, a supplemental affidavit with the Court 13 summarizing the services rendered by AP Services with respect 14 to the sale transaction. 15

16 Second, both the payment of the balance of the success fee, which is proposed to be paid one year following 17 the closing of the sale transaction, and any discretionary fee, 18 19 as that term is defined in the application, both of those payments shall be subject to review under the reasonableness 20 21 standards set forth in Sections 330 and 331 of the Bankruptcy Code, including the filing of an appropriate fee application by 22 23 AP Services, including time records.

And finally, Your Honor, no person from AP Services involved in the engagement, can bill at a rate higher than the

55 rate billed by Mr. Koch, as that rate may be adjusted from time 1 2 to time, on notice to the Office of the United States Trustee. 3 And I believe that, I hope, accurately sets forth the understanding. And if I have stated something --4 THE COURT: Mr. Matsumoto, forgive me. Could you 5 pull a nearby microphone over unless you want to come to the 6 main lectern? 7 MR. MATSUMOTO: That's correct, Your Honor. 8 THE COURT: Okay. 9 MR. MATSUMOTO: He's accurately said it. 10 11 THE COURT: Mr. Mater. MR. MOERS MATER: That is correct, Your Honor. 12 That reflects the agreement with the committee. 13 THE COURT: All right. Did everybody who weighed in 14 on this or wanted to, have a chance to be heard? Okay. As 15 16 modified by the understandings with the U.S. trustee and the 17 creditors' committee, that retention is approved. And at your convenience, you or one of your colleagues can get me the 18 19 revised order papering that understanding. 20 MR. KAROTKIN: Thank you, sir. 21 THE COURT: Thank you. MR. MILLER: If Your Honor pleases, Harvey Miller 22 23 again. Your Honor, one housekeeping detail. THE COURT: Yes. 24 25 MR. MILLER: The filing of a memorandum of law in

support of the proposed Section 363 transaction is due tonight. 1 2 There are objections, Your Honor, that are still coming in. 3 They've come in every day. They're still streaming in. What 4 we would propose, Your Honor, is to file our memorandum of law. But we would like the extension, Your Honor, to amend that 5 memorandum before the commencement of the hearing on June 30th, 6 to take into account the additional objections that are coming 7 in. 8 THE COURT: I need a little help from you here, Mr. 9

10 Miller, in a couple of ways. First, I thought the time for 11 objections to what you're doing had come and gone. You're 12 dealing with the practical problem that people, either because 13 they disregarded the deadline or didn't get notice of the 14 deadline, are still giving you stuff?

MR. MILLER: I think one day, Your Honor, ECF was down and that delayed a lot of things. Some people claim they did not get notice. And they're just continually streaming in, Your Honor.

19 THE COURT: I hear you. When were you thinking of -20 you did file one brief already. And this, I take it, would be
21 like a reply brief to the objections?
22 MR. MILLER: Yes, Your Honor.
23 THE COURT: And what was your thought as to when I
24 would get something I could work with?
25 MR. MILLER: The hearing is on Tuesday, Your Honor.

57 Monday, 5:00, 6:00. 1 2 THE COURT: Umm --MR. MILLER: I'll make a concession, Your Honor. 3 Noon. 4 THE COURT: I feel like I'm playing Let's Make a 5 Deal. I'm not going to default you if you can't make noon, but 6 I'd like you to try very hard to do that. 7 MR. MILLER: Very good, Your Honor. Thank you. 8 THE COURT: Thank you. Mr. Schwartz? 9 MR. SCHWARTZ: On that point. Mr. Miller said that 10 11 the deadline was this evening. We were under the impression 12 that it was tomorrow. And we were intending to put in papers 13 as well, if that's acceptable. THE COURT: Sure, you can do that. 14 MR. SCHWARTZ: Thank you. 15 16 THE COURT: Okay. Are we now up to retirees, Mr. Miller? 17 MR. MILLER: Yes, sir. 18 19 THE COURT: All right. I would like counsel for the 20 retirees to come on up, but then, only to get a place at 21 counsel table. Make room for him, folks. Somehow, make room for him, because I have some preliminary observations. Mr. 22 23 Mater, you get a place at the -- okay, that's fine. Folks, make your presentations as you see fit, but by 24 25 the time you're done, I want you to address the following

58 questions and concerns. It seems to me, subject to your rights 1 2 to be heard, that 1114(d) has two prongs, one of which is 3 mandatory, if it applies; the other which is discretionary. The mandatory part being "shall order, if the debtor seeks to 4 modify or not pay the retiree benefits"; and the discretionary 5 part being "or if the Court otherwise determines that it is 6 appropriate." Now a "shall" proceeds the second also, but when 7 you give me the ability to determine whether it's appropriate, 8 it seems to me, that changes it into a discretionary 9 determination. But it also seems to me, subject to your rights 10 11 to be heard, that neither of those requirements applies unless 12 1114 applies at all. Now, on that, it appears to me that there are two 13 principal legal issues which I'll get to in half a second. But 14 I also have a factual question for which I'd like your help, 15 16 Mr. Miller, or from whoever on your team is going to be arguing it; which is, are the debtors' plans the same with respect to 17 both its retiree pension plans and also its welfare plans, 18 19 which I understand to be its health and life insurance plans? Or is there some distinction between them? That's more in the 20 21 nature of a factual predicate, just so I know what we're talking about, either changing or leaving subject to the 22 23 possibility of a change. But then, when we get to the legal prongs, it seems 24 to me that one of the issues I have to deal with is whether 25

59 1 1114 applies at all. And on that -- and forgive me, on behalf 2 of the retirees, I'm not sure if I got your name? 3 MR. GOTEINER: I'm sorry, Your Honor. Neil Goteiner. THE COURT: Goteiner? 4 MR. GOTEINER: Yes. 5 THE COURT: Thank you. Mr. Goteiner, it appeared to 6 me that in arguing the issue as to whether 1114 applied, you 7 took kind of a national perspective. And I'm wondering, and I 8 would find your help valuable, in telling me whether I should 9 10 take a national perspective on the one hand, or whether I, as a 11 judge sitting in the Second Circuit in the Southern District of 12 New York, can appropriately consider a national perspective, or whether I have to give greater attention to a decision of the 13 Second Circuit and of the case law in the Southern District of 14 New York. 15 16 Now, I think many people might believe that a bankruptcy judge in the Second Circuit is bound by a decision 17 of the Second Circuit, and I've got the Chateaugay decision. 18 19 It's also the case that I'm on record in four or five or six 20 published decisions as saying that even though I'm not bound by 21 the decisions of other bankruptcy judges in this district, that I believe that the interests of consistency for the financial 22 23 community, for the bankruptcy community in this district, are very important, and therefore that I follow the decisions of 24 25 other bankruptcy judges in the Southern District of New York,

## VERITEXT REPORTING COMPANY

516-608-2400

1 in the absence of clear error.

2	Now, I was a little surprised, Mr. Goteiner, that at
3	least in your opening brief, unless I missed it, there was no
4	attention to Judge Drain's decision in Delphi. Now, obviously,
5	there was greater discussion of it by the debtors and the
6	creditors' committee when they filed their next round of
7	briefs. And while you mentioned it in your reply, you didn't
8	really address, unless again I missed it, the substantive
9	holdings that Judge Drain had with respect to whether 1114
10	applies or whether I should follow his decision or whether his
11	decision was incorrect in any way. Some might regard his
12	decision, albeit originally dictated, as one of the most
13	comprehensive and extensive discussions of this area that
14	anybody has ever written at any level in the federal system.
15	So I want both sides to address Judge Drain's decision
16	extensively, either up or down, whether it's right or wrong,
17	and address whether I should follow it or not.
18	Then we get to Sprague. As I read Sprague, and it's
19	long and it's complicated, and I'm not claiming to be the only
20	person who can read it or understand it, it appeared to me to
21	be an 8-1-1-3 en banc decision. And it looked to me that when
22	you looked at the plans, insofar as they affected the general
23	retirees, as contrasted to the early retirees, it was a 10 to 3
24	decision, putting aside the class action issue, which isn't
25	material to our concerns. And it also appears to me that for

VERITEXT REPORTING COMPANY

516-608-2400

either most or all of the GM community, their situation is more analogous to the general retiree situation rather than the early retiree situation, because the principal difference was the early retirees had separate deals that may have been explained to them when they were asked to take early retirement.

7 Now, one thing that was a matter of some difficulty for me, from both sides, is that the contentions that Spraque 8 was wrong came up only in the reply brief filed on behalf of 9 the retiree committee, your folks, Mr. Goteiner. And that 10 11 forced the debtor to deal with a whole new issue in a surreply, which the debtor did, but then you didn't have a chance to 12 reply to that. Now, debtor has stated in its surreply that res 13 judicata applies, binding on the retirees here, and also even 14 that collateral estoppel applies. I'm wondering whether the 15 16 more appropriate course is to analyze this, principally, on 17 bases of stare decisis where you have the classic blue Buick.

18 I don't want to foreclose you folks from other points 19 that you want to make, but by the time you're done, please be 20 sure to have covered at least those. Okay. Your motion, Mr. 21 Goteiner.

22 MR. GOTEINER: Neil Goteiner, General Motors 23 Retirees' Association. Your Honor, I think the questions you 24 asked obviously go to the core of issues, and so I'll address 25 them up front. And basically I'll constrain my general

## VERITEXT REPORTING COMPANY

516-608-2400

62 comments to dealing with your questions. 1 2 THE COURT: You don't have to constrain them, just be 3 sure you've covered them by the time you're done. MR. GOTEINER: Well, I'm constraining -- I'm saying 4 I'm constraining them, because they're core. 5 THE COURT: Okay. 6 7 MR. GOTEINER: And I haven't thought about every point, but I think I can deal with them. Let me begin by 8 saying this. If you look at the statute, 1114, and you look at 9 the way it's structured, you don't have that much legislative 10 11 history on tap. We have some, but very little. But if you 12 look at it, what is it doing? It uses the word "any benefit". And it's a very, very modest proposal. And this addresses part 13 of what Judge Drain did as well. 14 What Judge Drain did and what the debtors are doing -15 - what some courts are doing, I respectfully submit 16 17 incorrectly, is that they're treating this exercise as a summary judgment motion. Judge Drain asked about abrogation of 18 19 rights and that 1114 is not supposed to abrogate rights, and 20 he's not familiar with other sections with the Bankruptcy Code 21 that create rights. We're not creating rights here. All that 1114 did was to create a forum, a platform for discussion so 22 23 that people, like the 122,000 members of this retiree group who are not represented, has a chance to deal with and talk with 24 25 management about critical -- and this is not overly florid or

1 dramatic -- life-threatening decisions.

2	And Congress understood that. So what happens is,
3	there's a discussion, a conversation that occurs. And by the
4	way, Your Honor, it can occur very, very quickly. This is not
5	going to delay any decisions. There are lawyers on both sides
6	who can handle these issues, and management can handle them.
7	So you have the discussion. And usually these things work out
8	fine, because this particular group, my clients, understands
9	that there has to be cuts, that there has to be serious cuts.
10	But the point is, to have those people whose lives are being
11	affected making the decisions, and not having them be made by
12	executives; not having them been made by other people who don't
13	understand and really live these issues.

So that needs to be stated. And I didn't really see 14 that discussion in the cases. This is not a summary judgment 15 motion. What happens is, if there's going to be a 16 disagreement, and in the unlikely event that the committee --17 18 if it was selected and formed -- in the unlikely event that the 19 committee disagreed with the debtor, then what happens? Then it comes -- then and only then does it come to Your Honor. And 20 then you deal with some of the Sprague questions versus what we 21 think should control, which is the Devlin case in the Second 22 Circuit, which also addresses one of Your Honor's questions. 23 The debtor suggests that it's Sprague all the way. 24 25 That's not true. Your Honor, I have not read all Your Honor's

## VERITEXT REPORTING COMPANY

516-608-2400

decisions on this, but the Second Circuit has pointed out in 1 2 the Caesar case, I believe, as well as in other cases when they 3 were dealing the factors versus the Pro Arcs (ph.) cases, that was around 1980. I can get the cites to you on that. That 4 when you're dealing with federal questions, Your Honor should 5 be looking at courts in the Second Circuit. It's national, it 6 is national, but still, when you're looking at federal 7 questions, it's perfectly appropriate, and some courts say you 8 should look to the Second Circuit. 9

Now, I know that -- and so that means the Court should also consider the Devlin -- and I'm saying we shouldn't even be getting into that now, but if you look at the Devlin burden analysis, in the Devlin burden analysis, you determined whether there's an ambiguity. Under the Sprague analysis, the burden is on the retirees there to show it was clear and unambiguous. That is not the law of the Second Circuit.

THE COURT: Pause, please, Mr. Goteiner, because if I 17 heard you right as you were getting into that, you mentioned 18 19 Pro Arts. And sadly, I'm well aware of that case because in 20 the Adelphia case, I had issued a decision where I expressed 21 the view that the Third Circuit couldn't understand a matter of Pennsylvania law correctly, or at least a two-judge majority in 22 23 a Third Circuit decision, and that they ignored a decision of the Pennsylvania Supreme Court. And while I wasn't reversed on 24 25 the issue because there were satisfactory alternative grounds,

65 it was pointed out to me that I, as a bankruptcy judge, don't 1 2 have the ability to tell a circuit court that it was wrong when 3 it's construing a matter of state law within its home state district. And I think that's what Pro Arts stands for among --4 MR. GOTEINER: State law. 5 THE COURT: State law. 6 7 MR. GOTEINER: Correct. THE COURT: Now, it appeared to me that even -- when 8 I was reading Sprague, that even though there isn't much 9 discussion of Michigan law, when they're talking about contract 10 11 formation as contrasted to what ERISA provides, that's got to 12 be state law. MR. GOTEINER: They didn't -- Your Honor, they didn't 13 discuss it. And my -- I have the same question. All right? 14 And it seemed at that level and at the level that Your Honor is 15 grappling with, it seems that the state issues are subsumed in 16 17 federal issues. And look, there are a lot of blanks in Spraque. And there were a lot of disconnects and 18 19 discontinuities between the majority decision and the dissent. 20 The majority says most of the plans had the termination 21 language. The dissents, in a robust and animated dissent, says that some of them did. But in any event, it was clear that it 22 23 was all over the lot, and most could be fifty-one percent. So I'm aware of the point. I'm also aware of Factors, in fact, it 24 25 was one of my first cases. I was representing the estate of

## VERITEXT REPORTING COMPANY

516-608-2400

Elvis Presley and flew down to Graceland. I remember that case
 very well.

3	THE COURT: That is Pro Arts, isn't it?
4	MR. GOTEINER: Yes, Factors, Pro Arts. So I'm aware
5	of that case, as well. So in dealing with these issues, I
6	think 1114 trumps the analysis for today. And all I'm saying,
7	1114 is a very modest proposal. And where Judge Drain was
8	wrong was he started talking about creation of rights and
9	abrogation of rights. That's not what would happen today if
10	Your Honor appointed an 1114 committee. And by the way, Judge
11	Drain did appoint an 1114 committee after this long analysis.
12	THE COURT: Albeit for a fairly limited purpose.
13	MR. GOTEINER: Albeit for a fairly limited purpose,
14	but there was he left wedges in his decision. And it
15	depends on what was going to come up in that analysis. And
16	things do come up.
17	But the point is, the fair and equitable calculus
18	that Congress imposes on the debtor, on the retirees who are
19	not represented like the UAW I just want to make that clear;
20	it's an obvious statement what Congress imposes is a very
21	reasonable and quick approach. And that was my major problem
22	with Judge Drain's decision. He and by the way, I'll tell
23	you I'll take responsibility for part of that because we
24	were involved in that, as Your Honor may or may not know. And
25	we were involved in the briefing, and we were co-counsel on

## VERITEXT REPORTING COMPANY

516-608-2400

67 that point. But I got more involved in this matter, and as I 1 2 started to look at the literature and I started to look at all 3 the cases, it became clear to me that, with all due respect to these -- to very distinguished lawyers and judges, the 4 fundamental aspect and driving purpose of 1114 has been missed 5 in all this. And what's happening is -- and so what I'm 6 looking for is an Occam's razor that gets down to the 7 fundamentals and explains what 1114 is. And 1114 is as I 8 stated, I won't repeat it, and I doubt many people would 9 disagree with me on my right, but that's what it is. 10 11 And then Judge Drain did more than that. Then Judge 12 Drain talked about his analysis of 1114(1). What does that mean? Although I don't think you have to characterize this as 13 a vested right, as I was just saying, because that's not what 14 we're doing here. We're not aggregating rights. But what 15 16 Congress did do in 1114 is to create at least a vested 17 procedure outside of bankruptcy, for the 180 days preceding bankruptcy. To me, it's a dizzying non-sequitur -- and this is 18 19 also why I disagree with Judge Drain -- for to say that exists 20 in a pre-bankruptcy context that doesn't exist during 21 bankruptcy. 1114(1) has meaning. And it only has meaning if you 22 23 apply it logically and consistently, and I think Judge Drain missed that. And frankly, everyone did. But that's what 24 1114(l) means. 25 And --

## VERITEXT REPORTING COMPANY

516-608-2400

THE COURT: Well, pause, please, Mr. Goteiner. 1 2 Because -- and maybe the creditors' committee picked this point 3 up in its opposition to you or in -- I don't remember where I got this from, to tell you the truth -- but there are different 4 scenarios under which, prepetition, a debtor can adversely 5 affect its retiree rights. It can do it by exercising the 6 right that the debtor thinks it has to amend or terminate 7 unilaterally because it contends that its plan documents 8 provide it with that entitlement or that right. Or it can do 9 it because it says we simply can't afford it. And we're 10 11 changing it and maybe those guys can sue us. I think it's agreed that in the second -- or at least not very 12 controversial -- that in the second category, adversely 13 affected retirees can have had it and go after the debtor under 14 1114(1). But I think somebody said, again, I think it was the 15 16 creditors' committee, that the jury may still be out -- or the 17 legal equivalent to that -- as to whether 1114 applies when the debtor uses a right of amendment or termination that it 18 19 otherwise has in its plan documents. Is that your 20 understanding, as well? 21 MR. GOTEINER: Well, that's what they're saying, but the --22 THE COURT: That's what the creditors' committee is 23 24 saying, you're saying? 25 MR. GOTEINER: Right, well, I think the debtor --

## VERITEXT REPORTING COMPANY

1 THE COURT: Well, I guess what I'm interested in is 2 your view on that.

3	MR. GOTEINER: Well, I'm interested in their view, as
4	well. But my point is that the wording of 1114 is so broad, so
5	all-encompassing with any benefit, Congress was aware that
6	there are amendable benefits, and with that kind of language.
7	But when you combine that with the modest procedural rights
8	that 1114 provides, again, that's the simplest explanation of
9	what's happening here. It's premature to decide this now. And
10	we do know, because of announcements that they've been
11	transparent about this to a degree, that they're going to be
12	cutting two-thirds of benefits. You know, these are critical
13	benefits. So it's happening now. This process is happening
14	now. And it also happened in the six months prior to June 1,
15	which is an 1114(1) situation.
16	So I just disagree with the there's a lot, as I
17	say, of Talmudic analysis in all these decisions. And
18	particularly, Judge Drain's was excellent, it's true. I mean,
19	he covered the ground. But the fact that he had the excellent
20	legal analysis doesn't say to me that he covered the
21	fundamental point of what 1114(a) says. And on top and
22	1114(l), as well, where I think he's dead wrong.
23	But on top of that, if we even want to get into this
24	analysis, he says that bankruptcy law does not create rights.
25	Well, that's not true. Preference rights, 1113 rights, 363

# VERITEXT REPORTING COMPANY

puts limits on a debtor's use of a third party lender's cash 1 2 collateral during a Chapter 11 case providing substantive 3 protections that don't exist outside bankruptcy. Section 363 gives assets buyers the right to buy assets free and clear of 4 liens. Section 364 gives third party post-petition lenders the 5 right, under limited circumstances, to get priming liens, 6 granting them a lien on collateral ahead of existing lenders 7 which cannot be done outside bankruptcy, so he's wrong on that 8 as well. And, again, these points were not fully briefed. 9 But as I read the decision, I started asking these questions, and 10 11 they didn't make sense.

So I could deal more with Judge Drain's decision, but 12 I think with respect to those fundamental points, though, and I 13 know it's the most comprehensive decision out there, today. 14 Painfully so. But, it doesn't mean he's right. And so I 15 respectfully suggest this is for Your Honor to wrestle with to 16 determine whether he is correct or not correct on the 17 fundamentals and also on this overarching point of whether we 18 19 should decide this now. Is that what Congress had in mind? 20 And I respectfully submit they didn't.

21 So I think I have answered Your Honor's questions. 22 Let me just look at my notes for one second, Your Honor. Ah, 23 let's address Sprague just for a minute longer because Your 24 Honor raised the res judicata possibility. Your Honor also 25 said well, that was a class action; we don't need to involve

ourselves with that. But we do. We have --1 2 THE COURT: Your point being that they expressly 3 denied class action status for both of the two major classes? MR. GOTEINER: Precisely. No -- class actions have 4 significant meaning, obviously, and they have significant 5 meeting, and as defendants, we sometimes stipulate to class 6 7 certification because of what it means for final peace, global 8 peace. But there is no class representative there. There is 9 nothing close to the privity type issues in these virtual representation cases. 10 11 THE COURT: Well, pause, please, Mr. Goteiner, because you're absolutely right on the significance of class 12 action. But is it the case that if there had been certified a 13 class action, the decision would be a no-brainer on res 14 15 judicata. And the question really is, in the absence of a 16 class action, what's left? 17 MR. GOTEINER: Well, you said stare decisis, but 18 again, Your Honor, that really has to do with, you know, there 19 are all sorts of things that occur in a class action. Okay, I do that kind of work, as well. And there are all sorts of 20 21 decisions that are made. You have to take a look at whether 22 the subclasses were defined correctly. I don't know, I can't 23 answer your question because I also -- there are lacunae in 24 Sprague that don't make sense to me. And it just wasn't 25 because you had an impassioned chief -- I think it was the

## VERITEXT REPORTING COMPANY

516-608-2400

72 chief judge saying it was wrong. 1 2 THE COURT: It was Martin, if I recall. 3 MR. GOTEINER: I'm sorry? Judge Martin was chief judge --4 THE COURT: Yes. 5 MR. GOTEINER: -- at that point. 6 THE COURT: Yes. 7 MR. GOTEINER: And it's not only the lacunae that 8 exist there, but theoretically, to me, it doesn't make sense 9 given the ambiguities that did exist. But the Sixth Circuit 10 11 said, all right, this is our view, we see no ambiguity. But 12 the Sixth Circuit went off on the Wise decision. And that was, as I recall it, that page, that was the first primary decision 13 they cited was Wise from the Fifth Circuit. However, in 14 Devlin, the Second Circuit said we can see how the district 15 16 court could have been led by Wise into making the decision it 17 did, but we don't go that direction in the Second Circuit. So the core theoretical groundwork for Spraque finds itself 18 rejected in Devlin. Now, I don't think Devlin cited -- I think 19 20 Devlin maybe came down a month or two after, I'm not sure. But 21 there was no cross-referencing of the two. And I also note that in the debtors' brief, although I read it quickly, I 22 23 didn't see a reference to Devlin. So, as I say, it's Sprague. So I don't see 24 25 Sprague -- it's certainly not anything close to virtual

representation. There's not the privity, there's not the same motivation, it is not a one-on-one linkage that you found in Chase. It just isn't. It's an aborted class action. You cannot cherry-pick from Sprague and take one point, and then say it binds everyone, all the retirees. You just can't. It is limited and it is not what the Second Circuit would buy into as I read Devlin.

And I must say, with all due respect, Judge Drain was 8 wrong there, as well. Now, I do recall that there was briefing 9 10 on this choice-of-law issue in the Delphi matter, and I'm not 11 quite sure because this came in late last night so I haven't had time to check, I'm not sure because I think the judge in 12 the -- Judge Drain, in the decision that he announced from the 13 bench, said the parties hadn't briefed on him on the choice-of-14 15 Then there was briefing after that pursuant to his law issue. 16 comment. But I don't know what happened between -- and maybe counsel here does know -- I don't know what happened between 17 that briefing and Judge Drain's decision. But clearly, he did 18 19 not take into account Second Circuit law, and he should have 20 because the Second Circuit controls Judge Drain in this issue. 21 Or at least, that's what the Second Circuit in Caesar (ph.) said, and that's what is drawn from the analysis in Factors v. 22 23 Pro Arts. So, let me just see if I -- I think -- Your Honor, 24

does that cover your main points? I think it does.

74 THE COURT: I think it does, too. 1 2 MR. GOTEINER: So why don't I stop there and reserve 3 any additional time after I hear the opposition. THE COURT: Sure. 4 MR. GOTEINER: Thank you very much. 5 THE COURT: Mr. Miller? 6 MR. MATER: Your Honor, please, Harvey Miller on 7 behalf of the debtors again. Your Honor the law is perfectly 8 clear that Section 1111 -- I'm sorry, 1114 of the bankruptcy 9 code, does not apply with respect to a retiree plan that is 10 11 terminable or amendable or modifiable unilaterally by the plan sponsor. And while counsel may refer to Sprague as an aborted 12 class action case, it's certainly beside that GM had an 13 unqualified right to modify these retirement plans, and that 14 was heavily litigated, and that's what the Sixth Circuit 15 16 decided in the decision that you referred to. So if GM has the 17 right to modify or terminate these retirement plans, then Section 1114 does not apply and there should be no retiree 18 19 committee. 20 Counsel claims that Sprague decision should not be 21 binding on this Court. And he says that the -- there's no finding that the issues are exactly the same or there was an 22 23 alignment. Well, what was Sprague about, Your Honor? It was a claim violation of ERISA that GM unilaterally modified and 24 25 terminated rights that the retirees claim in violation of

## VERITEXT REPORTING COMPANY

516-608-2400

1 ERISA, because if it was a plan subject to ERISA, GM could not 2 do that unilaterally. So this welfare plan, the Sixth Circuit 3 held, is modifiable by GM and it went through the different 4 plans and came to the conclusion that all of the plans reserved 5 to GM the right to modify or terminate and that right 6 continues, Your Honor. And those are GM plans.

7 Now, counsel says, and the moving parties say, "Well, now we're in the Second Circuit and Sprague doesn't apply." We 8 argue, as we have in our brief, Your Honor, that there is 9 10 virtual representation. And notwithstanding that the class 11 action certification was vacated, the claim's rights 12 asserted -- the same rights that are being asserted in connection with this motion, Your Honor. So now we move, Your 13 Honor, to the Delphi case. And what happened in Delphi? 14 Exactly the same thing. 15

16 The argument was being made, by the plan beneficiaries, that Delphi did not have the right to modify or 17 terminate these benefits unilaterally. That was the issue that 18 19 was presented. And the important factor in that, Your Honor, 20 is that Delphi plans were GM plans because Delphi was a spinoff 21 from GM, I think, in 1999, and those plans were all GM plans. And as Your Honor pointed out, Judge Drain, in a very 22 23 comprehensive bench decision, came to the conclusion that Delphi had the unilateral right to terminate and modify the 24 plans and therefore 1114 was not applicable, but he did appoint 25

a committee. And he appointed a committee for a very limited
 purpose.

There was a contention made that certain of the beneficiaries had vested rights and if their rights were vested then Delphi could not unilaterally modify or terminate those rights. So he appointed a committee for a specifically limited purpose to explore and file a report as to whether any of the rights were vested.

9 THE COURT: Can you help me, if you know, as to why, 10 especially if these were former GM people, they might have had 11 vested rights? Like, could they have retired before the first 12 of the plan descriptions were issued that reserved the right to 13 modify or was it some different basis?

MR. MILLER: No, Your Honor. It wasn't because of a date or a time. Within Delphi, there were other acquisitions that form part of Delphi; American Axle Company and some other companies. It may have been that those companies had plans that were in existence when they were merged. And there may have been the employees that came from those companies that have vested benefits.

THE COURT: In other words, they became Delphi retirees but their retirement rights had been created back when they were employees for different companies? MR. MILLER: That's correct, Your Honor, as I

25 understand it.

212-267-6868

516-608-2400

77 THE COURT: I'm with you now, okay. 1 2 MR. MILLER: Now, subsequently to the bench opinion, 3 Your Honor, which was issued on -- in the early part of 2009, Judge Drain again revisited the issues that were presented and 4 5 in a transcript, which I was only able to get last night, Your Honor. 6 7 THE COURT: I think it's now on Westlaw also, maybe Lexis also. 8 9 MR. MILLER: It's March 11, 2009. He considered the report that came back from this committee. And if I may, Your 10 11 Honor, I would hand up a copy of the transcript. 12 THE COURT: I read it last night. 13 MR. MILLER: And I would refer Your Honor to page --THE COURT: Finding it is a different question. For 14 15 that, maybe you do have to hand it up. MR. MILLER: I have one if Your Honor would like it? 16 THE COURT: Yes. Why don't you do that. Give me a 17 18 second, please, Mr. Miller. 19 (Pause) THE COURT: Go ahead, please. 20 21 MR. MILLER: I would refer Your Honor to page 61. 22 And if I may, I would read. This is in consideration of the 23 report that the committee that he had appointed rendered. 24 THE COURT: Wait. Did you say 61? 25 MR. MILLER: 61, Your Honor.

1THE COURT: Oh, I see. The pagination on what I read2yesterday is different than what you just gave me. Go ahead,3please.

4 MR. MILLER: Starting with the first full sentence, "With respect to the first point, as I noted, probably too much 5 I lent during oral argument, I continue to believe that the 6 Sixth Circuit Spraque decision is one in which the Sixth 7 Circuit at length determined, en banc, that there was no 8 ambiguity in the respect of GM's reservation of rights to 9 modify, at will, it's welfare plans. Including for the 10 11 period" --

12 THE COURT: Forgive me, Mr. Miller. I'm having 13 trouble finding it in the one you gave me as well. You said --14 this is with respect to Sprague, right?

MR. MILLER: Yes, Your Honor.

16 THE COURT: Go on, please. I'm not sure if I can find it here, but I'll just listen to what you've given to me. 17 MR. MILLER: All right. "That there was no ambiguity 18 19 in respect of GM's reservation of rights to modify, at will, 20 it's welfare plans including for the period in question and 21 that -- or I could conclude otherwise, I would not be doing so by applying a different standard than that which is applied in 22 23 the Second Circuit under Bouboulis v. Transport Workers Union of American 442 F.3d 55 (2006), namely that the plan documents 24 25 contain specific written language that is reasonably

## VERITEXT REPORTING COMPANY

1 susceptible to interpretation as a promise to vest benefits.
2 Language quoted from Devlin v. Empire Blue Cross and Blue
3 Shield 274 F.3d 7684 (2001). Instead, what I would be doing
4 would be, in essence, reversing the majority's conclusion in
5 the en banc Sprague opinion that there was no ambiguity in the
6 relevant documents. And that, in fact, it was clearly
7 understood that GM had reserved the right to modify.

8 Based on the analysis of the record, which I believe 9 is one that is clearly pointed out as such by the descent of 10 Chief Judge Martin in that case, I don't believe there's any 11 difference as far as how the Sprague Court and the Second 12 Circuit would review the underlying documents.

In any event, I believe that that portion of the 13 report that went beyond my charge or my assignment to the 14 committee, since it, in essence, sought to reargue my earlier 15 16 ruling, and in addition sought to suggest that the assumption 17 by Delphi pursuant to the master separation agreement, which appears at Exhibit 90 in the U.S. Employee Matter's Agreement, 18 19 which was referred to there and appears in here most readily at 20 supplemental Exhibit 4, provided for the transfer to Delphi and 21 the assumption by Delphi of GM's legal responsibilities for OPEB claims. 22

23 My conclusion was in February and is now that in 24 assuming such legal responsibilities at the time, Delphi and GM 25 were both fully aware of the Sprague decision, which predated

these agreements which found that GM has no legal 1 2 responsibilities in respect to these claims. And in light of 3 the clear evidence that all of Delphi's plans and all of GM's plans, at least since 1985, contained a clear unambiguous 4 reservation of the right to terminate or plan documents contain 5 such reservation that I cannot ignore the context of the 6 Spraque decision as underlying the parameters of what Delphi 7 adequately assumed and what GM transferred to it." 8

9 I will submit to Your Honor, that on reconsideration, 10 Judge Drain went even further then the bench opinion. And I 11 submit to Your Honor that it's incontestable that GM had the 12 right and has the right to modify, terminate, any of these 13 welfare plans. And in that context, Your Honor, then GM is not 14 subject to 1114 and there is no need for a retiree's committee.

As to the -- Your Honor's question with respect to 15 the salaried OPEB plan and the pension plans, the pension plans 16 17 will be assumed by New GM and the salaried retiree plans, as modified, will be assumed by New GM. There are cuts being 18 19 made, Your Honor. These are cuts, and as we pointed out in our 20 papers, since 2002 we outlined the various changes that have 21 been made by GM in these particular plans which increase the cost to the employees from something like twenty-four percent 22 23 to forty-one percent over that decade. And these changes were made unilaterally, Your Honor, by GM and there's never been in 24 25 that period in time an action by any salaried retiree

## VERITEXT REPORTING COMPANY

516-608-2400

contesting that that was a violation of vested benefits in any
 way, shape or form.

3	THE COURT: Pause, please, Mr. Miller. Let me get it
4	straight. I take it, for the retirees that we're talking about
5	here, they have rights of essentially three times. They have
6	pensions, which if I heard you right, are being taken over if
7	the 363 is approved by New GM and would remain unchanged. Then
8	they have a number two, health, and number three, insurance,
9	which would be taken over by the New GM by the modified form in
10	which they were modified before the filing date?
11	MR. MILLER: Yes, Your Honor.
12	THE COURT: Okay.
13	MR. MILLER: Now, the pension plan
14	THE COURT: And pause, please; a follow-up. Are
15	there any changes contemplated beyond those that were
16	announced
17	MR. MILLER: Not currently.
18	THE COURT: prior to the filing date?
19	MR. MILLER: Not currently. But I point out, Your
20	Honor, the pension plan is a defined benefits plan. The
21	which is a qualified plan. The welfare plans are not
22	qualified. These are discretionary plans with GM.
23	THE COURT: Okay. Continue, please.
24	MR. MILLER: Also, Your Honor, in the March 11th oral
25	decision, subsequent oral decision by Judge Drain, he likewise

## VERITEXT REPORTING COMPANY

82 deals with 1114(1). And he says very specifically in there, 1 2 Your Honor, that there is no indication whatsoever that 3 Congress intended to change the applicability of 1114 when it adopted 1114(1). In fact, there was nothing in the 4 congressional record. There is no indication whatsoever that 5 Congress was changing the laws that existed prior to the 6 adoption of 1114(1), and I think it was in 2005. 7 So the law is, Your Honor, that if a welfare plan is 8 subject to unilateral termination or modification, then 1114 9 10 doesn't apply. 11 Now, in connection, Your Honor, with discussions with the company, there's nothing holding back counsel and his group 12 from contacting GM. You don't need a retiree committee to do 13 that. There can be discussions and there is actually, a, as I 14 understand it, Your Honor, a salaried retirees' committee of 15 16 some type that does periodically discuss these issues with GM. So we come back to the bottom line issue, Your Honor. 17 Is 1114 applicable to these particular welfare plans? Judge 18 19 Drain, in his very comprehensive bench opinion said, no. 20 Subsequently, in his consideration of the report of that 21 committee which was appointed for a specific purpose, he reiterated that. He also went further, Your Honor, and said 22 23 that the Second Circuit, at least in his opinion, would not vary at all from the Spraque decision. And we would submit to 24 Your Honor the Sprague decision should be binding. Yes, it's 25

## VERITEXT REPORTING COMPANY

516-608-2400

binding on the 114 plaintiffs in that action, but when you look at the issues that were litigated in that case, they are precisely the issues that would come up here: did GM have the right to unilaterally terminate or modify?

The Second Circuit en banc, as Your Honor pointed 5 out, nature as majority, on certain issues, and 1011, on other 6 issues, found that GM had that right. And all of the plans, 7 Your Honor, had the reservation of that right. And it's been 8 consistent. And in that context, Your Honor, there should be 9 no retiree committee in this case which would just simply add 10 11 more cost. And as Your Honor pointed out in your decision last Tuesday, all that means is you're transferring more costs to 12 13 the general creditors. And in that context, Your Honor, we submit there should be no committee. 14

15 THE COURT: All right. Thank you. Mr. Mayer, 16 creditors' committee?

MR. MAYER: Thank you, Your Honor. Tom Mayer for the 17 official committee of unsecured creditors. We echo the 18 19 debtors' view that because the contract provides for modification at GM's will, I don't mean to minimize the 20 21 hardship that a termination or modification at the debtors' option may impose on individuals but that's the agreement they 22 23 have; that's the effect of the agreement. And with respect to the Sixth Circuit versus Second Circuit, if I may pick up on a 24 comment Your Honor made, one of the unfortunate results of 25

## VERITEXT REPORTING COMPANY

516-608-2400

going a different way here is to take a decision on these 1 2 precise documents and say the Sixth Circuit got wrong looking 3 at the documents before it. I think perhaps Your Honor was referring to a resonance to your earlier decision on the Third 4 Circuit. Sixth Circuit, it's not just that it's interpreting 5 ERISA, it's interpreting these documents. And to seek a 6 different decision in this Court when the Sixth Circuit has 7 looked at these documents, I think would be very unfortunate. 8 But that being said, there's one other major point that is sort 9 of the elephant in the room that is being overlooked and was 10 critical in the Chrysler case where we were involved, who are 11 12 the negotiations with, Your Honor? A statement has been made that "GM" is cutting its

13 benefits by two-thirds. Who's going to pay the one-third 14 that's left? It's New GM. The elephant in the room is the 15 16 government. The government is the owner of New GM and any 17 relief that this committee is seeking is going to have to be paid by New GM. That's the only entity that's going to have 18 19 any plans going forward. That's the only entity that's going 20 to be set up to pay retiree medical benefits going forward. 21 Any discussion has to be with New GM.

And if I may go back to an issue, Your Honor, at the very beginning of this hearing as a shout point at 1114 and there is a nay point at 1113. We are not in the shout section, no one has moved to terminate or modify retiree medical

benefits. Largely because no -- the debtor has nothing, the
 committee does not think that's necessary.

3 If you're in the nay part of 1114, and this is where we start diverging from Delphi with respect to the need for any 4 committee in the first play, the fact of the matter is these 5 negotiations aren't with Old GM. They're with New GM. And I 6 think the Court should take that into account just as Judge 7 Gonzalez did in conjunction with the Chrysler decision where we 8 had a very similar set of arguments, and Judge Gonzalez 9 basically said, "Look, your discussion with new co." And 1114 10 11 is not set up to facilitate a third party's discussions with an 12 acquirer. It is the acquirer who is going to make the decisions here. That's the reality and I think that Your Honor 13 can take account of that in determining in whether you should 14 exercise discretion to appoint a committee here. Because I 15 16 think that's the elephant in the room.

We cited to the Chrysler transcript. We did not include a copy of it in our pleading because we called chambers and was told that because that transcript had not been made an official record yet, it was not appropriate for us to provide copies to the world by attaching it to our pleadings. I have copies here if you want --TZIPPY2 14900

24THE COURT: This is what? For the protection of25court reporters? Because it's a public document.

86 MR. MILLER: Well, yes, Your Honor. I think that's 1 2 exactly what it is. I have copies here. I'm happy to hand 3 them out. THE COURT: Well, I must say, the most important 4 thing is to get one to Mr. Goteiner because I thought I was 5 allowed to read that transcript and I read the Gonzalez 6 7 transcript. MR. MILLER: I'm happy to provide it and I apologize 8 for not having done so but we were given instructions. 9 THE COURT: Well, I think we've got to get a copy to 10 11 Mr. Goteiner. I mean, you cited that transcript in your brief, 12 if I recall, at the end as your last point. Didn't you, Mr. Miller. 13 MR. MILLER: Yes, Your Honor. I did so and as I said 14 I apologize for not having attached it but we were told by 15 16 chambers, because of the court reporter's rules, that we 17 couldn't make copies available to everybody. THE COURT: Well, I'm sorry. I didn't know that 18 19 chambers told you that. Mr. Goteiner should have been given it 20 before now and I'm going to take a recess to allow him to 21 comment on it, if he wants to, before we're all done. MR. MILLER: Certain. 22 THE COURT: I'm sorry. Sometimes my chambers tells 23 people things that I never know about and they don't have the 24 same sensitivities that I do. 25 There are rules to protect

## VERITEXT REPORTING COMPANY

516-608-2400

87 court reporters and sometimes those rules just have to be 1 2 trumped. Okay. 3 MR. MILLER: I have nothing further. THE COURT: All right. Does anybody want to be heard 4 before I give Mr. Goteiner a chance to reply? No. Mr. 5 Goteiner, your option. Would you like me to take a recess now 6 to give you a chance to read it? The Gonzalez decision? 7 MR. GOTEINER: Well --8 THE COURT: On the one hand it was referred to in Mr. 9 Miller's brief or in his firm's brief, I forgot whether he was 10 11 a signer, but on the other hand, the underlying transcript 12 wasn't there. MR. GOTEINER: Your Honor, if I may, might I respond 13 for a few minutes to arguments --14 THE COURT: Certainly. 15 16 MR. GOTEINER: -- and then take a recess? THE COURT: Yes. 17 MR. GOTEINER: Okay. Well, the one overarching 18 19 argument that has not been dealt with is the 1114 process and 20 that what's gone on in some of the decisions and what debtors 21 and creditor committee wants to do is to turn this into a summary judgment determination. It's too premature for that. 22 23 And you know it's premature when they get back to Sprague. I 24 also just read Drain's -- Judge Drain's decision or transcript 25 and he even points out that he's clear with respect to all the

plans, at least since 1985. So what happens to the plans 1 2 before 1985? So, there's a large number of retirees who come 3 within that time period. Judge Drain starts talking about no ambiguity but it's not a factual issue only, Your Honor. And 4 this is -- unfortunately, we have to go back and take a look at 5 the decisions but Devlin -- it's a legal issue. The question 6 is, what would the Devlin court decide as to whether it was 7 ambiguous. We respectfully submit that Devlin, again, not 8 cited to except in Judge Drain's decision but with no analysis, 9 10 makes it real clear that under Second Circuit analysis, Judge 11 Martin was right; it was ambiguous.

And the notion of making a decision at this point and 12 totally sidestepping Congress' provision of an 1114 proceeding 13 because debtor suggests it's going to be more money, I think 14 absolutely flies in the face of what Congress intended 15 16 particularly when you're talking about billions of dollars of 17 benefits to people who truly -- this really is the archetypical situation where you have widows and orphans. And it's just --18 19 it's grossly unfair. But putting aside fairness and equity, it flies in the face of 1114. That's precisely what Congress 20 21 wanted to avoid; a quickly determined summary judgment determination without giving the retirees a chance to sit down 22 23 and at least be the assistant captain of their fate. That is not what Congress had in mind and the notion of having an 24 25 informal ad hoc committee without portfolio as opposed to an

## VERITEXT REPORTING COMPANY

1114 committee, I suggest is absurd. And again, flies in the
 face of what 1114 does.

3 THE COURT: Pause please, Mr. Goteiner. I didn't want to interrupt you when you made the point. You pointed out 4 that Judge Drain's decision said, in substance, I don't 5 remember the exact words, at least since 1985 retirees had been 6 told that the company reserved the right to change the welfare 7 plans. Do you know how many retirees there are who retired 8 before 1985 and, if I'm allowed to ask a compound question, how 9 many of them aren't sixty-five where they would get Medicare 10 11 rights and therefore their medical needs would be greater than they would be if you got an entitlement to Medicare? 12 MR. GOTEINER: I do not know that number. I do not 13 know that number. And as --14 THE COURT: That's almost twenty-five years ago. 15 MR. GOTEINER: Oh, I understand. I understand. 16 I don't know that number but there are other rights as well. 17 There's life insurance, health bene -- you know, health 18 19 benefits might -- that would be an issue, I understand that but 20 if there's life insurance issues. So, all I'm saying is that 21 there's ambiguity there as well. And when you look at Judge Martin's decision, I'm not trying to hold close to my bosom the 22 23 descending opinion for all purposes. But the point is, for purposes of Second Circuit analysis, it bears close reading. 24 Judge Martin pointed out how some of the materials were 25

## VERITEXT REPORTING COMPANY

516-608-2400

deceptive. So, yes, the majority opinion decided it was 1 unambiguous under the Wise standard. That is not, I 2 3 respectfully submit, what the Second Circuit would do, not withstanding Judge Drain's view of it in this transcript. 4 But again, that issue is so premature to what 1114 is 5 all about but what is does underlie is how this would be 6 singularly inappropriate, where you have that kind of 7 ambiguity, that kind of dissension about what these plan 8 documents mean and decide the issue now and say no 1114 9 committee because it's going to cost the debtor a few bucks 10 11 compared to the billions that are at issue for these people. It 12 doesn't make sense. And I respectfully submit is not consistent with what the Second Circuit does. 13 And there may be vested benefits. I know the 14 debtor's counsel's saying there's no vested benefits. That's 15 16 another issue. It could well be, depending upon how the Second Circuit would rule on whether there was sufficient ambiguity, 17 that they would find vested benefits. If the Second Circuit 18 19 found or agreed with Judge Martin that there was, for instance, 20 deception or at least unclarity, I think the Second Circuit 21 would come out differently. And that's what, respectfully submitted, Your Honor has to grapple with. But again, that's 22 23 for a different day. There's been enough of a showing today and in the papers and in everything that even Judge Drain said 24 25 in hi supplement, to make it clear this is singularly

## VERITEXT REPORTING COMPANY

91 unappropriate for the kind of judgment that defendants want 1 2 entered today, given what's at risk. 3 So it all -- this is more than just mother and apple pie. It really has to do with the practicalities of how these 4 decisions should be made and they can be made very quickly. 5 Your Honor could put a time period on it. And within a couple 6 of days, the trustee can select a committee and the parties, 7 within a few more days after that, can sit down and start to 8 talk. The down side is so miniscule compared to what's at 9 stake that I submit that cost benefit analysis mitigates very 10 11 heavily in terms of appointing the committee. And I think that covers all issues except this 12 1411(1). The 1411(1) statute is real clear. There's no doubt 13 about it. And I see a lot of evasion --14 THE COURT: Well, isn't it just as ambiguous as 15 16 1114(d) is? 17 MR. GOTEINER: Well, Your Honor, okay --THE COURT: I mean, neither one -- each of them could 18 19 have said not withstanding any provision of contract that gives 20 the company greater rights and then proceed into what it says. 21 MR. GOTEINER: Your Honor --THE COURT: Conversely, I suppose, it could've taken 22 23 the opposite view. But one of the practical problems that guys in my position have is we're sworn to follow instructions from 24 25 Congress and Congress sometimes doesn't do its job as well as

1 it might.

2	MR. GOTEINER: Your Honor, I agree with that
3	obviously but then we have things to help judges and we have a
4	series of cases from the early 80s from the U.S. Supreme Court.
5	I think one of them was called Cannon in dealing at Touche
6	Ross in dealing with how you interpret congressional statute
7	when there is preexisting law. And the Congress is presumed to
8	understand what the law was and yet they didn't put in that
9	little fillip at the end of the statute, why? Because it was
10	good enough. It said any benefit. Congress is presumed to
11	know there is such a thing as amendable benefits. And yes, I
12	read Judge Drain's point that there was even a proposal to deal
13	with Doxell (ph.); I saw that. But that Congress rejects that
14	when Congress has language like any benefit, when the costs are
15	so minimal, I think speaks volumes. And that is that
16	stubborn and irreducible fact and logic is something that the
17	defendant that the debtors have not dealt with.
18	THE COURT: When Congress wanted to overrule Lilly
19	Ledbetter, it did so pretty clearly, didn't it?
20	MR. GOTEINER: Sometimes they do. Sometimes they do.
21	But when they don't, all you can do is go back to Sutherland, I
22	think that's the treatise, and go back to the Supreme Court
23	cases that talk about how you interpret statutory language when
24	there is existing law and when there is law that may be
25	inconsistent. And again, that discussion has not taken place

# VERITEXT REPORTING COMPANY

516-608-2400

93 enough here. So, I think with -- that all the practicalities, 1 2 all the legislative interpretations that we've been discussing, 3 point to the appointment of an 1114 committee. And again, the cost benefit analysis says this very clearly. And I'll stop 4 there, I'll take a --5 THE COURT: I don't want you quite to stop, Mr. 6 Goteiner --7 MR. GOTEINER: Okay. 8 THE COURT: -- because on the wholly discretionary 9 point, I guess if 1114 doesn't apply at all, people can debate 10 11 about whether I'm even supposed to take a discretionary analysis, but assume I do. Toward the end of its brief, the 12 creditors committee pointed out that negotiation is with the 13 wrong entity and that the negotiation would have to be with 14 Treasury or new GM or somebody other than the debtor in 15 16 possession. And that brings up Judge Gonzalez's holding and 17 I'm at a mind that I should give you a chance to comment on that if you want it. And since I'm going to have to take at 18 least a recess to do this anyway, just to go through what we 19 20 have, I wonder if you would like to reserve the right to say 21 something before I finally rule during a recess to take a look at Gonzalez's decision and tell me if you thought Arthur 22 23 Gonzalez got it wrong. MR. GOTEINER: I'll do that, Your Honor, and you 24 25 know, again, I will do that. I just want to make one more

	94
1	point. That which is subsumed in my prior points, it's
2	really not necessary for this Court to say the Sixth Circuit
3	got it wrong. Again, not today. It's just not. But the only
4	thing I ask Your Honor to consider in making this decision, you
5	know debtors speak with certainty that hasn't been seen since
6	the twelfth century about what amendable benefits are and
7	whether they exist here and that is just not true. And no
8	matter how many times you say it, that it's clear, even if
9	Judge Drain says he doesn't think there's ambiguity, that
10	doesn't make it true. It is not certain here. And that is
11	another point that's subsumed in Congress's wisdom about 1114
12	and I'll take a look at the transcript.
13	THE COURT: Okay. Thank you.
14	MR. GOTEINER: Thank you.
15	THE COURT: Folks, I'd like you to take an early
16	lunch and be back by 12:30. I can't guarantee you that I'll be
17	ready by then but hopefully you can get something to eat
18	between now and then. Give you enough time to both get a
19	sandwich down and also read Judge Gonzalez's transcript, Mr.
20	Goteiner. And then I'll try to give you a decision after that
21	lunch break but not before giving Mr. Goteiner another chance
22	to be heard if he wants to. Okay, we're in recess.
23	(Recess from 11:30 a.m. until 1:37 p.m.)
24	THE COURT: I apologize for keeping you all waiting.
25	Before I come to a final decision, I want to give you, Mr.

	95
1	Goteiner, an opportunity to comment on Judge Gonzalez's
2	decision since it was noted by the creditors' committee and is
3	at least arguably fairly relevant to this determination.
4	MR. GOTEINER: Thank you, Your Honor. Neil Goteiner,
5	Farella Braun + Martel, for the General Motors Retirees
6	Association. I had a chance to take a look at the transcript.
7	I would just note a couple of distinctions and then get back to
8	a basic point. Of course, here we do know that GM has
9	announced that there's going to be cuts in the order of
10	magnitude of two-thirds. And we also know that there have been
11	prepetition cuts as well in the six-month period.
12	So were we to abandon at this point the 1114 process,
13	you would be what would be happening is that the committee
14	would be giving up whatever rights it has under 1114. It would
15	lose leverage because, of course, New GM would not be a debtor.
16	And but I did go beyond that, obviously. I took a
17	look at the practicalities that Judge Gonzalez was addressing,
18	and of course there are practicalities, but here it's not the
19	same sequence and it's not the same or different
20	personalities, completely different personalities, as in
21	Chrysler.
22	You will have committee speaking with people who are
23	going to be involved to some degree in New GM. And lots of
24	things can happen in these negotiations. Yes, it's possible
25	that the representatives of GM who will be in the New GM will

simply say okay, hats have changed, we reject what we agreed to 1 2 with you. But it's quite possible that that won't happen and 3 that there will be some agreements that are reached with the 1114 committee participating that, in the negotiation process 4 and the relationships that develop during negotiations, will be 5 passed on to some of the same people in the New GM and they 6 will abide by what they agreed as they negotiated as part of 7 the 1114 process. 8

9 At least there's no reason to assume that will not 10 happen. And, indeed, I think the way even the creditors' 11 committee phrased it is that this committee may not be the 12 appropriate person -- the appropriate party to negotiate now. 13 And anything is possible, but the atmospherics and the elements 14 are quite different here than in Chrysler. And there's a 15 stronger argument/brief of appointing an 1114 committee.

And that's what 1114 says should happen in any event.
So that's my submission.

THE COURT: Just one question before I give anyone 18 19 else a chance to comment, if they wish, because I like your 20 idea of being realistic. Earlier in your remarks just a moment ago you said you were concerned about giving up leverage. 21 Unrealistic to know that leverage tends to be something that 22 23 people think about all the time in large bankruptcy cases, maybe smaller ones too. But to what extent, in your view, 24 should I, as a judge who's supposed to call balls and strikes 25

## VERITEXT REPORTING COMPANY

97 the way he sees them, be guided by giving one party or another 1 2 leverage against the party with the different perspective? 3 MR. GOTEINER: Well, leverage is whatever is provided, and I use leverage -- I'm not backing away from the 4 word "leverage", it's a reasonable word to use, but the whole 5 panoply of dynamics that are embraced by 1114, because it has 6 to be equitable and fair, that's the leverage I'm talking 7 about. 8 9 So, and that, by the way -- leverages goes both ways, 10 Your Honor, because my clients, at the end of the day, have far less leverage than the debtor has. So it's far worse, from my 11 clients' point of view, than a two-way street. 12 13 THE COURT: Okay. MR. GOTEINER: So that is why, I respectfully submit, 14 Your Honor should have not a moment's pause that there's any 15 16 untoward leverage given to the 1114 committee. This is 17 precisely what 1114 contemplated; no more. THE COURT: Okay. Thank you. I know we've been at 18 19 this for a long time, but if either the debtors or the 20 creditors' committee who brought up Judge Gonzalez's decision 21 want to be heard before I take another brief recess, I'll 22 permit that. Mr. Mayer? 23 MR. MAYER: Yes, Your Honor, thank you. Unless you have questions, I don't think I have anything to add. 24 25 THE COURT: Okay. Mr. Miller?

## VERITEXT REPORTING COMPANY

516-608-2400

98 MR. MILLER: And if Your Honor please, I would just 1 2 point out, in order for --3 THE COURT: You're very tall, Mr. Miller. Can you either lift that microphone up or come to the main lectern? 4 MR. MILLER: Thank you, Your Honor. I would just 5 point out, in order for this committee to have any effect and 6 to provide the leverage which counsel says they need, you would 7 have to determine that GM does not have the right to modify or 8 terminate any of these claims. And the record is, I think, 9 crystal clear that GM has the right to terminate or modify any 10 11 of these claims. 12 And what we're talking about, Your Honor, is a situation which hopefully, in my view, is a few days. The sale 13 hearing is scheduled for Tuesday. Hopefully we will finish it 14 next week. It's important that this company emerges -- these 15 assets emerge as part of a New GM that's going to have any 16 chance of success. 17 Counsel's talking about give the U.S. Trustee three 18 19 or four days to appoint a committee, the committee's got to 20 organize, it's going to have to hire professionals, probably a 21 financial advisor, a statistician, and so on. By the time all of that happens, Your Honor, hopefully, if we're right, and 22 23 Your Honor approves it, the transaction will have been consummated. 24 25 So the leverage that is so important, and which is

1 the only purpose for which this motion has been brought, will 2 be of no avail because New GM will be off as a new OEM 3 manufacturing cars and trucks without the stigma, if I can use 4 that word, of bankruptcy, which is the objective for this 5 transaction.

6 So the negotiations, Your Honor, are going to be with 7 the debtor which is going forward with the plan of liquidation. 8 And in the context of the liquidation, even if 1114 applied, 9 it's going to have to be rejected under 1114 because there's 10 not going to be any ongoing company.

So what we're down to, Your Honor, and Your Honor put your finger on it, is leverage, that if Your Honor would grant this motion and appoint a retirees' committee, the next thing that will happen is a request to defer the 363 transaction, which affects a lot of parties-in-interest and affects all of the creditors and affects the ability of this company to survive going forward.

So there's a real downside, Your Honor, to this motion, notwithstanding what counsel says.

THE COURT: All right. Thank you. All right, folks, I've made you wait a long time. I'm going to ask you now to sit in place and wait with me here in the courtroom for a minute.

24 (Pause)

25

THE COURT: Okay, folks once more I apologize for

1 keeping you all waiting. In this contested matter in a case 2 under Chapter 11 of the Code, the General Motors Retiree 3 Association, which I'll refer to as the "Retirees Association", 4 moves for an order pursuant to Section 1114 of the Code, 5 appointing an official 1114 committee. Its motion is opposed 6 by the debtors and the creditors' committee. 7 The motion is denied, though without prejudice to

reconsideration at a later time under appropriate circumstances, largely in accordance with the ruling by my colleague Judge Drain in Delphi on March 10 of this year. The following are my findings of fact, conclusions of law and bases for the exercise of my discretion in connection with this determination.

Turning first to my findings of fact, as facts I find 14 that GM offers retiree benefits to salaried retirees who 15 started work before 1993 under two plans: the GM Salaried 16 Health Care Program, which I'll refer to as the "Health Care 17 Program", which includes medical, prescription drug, dental and 18 19 vision care; and the GM Life and Disability Benefits Program, 20 which I'll call the "Life Insurance Program", which provides 21 life insurance benefits. I refer to the two programs together as the "Welfare Plans". 22

The inference is compelling, and I so find, that the benefits offered under the Welfare Plans are quite important to many retirees, particularly those who are still under sixty-

## VERITEXT REPORTING COMPANY

1 five and who are ineligible for Medicare.

2 The salaried retirees are separate and apart from 3 hourly retirees whose interests have been represented by the UAW or other unions. At this point, they have no officially 4 designated representative, though, from everything I've seen so 5 far, the Retirees Association has been a forceful and effective 6 advocate on their behalf. And to the extent any retirees might 7 have unsecured claims, their interests in that regard would be 8 well-protected by the official creditors' committee. 9

10 Retirees are required to reenroll in these plans at 11 the beginning of each calendar year, prior to which GM provides 12 enrollment forms accompanied by an enrollment brochure explaining changes in benefits for the upcoming year. 13 The debtors assert that these brochures have contained an 14 unequivocal statement of GM's right to amend, modify or 15 16 terminate the plans. But that was not always so. The Retirees 17 Association asserts that, at least between 1974 and 1987, salaried retirees were performing under unilateral contracts 18 19 that guaranteed lifetime benefits upon retirement without 20 having also received statements reserving the right to amend or 21 terminate. And the Retirees Association points to specific language in benefit handbooks that it asserts could reasonably 22 23 be interpreted as a promise to provide such benefits. However, these matters were a subject of litigation, extensive 24 25 litigation, going all the way up to an en banc decision of the

## VERITEXT REPORTING COMPANY

516-608-2400

Sixth Circuit Court of Appeals, which I'll describe more fully
 in my conclusions of law.

3 GM effected changes in its retiree Welfare Plans from time to time. Prior to these Chapter 11 cases, three changes 4 were made that are at least arguably significant. On July 5 2008, effective January 1, 2009, GM eliminated medical, dental, 6 vision and extended care coverage for salaried retirees, their 7 surviving spouses and their dependents age sixty-five or older. 8 In September 2008, GM changed the plans to comply with a cap on 9 salaried retiree health care; it was approved by the GM board 10 11 of directors in 2007. And in February of this year, GM accelerated a planned reduction in salaried retiree life 12 insurance, which had previously been announced in 2006 and was 13 going to be effective in 2017, in respect to whose details are 14 not material here, effective May 1, 2009. All but the third 15 change, the one announced in February and effective May 1, were 16 17 communicated to salaried retirees more than six months prior to the filing date, a time which is arguably significant to 18

19 parties' rights.

GM has not proposed any further changes in either of the plans, at least insofar as it would implement them. And under the proposed sale agreement, assuming, of course, that it is approved, and without prejudging that issue in any way, the purchaser knew GM will assume responsibility for them going forward but as modified prepetition in the manner I just

1 described to provide them in lesser amounts.

2 Turning now to my conclusions of law and bases for 3 the exercise of my discretion, as usual I start with the words of the statute. Section 1114 of the Code provides, in relevant 4 part, in its subsection (d), "The Court, upon motion by any 5 party-in-interest, and after notice and a hearing, shall order 6 the appointment of a committee of retired employees if the 7 debtor seeks to modify or not pay the retiree benefits or if 8 the Court otherwise determines that it is appropriate to serve 9 as the authorized representative, under this section, of those 10 11 persons receiving any retiree benefits not covered by a 12 collective bargaining agreement. The United States Trustee shall appoint any such committee." 13

Thus, under the statute, the Court must order the 14 appointment of the committee if the debtor seeks to modify or 15 16 not pay the retiree benefits. Alternatively, it may order the 17 appointment if the Court otherwise determines that it's appropriate to serve as a bargaining representative for 18 retirees not covered by a collective bargaining agreement. 19 The Retirees Association contends that Section 1114 20 21 of the Code applies to what the debtors did prepetition and would do post-petition here and that I thus should appoint a 22 23 retirees' committee under each of the two separate regimes under which a retirees' committee should be appointed. 24 Ι 25 disagree with the Retirees Association with respect to the

#### VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

1 first, and for the most part with respect to the second, 2 although I think I should reserve room to have the ability 3 going forward to make a discretionary limited appointment if 4 circumstances not present now but in the future later warrant.

Turning to the matter of mandatory appointment, the 5 backdrop as to the mandatory appointment issue is the fact 6 that, as discussed in my findings of fact above, at some point 7 in time GM started to tell its employees, who were of course 8 its prospective retirees, that their welfare plans could be 9 amended, modified or terminated. GM and the creditors' 10 11 committee contend that Section 1114 doesn't apply when a debtor simply exercises the rights to modify or terminate that it has 12 outside of bankruptcy. But the Retirees Association, in 13 contrast, contends that 1114 applies to any modification or 14 termination of retiree rights under a welfare plan, whether 15 such termination or modification is authorized under non-16 17 bankruptcy law or not. And thus, in substance, it argues that Section 1114 improves upon non-bankruptcy law rights. 18

19 Though Sections 1114(d), (e) and (l) are, in my view, 20 ambiguous, and the cases are somewhat split in this area, I 21 must agree with GM and the creditors' committee. The Retirees 22 Association says at page 9 of its motion that, quote, "A few 23 courts have held, on a divided issue of law where other courts 24 disagree, that this Section 1114 does not protect in bankruptcy 25 benefits the Debtor retained the unfettered right to amend

outside of bankruptcy", quote. But I can't regard that as a fully accurate description of the state of the law, especially in this circuit and district. In fact, I think it's exactly the opposite.

The Retirees Association cites the Second Circuit's 5 decision in LTV Steel Company v. United Mine Workers, In re 6 Chateaugay Corporation, 945 F.2d 1205 (2nd Cir. 1991), as being 7 one of the cases that holds against the retirement committee on 8 this issue. And, of course, Chateaugay does. Chateaugay says, 9 in fact, "The Bankruptcy Protection Act", which was the statute 10 11 by which 1114's predecessor came into being, and from which 1114 evolved, "requires that during reorganization the parties 12 continue to provide benefits according to the plan in effect at 13 the time of the declaration of bankruptcy. The Bankruptcy 14 Protection Act does not alter the terms of that plan." 945 15 16 F.2d at 1209. And that's exactly why Judge Restani dissented in that case. 17

But while acknowledging Chateaugay, the Retirees 18 19 Association doesn't give enough recognition, in my view, to the fact that Chateaugay is a controlling decision of the Second 20 21 Circuit, binding on me and the other judges in this circuit. Likewise, the Retirees Association cites decisions of a former 22 23 visiting judge who sat in this district, and a district who affirmed him, in the case of Ames Department Stores, 24 insufficient attention to the fact that those decisions were, 25

1 with respect, strikingly lacking in consideration of the 2 applicable case law. They can only be read as having been 3 roundly criticized by this circuit in a subsequent decision in 4 Ames (see 76 F.3d 66 at page 71), though not on direct appeal, 5 and while the thoughts were expressed in dictum.

The district court decision, which is available 6 electronically but isn't published, expressed its conclusions 7 in what some might say was an ipse dixit fashion, without 8 parsing the words of the statute or relying upon any case law, 9 which at that point in time included about nine cases, as 10 11 observed by Judge Lifland in Ionosphere Clubs, 134 B.R. 515 at 12 page 517 (1991). Unfortunately, the decision of the bankruptcy 13 court was equally thin.

In that later Ames decision, the circuit held, "We 14 think that there's a substantial room for disagreement with the 15 16 categorical holding in the district court's orders that the 17 debtor was required to follow the requirements of Section 1114;" reading from page 71, 76 F.3d at 71. And while the 18 19 circuit in that Ames decision merely held that it couldn't be 20 said that the argument for the debtor's interpretation was 21 frivolous, that being an appeal of a sanctions determination or a denial of fees for pursuing a frivolous argument, and while 22 23 the circuit expressly stated that it wasn't examining the, quote, "present status of the pertinent law", quote, id at 71, 24 it was hardly an endorsement of the lower court's views. 25 In

#### VERITEXT REPORTING COMPANY

516-608-2400

1 fact, the circuit made a point to cite Chateaugay and Doskocil, 2 Federated Department Stores, New Value, and Collier as examples 3 of authorities that had gone the other way. And it went on to 4 observe that Collier -- Collier on Bankruptcy, of course --5 provides that Section 1114 does not, however, protect retiree 6 benefits beyond the contractual obligations of the debtor.

7 And the circuit observed, with respect to the 8 bankruptcy court and district court Ames decisions upon which 9 the Retirees Association relies, not one of the foregoing 10 authorities was discussed or even mentioned by either the 11 bankruptcy court or the district court. More importantly, 12 neither court cited any interpretative authority that 13 conflicted with that above cited.

Now, make no mistake, I don't read that decision as having ruled in favor of the principle for which the debtors and the creditors' committee argue here. In fact, it expressly stated that it was not then ruling on the existing law. But what I think it very effectively does, if not conclusively so, is say that I shouldn't be relying on those lower court Ames decisions.

But perhaps most importantly, in its briefing on this motion the Retirees Association failed even to mention Judge Drain's decision in March of this year in Delphi, 2009 WL 637315 (Bankr. S.D.N.Y. Mar. 10, 2009), until the Retirees Association filed its reply. And even then the Retirees

#### VERITEXT REPORTING COMPANY

Association failed sufficiently, in my view, in that reply to 1 2 acknowledge all of the things Judge Drain said and to discuss 3 his substantive analysis before the retirees' committee properly commented on the relatively limited relief that Judge 4 Drain had ultimately granted in Delphi. Of course, the 5 Retirees Association made up for that in oral argument, but I 6 think Judge Drain's decision in Delphi is of great importance. 7 I've previously noted many times in writing my view 8 as to the importance of consistency in the decisions in the 9

bankruptcy court in this district and that I follow the decisions of the other bankruptcy judges in this district, in the absence of clear error. But when we're talking about the Delphi decision, I think that's feigned praise since, in my view, Judge Drain's analysis was plainly correct and, by far, the most comprehensive and well-reasoned of any of the decisions in the 1114 area.

17 I note, by the way, that when I talk of Judge Drain's decision, although I'm principally speaking of his decision of 18 19 March 10, there was a supplemental argument on or about March 20 11, as evidenced in a separate transcript to which I'll be 21 referring in a moment or two, and that getting one's arms around Judge Drain's Delphi rulings is best achieved by 22 consideration of both of the two decisions. 23 Judge Drain also dealt with the argument that I also 24

25 heard here, that Chateaugay was overruled by statute by the

inclusion of new Section 1114(1) in BAPCPA. Judge Drain disagreed, and so do I. As Judge Drain observed, Section 1114(1), however, does not specifically deal with the issue of plans modifiable as of right and could conceivably apply to pre-bankruptcy breaches by debtors in financial distress of vested rights.

7 More importantly, even if it does apply to modifiable plans, I do not view Section 1114(1), which applies to a 8 specific type of prepetition action, as overruling Doskocil and 9 the line of cases that follow it which apply to post-petition 10 11 actions. Nor does there appear to me to be any legislative history or other policy statements accompanying the 2005 12 amendment that would clearly set forth Congress's intention 13 generally in Section 1114(1) to override, beyond its specific 14 terms, the fundamental principle that bankruptcy does not give 15 16 new rights to individual parties-in-interest or to cut back on 17 the tenet set forth by the Supreme Court in Butner.

Now, I have not discussed the underlying principles 18 19 as thoroughly as Judge Drain did there. In this oral dictated 20 decision, I don't know if that's necessary or appropriate. But 21 I've carefully read Judge Drain's analysis and I concur in it in full, even putting aside the deference in respect to which I 22 23 give the decisions of my colleague judges. And since Chateaugay and Delphi are in alignment, I'm ruling in 24 accordance with each of them that Section 1114 doesn't apply to 25

employee benefit plans that are terminable or amendable unilaterally by the plan sponsor. Putting it another way, Section 1114 does not trump any agreement between a company and its employee that gives the company the right to amend or terminate a welfare plan.

Thus, in terms of arguably persuasive authority, 6 we're left only with the decision in Farmland Dairies. If one 7 were to look solely at the words of the statute, which, as I've 8 noted, is ambiguous, the Farmland Dairies view is not 9 necessarily an unreasonable one. But Farmland can't be 10 11 reasonable with the weight of authority in this area, only part 12 of which I've noted above, and Farmland Dairies is inconsistent with the law in this circuit and district. Of course, when I 13 speak of the weight of the authority I'm not counting noses; 14 I'm looking at it qualitatively and at what level it was 15 16 decided. That consideration is particularly relevant to 17 Chateaugay and Delphi. And, as I've noted, I regard Delphi as by far the most thoughtful and comprehensive decision in this 18 19 area. So for any retirees as to whom the debtor reserved the 20 right to modify before they retired, they don't have rights under 1114. 21

22 So then we get to Sprague. GM and the creditors' 23 committee each cite the Sixth Circuit's en banc decision in 24 Sprague v. General Motors Corp., 133 F.3d 388 (6th Cir. 1998), 25 as having ruled that the health care programs explicitly permit

#### VERITEXT REPORTING COMPANY

GM to unilaterally amend or terminate benefits under those 1 2 Sprague does hold that, although the Retirees programs. 3 Association is correct in noting that Sprague was a split decision and that it also isn't binding on me. And I agree 4 with the Retirees Association, and perhaps the debtors agree 5 with it as well -- I don't think they addressed it one way or 6 the other -- that, on a question of federal law, Second Circuit 7 law, and not Sixth Circuit law, controls in any area where the 8 law of the two circuits is inconsistent. 9

But Judge Drain ruled, and I concur, that, and I'm 10 11 quoting Judge Drain, "I continue to believe that the Sixth Circuit Sprague decision is one in which the Sixth Circuit at 12 length determined en banc that there was no ambiguity in 13 respect of GM's reservation of rights to modify at will its 14 welfare plans, and that, were I to conclude otherwise, I would 15 16 not be doing so by applying a different standard than that 17 which is applied in the Second Circuit under Bouboulis v. Transport Workers Union of America, 442 F.3d 55 (2nd Cir. 18 19 2006), namely, that the plan documents contained, quote, 20 'specific written language that is reasonably susceptible to 21 interpretation as a promise to vest benefits', end quote." I'm quoting from the transcript of the Delphi hearing of March 11, 22 23 2009, which probably should be read as a supplemental and second Delphi decision. See also the comments Judge Drain made 24 25 in the course of argument at page 11.

#### VERITEXT REPORTING COMPANY

1 And I recognize that sometimes judges say things in 2 oral argument that they don't mean or that they're throwing up 3 just to be devil's advocates, but from the context I believe 4 that Judge Drain meant it here. If you read the opinions, they 5 really are applying the same standard. They're basically 6 saying there was nothing ambiguous.

Now, when I use the words above, quote, "specific written language that is reasonably susceptible to interpretation as a promise", quote, those words being the words that Judge Drain used, they in turn were a quotation from Bouboulis, 442 F.3d at page 61. And the Bouboulis words, in turn, were a quotation from the Second Circuit's decision in Devlin v. Blue Cross and Blue Shield, 274 F.3d at 84.

So when I rely on Judge Drain's analysis in this area and I concur with it, it's very clear to me that he gave careful consideration to both Bouboulis and Devlin and made a knowing and accurate determination that there was no material difference between Second Circuit law and Sixth Circuit law in this regard.

Thus, at the risk of a slight repetition, stating a similar thing a different way, I find insufficient basis to conclude that the standard that the Sixth Circuit applied in Sprague would be materially different than the standard that the Second Circuit would apply.

Now, is the Sprague conclusion debatable under those

#### VERITEXT REPORTING COMPANY

25

1 standards? I think it plainly is. And if I were writing on a 2 clean slate, I think I might well have agreed with the Boyce 3 Martin dissent. But as to the issues upon which GM relies upon 4 it, Sprague was an eight-to-five decision as to the early 5 retirees, and a ten-to-three decision as to the general 6 retirees. And the general retirees' analysis is the one that's 7 more closely on point here.

A ten-to-three split isn't close, but once more I'd 8 agree that this isn't a counting game. Rather, I look at it 9 qualitatively and see things as Judge Drain commented on in 10 11 argument. Judge Drain observed, "You may agree with Judge 12 Martin, and maybe if one were writing on a clean slate one might agree with Judge Martin, but the Sixth Circuit ruled, and 13 I find it very hard for me, when there's no difference in the 14 15 standard, to say oh, the Sixth Circuit was wrong;" reading from 16 the March 11 transcript at page 11.

17 Where the circuit court, with ten judges no less, having ruled as it did with respect to general retirees, 18 19 addressing the same issues we have here, I think that as a 20 matter of stare decisis I should respect its ruling and follow 21 it. Folks, as is implied by what I just said, I note that 22 23 I'm doing so as a matter of stare decisis. I am not so ruling on the applicability of res judicata one way or the other, and 24 25 I'm not relying on the doctrine of res judicata. I have some

#### VERITEXT REPORTING COMPANY

reservations as to whether res judicata applies is not very similar to those Judge Drain had. But I don't need to reach that issue. In my view, Sprague and Delphi are so dramatically on point that they counsel the result I reach here on traditional bases of stare decisis. We have what we refer to in law school as the "blue Buick".

So now we get to the application of Section 1114(d). 7 Turning first to its mandatory portion, GM hasn't moved for 8 permission to change any retiree welfare plan benefits, which 9 is hardly surprising in light of its position that it doesn't 10 need court approval to do so and the case law that I described 11 12 above, and I'm going to follow that it has the right to unilaterally amend or terminate such benefits. As at least the 13 first portion of 1114 doesn't apply at all, if not the entirety 14 of 1114(d), or 1114 at all for that matter, there's no occasion 15 16 to apply the mandatory portion of Section 1114. So I'm going 17 to deny appointment insofar as it's premised on the contention that appointment is mandatory. 18

19 Turning now to discretionary appointment, though 20 appointment of a retiree committee isn't mandatory, I need also 21 to consider discretionary appointment. As I noted, Section 22 1114(d) provides that the Court shall order the appointment of 23 a committee of retired employees if the Court otherwise 24 determines that it is appropriate. One can make an argument 25 that if 1114 doesn't apply at all, there's no occasion to apply

the provision in 1114 providing discretionary authority either.
But I think the better view might be consistent with what Judge
Drain concluded in Delphi: that bankruptcy judges should have
the discretion to appoint a retirees' committee, especially if
its budget can be kept under control, in any instances where it
would really accomplish something.

I don't reach that issue today because I here do not 7 consider the appointment of a committee now to be necessary or 8 appropriate for retirees for whom GM has the right to amend or 9 terminate benefits, for, while I well understand the importance 10 11 of these kinds of benefits to any retiree, believe me I do, I 12 can't change retirees' non-bankruptcy rights. And there is no need to form a committee to argue or negotiate with respect to 13 entitlements under Section 1114(1) as that can be done by the 14 Retirees Association as an ad hoc committee with rights under 15 16 Section 1109. See In re Anchor Glass Container Corp., 342 B.R. 17 878 at page 882, Middle District of Florida 2005 decision by Judge Alex Paskay. 18

As Judge Paskay noted in that case, "Unlike Section 1114(e), which contemplates motions brought by, and the debtor negotiating with, an authorized representative, Section 1114(l), similar to Section 1114(d), depends upon a motion brought by a party-in-interest. Section 1114(l) does not require, nor does it contemplate, the appointment of a committee."

I also made a similar point when I considered the application of the Ad Hoc Committee of Family and Dissident Bondholders a couple of days ago. In most, if not all, cases under the Code, an ad hoc committee can be heard perfectly satisfactorily under 1109 without being designated as a formal official committee.

7 Similarly, I share concerns articulated by the creditors' committee as to unnecessary costs in this case. And 8 I also agree with another creditors' committee point, which, in 9 10 my view, is quite significant. Even assuming that New GM were 11 to be making further modifications in the future, assuming, of course, that I approve the 363 sale, all salaried retiree 12 benefits would be entirely New GM's responsibilities. Thus, 13 any modifications to such benefits would have to be negotiated 14 with New GM and/or the U.S. Treasury. 15

As Judge Gonzalez noted in Chrysler, "A retiree committee should be appointed only if it's necessary to negotiate with the debtors, not with a purchaser of the debtors' assets." See the transcript of Judge Gonzalez's May 14 hearing in Chrysler at page 35.

21 With all of that said, I can't rule out the 22 possibility that appointing a retirees' committee might be 23 desirable and thus appropriate to facilitate some kind of 24 negotiations in the future or any kind of a settlement, 25 including with respect to any appeal of the determination I'm

#### VERITEXT REPORTING COMPANY

1 making today, or in connection with some other matters where it 2 would bring something to the table beyond appearing and being 3 heard in a fashion for which it could already do that under 4 1109. That might be helpful, by way of example, to bind absent 5 parties or dissenters.

That appears to be the rationale upon which Judge 6 Drain allowed the formation of a committee, or one of them --7 the other isn't applicable here -- though with a limited 8 200,000 dollar budget. And if it turned out to be necessary or 9 desirable to do that here, I might be of a mind to do the same 10 11 thing if asked. But that isn't now necessary, if it ever will 12 be. For instance, I don't need a supplemental report of the type that Judge Drain did, and which was an element of the 13 limited appointment authority that he granted. I'll simply 14 note now that this ruling is without prejudice to any such 15 16 eventuality.

Accordingly, the motion is denied without prejudice to reconsideration in the event of an eventuality of the type I just described.

20 Mr. Miller, you or your folks are to settle an order 21 in accordance with this ruling at your earliest reasonable 22 convenience. 23 MR. MILLER: Yes, sir.

24THE COURT: All right, folks. Do we have any further25business for today?

## VERITEXT REPORTING COMPANY

	118
1	MR. MILLER: No, Your Honor.
2	THE COURT: All right, I want to thank you for
3	waiting as long as you did on the matter that I had taken under
4	advisement. We're adjourned for the day. Have a good day.
5	ALL: Thank you, Your Honor.
6	(Whereupon these proceedings were concluded at 2:25 p.m.)
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
	VERITEXT REPORTING COMPANY

			119
1			
2	I N D E X		
3			
4	RULINGS		
5	DESCRIPTION	PAGE	LINE
6	Debtors' motion for final order authorizing	30	20
7	debtors to pay pre-petition obligations to		
8	foreign creditors and authorizing and directing		
9	financial institutions to honor and process		
10	related checks and transfers granted		
11	Debtors' motion for final orders establishing	31	4
12	notification procedures regarding restrictions		
13	on certain transfers of interest in the debtor		
14	granted		
15	Debtors' motion for final order on cash	31	9
16	management granted		
17	Debtors' motion for authority to exercise a put	31	17
18	Debtors' motion to grant additional time to	31	23
19	file reports of financial information or to		
20	seek modification of reporting requirements grant	ced	
21	Debtors' application to retain Weil Gotshal	32	5
22	& Manges as attorneys nunc pro tunc to		
23	commencement date granted		
24			
25			

			120
1			
2	INDEX, cont'd		
3			
4	RULINGS		
5	DESCRIPTION	PAGE	LINE
6	Debtors' application to retain Jenner &	32	14
7	Block LLP pursuant to Section 327(e) as		
8	conflicts counsel and special corporate		
9	counsel granted		
10	Debtors' application to retain under Section	32	21
11	327(e) Honigman, Miller, Schwartz & Cohn, LLP		
12	as special counsel granted		
13	Debtors' application authorizing retention	33	2
14	and employment of The Garden City Group, Inc.		
15	as notice and claims agent nunc pro tunc to		
16	commencement date granted		
17	Debtors' motion seeking entry of final order	35	21
18	with respect to the debtors' essential supplier		
19	programs granted		
20	Motion of ad hoc committee of asbestos personal	52	12
21	injury claimants for order appointing a future		
22	asbestos personal injury claimant denied without		
23	prejudice		
24			
25			

			121
1			
2	I N D E X, cont'd		
3			
4	RULINGS		
5	DESCRIPTION	PAGE	LINE
6	Debtors' motion to retain AP Services LLC as	55	17
7	crisis managers and to designate Albert A. Koch		
8	as chief restructuring officer nunc pro tunc to		
9	commencement date		
10	Application of the General Motors Retirees	117	17
11	Association for order to appoint retiree		
12	committee pursuant to 11 U.S.C. Section 1114(d)		
13	denied without prejudice to reconsideration		
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
	VERITEXT REPORTING COMPANY		

Г

122 1 CERTIFICATION 2 3 I, Lisa Bar-Leib, certify that the foregoing transcript is a 4 true and accurate record of the proceedings. 5 6 7 LISA BAR-LEIB 8 9 AAERT Certified Electronic Transcriber (CET**D-486) 10 11 Also transcribed by: Tzippy Geralnik 12 Pnina Eilberg Penina Wolicki 13 Dena Page 14 15 Ellen Kolman 16 Clara Rubin 17 18 Veritext LLC 19 200 Old Country Road Suite 580 20 21 Mineola, NY 11501 22 23 Date: June 26, 2009 24 25

# Exhibit 4

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK					
	x				
	::				
In re:	:: Chapter 11				
	:: Case No. 09-50026 (REG)				
General Motors Corporation, et al.,	::				
• • •	:: (Jointly Administered)				
Debtors.	::				
	X				

# FINAL ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a), 361, 362, 363, 364 AND 507 AND BANKRUPTCY RULES 2002, 4001 AND 6004 (A) APPROVING A DIP CREDIT FACILITY AND AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING PURSUANT THERETO, (B) GRANTING RELATED LIENS AND SUPER-PRIORITY STATUS, (C) AUTHORIZING THE USE OF CASH COLLATERAL AND (D) GRANTING ADEQUATE PROTECTION TO CERTAIN <u>PRE-PETITION SECURED PARTIES</u>

THIS MATTER having come before this Court by the motion dated June 1, 2009

(the "<u>Motion</u>") of General Motors Corporation ("<u>GM</u>") and its affiliated debtors in the abovecaptioned cases, as debtors and debtors-in-possession (collectively with GM, the "<u>Debtors</u>"),¹ seeking, among other things, entry of a final order (the "<u>Final Order</u>"):

(i) Authorizing the Debtors, pursuant to sections 105, 362, 363 and 364 of title 11 of the United States Code (the "<u>Bankruptcy Code</u>"), Rules 2002, 4001 and 6004 of the Federal Rules of Bankruptcy Procedure (the "<u>Bankruptcy Rules</u>"), and Rule 4001 of the Local Bankruptcy Rules for the Southern District of New York (the "<u>Local Bankruptcy Rules</u>"), to enter into the Secured Superpriority Debtor-in-Possession Credit Agreement, by and among GM, as borrower, and The United States Department of the Treasury ("U.S. Treasury") and Export Development Canada ("EDC"), as lenders

¹ The Debtors in these cases include: GM, Saturn, LLC, Saturn Distribution Corporation, and Chevrolet-Saturn of Harlem, Inc.

(together, the "<u>**DIP Lenders**</u>"), in substantially the form annexed hereto as <u>Exhibit 1</u> (as the same may be amended, supplemented, restated or otherwise modified from time to time, and together with all related agreements and documents, the "<u>**DIP Credit**</u> <u>**Facility**</u>"), and to obtain post-petition financing on a secured and super-priority basis pursuant to the terms and conditions thereof, up to a maximum aggregate amount of \$33.3 billion (the "<u>**Commitment**</u>");

(ii) Authorizing the Debtors to execute and deliver the DIP Credit Facility and to perform such other acts as may be reasonably necessary or desirable in order to give effect to the provisions of the DIP Credit Facility, including the unconditional, joint and several guaranty of the obligations of GM under the DIP Credit Facility by each other Debtor (each, a "<u>Guarantor</u>", and collectively, the "<u>Guarantors</u>");

(iii) Providing, pursuant to sections 364(c)(1) and 507(b) of the Bankruptcy Code, that all obligations owing to the DIP Lenders under the DIP Credit Facility shall be accorded administrative expense status in each of these cases, and shall, subject only to the Carve-Out (as defined below), have priority over any and all other administrative expenses arising in these cases; <u>provided</u>, <u>however</u>, that subsequent to the closing of the Related Section 363 Transactions (as defined in the DIP Credit Facility), claims against the Debtors' estates that have priority under Sections 503(b) or 507(a) of the Bankruptcy Code, including costs and expenses of administration that are attendant to the formulation and confirmation of a liquidating chapter 11 plan, whether incurred prior or subsequent to the consummation of the Related Section 363 Transactions (the "<u>Old GM</u> <u>Administrative and Priority Claims</u>") shall have priority over such obligations (up to the aggregate amount of \$950,000,000; provided, however, that any greater amount shall

-2-

be subject to approval by the DIP Lenders) owing to the DIP Lenders under the DIP Credit Facility; and

(iv) Granting the DIP Lenders security interests in and liens on (the "DIP Liens") all property and assets of each of the Debtors, of every kind or type whatsoever, including tangible, intangible, real, personal or mixed, whether now owned or hereafter acquired or arising, wherever located, all property of the estates of each of the Debtors within the meaning of section 541 of the Bankruptcy Code and all proceeds, rents and products of the foregoing, (including all avoidance actions arising under chapter 5 of the Bankruptcy Code and applicable state law except avoidance actions against the Prepetition Senior Facilities Secured Parties (as defined below)) with the exception of (a) any stocks, warrants, options or other equity interests issued to or held by any Debtor pursuant to the Related Section 363 Transactions (the "New GM Equity Interests"), (b) any leasehold interest of the Debtors in (i) the real property located at and commonly known as 301 Freedom Drive, City of Roanoke, Denton County, Texas or (ii) the real property located at and commonly known as 475 Brannan Street, City and County of San Francisco, California; and (c) certain Excluded Collateral (as defined in the DIP Credit Facility) (collectively, "Property") as follows:

(A) pursuant to section 364(c)(2) of the Bankruptcy Code, valid, perfected, first-priority security interests in and liens on all Property that is not subject to non-avoidable, valid and perfected liens in existence as of the Petition Date (as defined herein) (or to non-avoidable valid liens in existence as of the Petition Date that are subsequently perfected as permitted by section 546(b) of the Bankruptcy Code), in each case subject

-3-

only to (1) the Permitted Liens (as defined in the DIP Credit Facility), (2) the Carve-Out, (3) the adequate protection liens granted in connection with the Prepetition Revolving Credit Agreement pursuant to paragraph 6(b)(1)(x) of the Interim Order (the "Prepetition Revolving Credit Agreement Order") Under 11 U.S.C. §§ 105, 361, 362, 363 and FED. R. BANKR. P. 2002, 4001 And 9014 (I) Authorizing Debtors to Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Revolver Secured Parties and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B) (the "Prepetition Revolving Credit Agreement Adequate Protection Liens"), and (4) the adequate protection liens granted in connection with the Prepetition Term Loan Agreement pursuant to paragraph 5(b)(i) of the Interim Order (the "Prepetition Term Loan Facility Order", and together with the Prepetition Revolving Credit Agreement Order, the "Prepetition **Revolving And Term Loan Orders**") Under 11 U.S.C. §§ 105, 361, 362, 363 and FED. R. BANKR. P. 2002, 4001 and 9014 (I) Granting Adequate Protection to Term Loan Secured Parties and (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B) (the "Prepetition Term Loan Adequate Protection Liens", and together with the Prepetition Revolving Credit Agreement Adequate Protection Liens, the "Prepetition **Revolving And Term Adequate Protection Liens**");

(B) pursuant to section 364(c)(3) of the Bankruptcy Code, valid, perfected junior security interests in and liens on all Property that is subject to non-

-4-

avoidable, valid and perfected liens in existence as of the Petition Date, or to non-avoidable valid liens in existence as of the Petition Date that are subsequently perfected as permitted by section 546(b) of the Bankruptcy Code, subject only to the Carve-Out; and

(C) nothing in this Final Order, the Interim Order or the DIP Credit Facility shall in any way be construed to authorize or permit the DIP Lenders to seek recourse against the New GM Equity Interests at any time.

(v) Authorizing the application of a portion of the proceeds of the DIP Credit Facility toward payment in full of all principal, interest, letter of credit reimbursement obligations (including obligations to cash collateralize undrawn letters of credit) and other amounts due or outstanding under (A) that certain Term Loan Agreement, dated as of November 29, 2006, among GM, Saturn Corporation and JPMorgan Chase Bank, N.A., as administrative agent, and the lenders party thereto from time to time (as may be amended, restated, supplemented or otherwise revised from time to time, and together with all related agreements and documents, the "Prepetition Term Loan Agreement") secured by a first-priority lien on certain Property (the "Prepetition Term Loan **Collateral**"), (B) that certain Amended and Restated Credit Agreement, dated as of July 20, 2006, among GM, General Motors of Canada, Limited ("GMCL"), Saturn Corporation, Citicorp USA, Inc., as administrative agent, and the lenders party thereto from time to time (as may be amended, restated, supplemented or otherwise revised from time to time, and together with all related agreements and documents, the "Prepetition **<u>Revolving Credit Agreement</u>**") secured by a first-priority lien on certain Property (the "Prepetition Revolving Credit Agreement Collateral"), and (C) that certain Loan and

-5-

Security Agreement, dated as of October 2, 2006, among GM and Gelco Corporation (d/b/a GE Fleet Services) (as may be amended, restated, supplemented or otherwise revised from time to time, and together with all related agreements and documents, the "<u>Prepetition Gelco Loan Agreement</u>", and together with the Prepetition Term Loan Agreement and the Prepetition Revolving Credit Agreement, the "<u>Prepetition Senior Facilities</u>") secured by a first-priority lien on certain Property (the "<u>Prepetition Gelco Loan Collateral</u>", and together with the Prepetition Term Loan Collateral and the Prepetition Revolving Credit Agreement Collateral", and together with the Prepetition Term Loan Collateral and the Prepetition Revolving Credit Agreement Collateral, the "<u>Prepetition Senior Facilities Collateral</u>");

(vi) Authorizing the Debtors to use cash collateral of the Existing UST
 Secured Parties (as defined below) (the "<u>Cash Collateral</u>");

(vii) Granting to the Existing UST Secured Parties (as defined below), as adequate protection for the potential diminution in value of their respective liens on and security interests in Property, (A) a claim as contemplated by section 507(b) of the Bankruptcy Code (the "<u>Adequate Protection Claim</u>"), which Adequate Protection Claim shall have a priority immediately junior to the Super-priority Claim (as defined below) and <u>pari passu</u> with the super-priority claims granted under the Prepetition Revolving And Term Loan Orders, (B) liens on and security interests in the Property (the "<u>Adequate Protection Liens</u>"), only to the extent of and on account of any diminution in the value of the Existing UST Secured Parties' interests in the Debtors' interests in the Property on and after the Petition Date, which Adequate Protection Liens shall have a priority immediately junior to the DIP Liens on the Property, and (C) reimbursement by the Debtors of all reasonable expenses incurred in the course of these

-6-

chapter 11 cases by the Existing UST Secured Parties and their respective professional advisors and counsel. "Existing UST Secured Parties" shall mean the secured parties under (1) that certain Loan and Security Agreement, dated as of December 31, 2008, by and between GM and the U.S. Treasury (as may be amended, restated, supplemented or otherwise revised from time to time, and together with all related agreements and documents, the "TARP Loan Agreement") and (2) that certain Credit Agreement, dated as of April 2, 2009, by and between GM Supplier Receivables LLC and the U.S. Treasury (as may be amended, restated, supplemented or otherwise revised from time to time, and together with all related agreements, the "Supplier Receivables Facility", and together with the TARP Loan Agreement, the "Existing UST Loan Agreements"). For the avoidance of doubt, the Adequate Protection Liens shall be paripassu with any adequate protection liens granted under the Prepetition Revolving And Term Adequate Protection Liens as detailed in paragraph (iv)(A) above;

(viii) Authorizing and directing the Debtors to pay, without further order of this Court, the principal, interest, reasonable fees, expenses and other amounts (including the Additional Notes (as defined in the DIP Credit Facility)) payable to the DIP Lenders and their professional advisors and counsel under the DIP Credit Facility, as the same become due, including all reasonable expenses incurred in the course of these chapter 11 cases by the DIP Lenders and their professional advisors and counsel, all as and to the extent provided in the DIP Credit Facility; <u>provided</u>, that copies of the invoices for reimbursement by the Debtors of such expenses and fees (if any) are to be provided to the Committee, any other statutory committee appointed in the Debtors' chapter 11 cases, and the United States Trustee on a confidential basis; and

(ix) Vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Credit Facility and this Final Order.

This Court having considered the Motion, the DIP Credit Facility, the pleadings in support thereof and the pleadings in response thereto; and due and proper notice of the Motion having been provided in accordance with Bankruptcy Rules 2002, 4001, and 6004, and Local Bankruptcy Rule 4001 as reflected in the Affidavit of Service (Docket No. 134) filed with the Court on June 1, 2009; and a hearing pursuant to Bankruptcy Rule 4001(c)(2) having been held and concluded on June 1, 2009 (the "Interim Hearing") to consider the interim relief requested in the Motion; and the Court having entered an order granting the interim relief requested in the Motion (the "Interim Order"); and the Court having held a final hearing with respect to the Motion on June 25, 2009 (the "Final Hearing"); and it appearing that granting the relief requested in the Motion is appropriate, fair and reasonable and in the best interests of the Debtors, their estates, creditors and other parties in interest, and is essential for the Debtors' continued operations; and all objections to the relief requested in the Motion having been withdrawn, resolved or overruled on the merits by this Court; and upon consideration of the evidence presented, proffered or adduced at the Interim Hearing, the Final Hearing and in the Affidavit of Frederick A. Henderson, which was filed pursuant to Local Bankruptcy Rule 1007-2 on the Petition Date, the Declaration of William C. Repko in Support of Debtors' Proposed Debtor in Possession Financing Facility, the Statement of the United States of America Upon The Commencement Of General Motors Corporation's Chapter 11 Case [Docket No. 37] and

-8-

any other evidence presented at the Interim Hearing and the Final Hearing; and upon the record of the Interim Hearing and the Final Hearing; and upon the arguments of counsel; and after due deliberation and consideration and good and sufficient cause appearing therefor:

## BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING AND THE FINAL HEARING, THIS COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. On June 1, 2009 (the "<u>Petition Date</u>"), the Debtors each filed a voluntary petition under chapter 11 of the Bankruptcy Code in this Court, commencing these cases. The Debtors continue to manage and operate their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases; the United States Trustee appointed the Official Committee of Unsecured Creditors (the "<u>Committee</u>") on June 3, 2009.

B. <u>Jurisdiction and Venue</u>. This Court has jurisdiction over these proceedings, and over the property affected hereby, pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding as defined in and pursuant to 28 U.S.C. § 157(b)(2). Venue for these cases and for the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. <u>Need for Post-petition Financing</u>. The Debtors have demonstrated a need for immediate and continuing access to post-petition financing pursuant to sections 363 and 364 of the Bankruptcy Code and Bankruptcy Rule 4001(c)(2). In the absence of this access, the Debtors will be unable to continue operating their business, causing immediate and irreparable loss or damage the Debtors' estates, to the detriment of the Debtors, their estates, their creditors and other parties in interest in these cases. The Debtors do not have sufficient unrestricted cash

-9-

and other financing available to operate their businesses, maintain the estates' properties, and administer these cases absent the relief provided in this Final Order.

D. <u>No Credit Available on More Favorable Terms</u>. Given the Debtors' current financial condition, available assets and current and projected liabilities, as well as current conditions in the automotive and credit markets, the Debtors are unable to obtain financing from any other lender on terms more favorable than those provided by the DIP Lenders in the DIP Credit Facility. Other than pursuant to the DIP Credit Facility, the Debtors have been unable to obtain credit that either (i) was allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense, (ii) would have priority over all other administrative expenses specified in sections 503(b) and 507(b) of the Bankruptcy Code, (iii) would be secured solely by a lien on property of the Debtors' estates that is not otherwise subject to a lien, or (iv) would be secured only by a junior lien on property of the Debtors' estates that is subject to a lien.

E. <u>Good Faith of DIP Lenders</u>. The Debtors chose the DIP Lenders as postpetition lenders in good faith and after obtaining the advice of experienced counsel and other professionals. The Debtors and the DIP Lenders proposed and negotiated the terms and provisions of the DIP Credit Facility, the Interim Order and this Final Order in good faith, at arm's length, without collusion and with the intention that all obligations owed under the DIP Credit Facility would be valid claims accorded the priority and secured by the liens set forth herein. The loans and extensions of credit authorized in the Interim Order and this Final Order are supported by reasonably equivalent value and fair consideration and the terms and provisions of the DIP Credit Facility, the Interim Order and this Final Order are fair and reasonable and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

-10-

Any credit extended, loans made, or funds advanced to the Debtors pursuant to this Final Order, the Interim Order or the DIP Credit Facility is deemed to be so extended, made or permitted to be used in good faith by the DIP Lenders as required by and within the meaning of section 364(e) of the Bankruptcy Code. As good faith lenders, the DIP Lenders' claims, super-priority status, security interests and liens and other protections arising from or granted pursuant to this Final Order and the DIP Credit Facility will not be affected by any subsequent reversal, modification, vacatur or amendment of this Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

F. <u>Authority for the DIP Credit Facility</u>. The U.S. Treasury has extended credit to, and acquired a security interest in, the Debtors as set forth in the DIP Credit Facility and as authorized by the Interim Order and this Final Order. Before entering into the DIP Credit Facility, the Secretary of the Treasury, in consultation with the Chairman of the Board of Governors of the Federal Reserve System and as communicated to the appropriate committees of Congress, found that the extension of credit to the Debtors is "necessary to promote financial market stability," and is a valid use of funds pursuant to the statutory authority granted to the Secretary of the Treasury under the Emergency Economic Stabilization Act of 2008, 12 U.S.C. §§ 5201 et. seq. ("<u>EESA</u>"). The U.S. Treasury's extension of credit to, and resulting security interest in, the Debtors as set forth in the DIP Credit Facility and as authorized in the Interim Order and this Final Order is a valid use of funds pursuant to EESA.

G. <u>Waiver</u>. Upon entry of this Final Order, each of the Debtors hereby forever releases, waives and discharges the Existing UST Secured Parties and DIP Lenders, together with their respective officers, directors, employees, agents, attorneys, professionals, affiliates, subsidiaries, assigns and/or successors (collectively, the "<u>Released Parties</u>") from any

-11-

and all claims and causes of action arising out of, based upon or related to, in whole or in part, (i) the Existing UST Loan Agreements, (ii) any aspect of the prepetition relationship, or any prepetition transaction, between any Debtor, on the one hand, and any Released Party, on the other hand, or (iii) any acts or omissions by any or all of the Released Parties in connection with any prepetition relationship or transaction with any Debtor or any affiliate thereof including, without limitation, any claims or defenses as to the extent, validity, characterization, priority or perfection of the liens and security interests granted to any Existing UST Secured Parties pursuant to the Existing UST Loan Agreements, "lender liability" and similar claims and causes of action, any actions, claims or defenses arising under chapter 5 of the Bankruptcy Code or any other claims or causes of action. The waivers described in this paragraph were binding on the Debtors immediately upon entry of the Interim Order, and shall be binding upon the Committee or any other statutory committee and all other parties in interest sixty (60) days after entry of this Final Order if, prior to the expiration of such sixty (60) day period, the Committee or other party in interest has not commenced, or filed a motion with this Court for authority to commence, a proceeding asserting a claim or cause of action waived under this paragraph.

H. <u>Notice</u>. Due and proper notice of the Motion, the DIP Credit Facility, and the time and location of the Final Hearing has been provided in accordance with the Interim Order. Such notice was adequate and sufficient, and no other or further notice need be provided.

## BASED UPON THE FOREGOING FINDINGS AND CONCLUSIONS, AND UPON THE MOTION AND THE RECORD MADE BEFORE THIS COURT AT THE INTERIM HEARING AND THE FINAL HEARING, AND GOOD AND SUFFICIENT CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent provided in this Final Order. All objections to the Motion heretofore not withdrawn or resolved by the Final Order are overruled

on the merits in all respects. The Debtors are authorized, pursuant to section 364(c) of the Bankruptcy Code, to obtain post-petition financing on a final basis up to the maximum aggregate amount of the Commitment, on a super-priority and secured basis, pursuant and subject to the terms and conditions of the DIP Credit Facility and this Final Order including, without limitation, the Initial Budget (as defined in the DIP Credit Facility) and the DIP Credit Facility is approved in all respects.

2. The Debtors are hereby authorized to (A) enter into the DIP Credit Facility and are authorized and directed to perform all obligations under the DIP Credit Facility and this Final Order, including paying the principal, interest, fees, expenses, and other amounts (including the Additional Notes) due to the DIP Lenders and their professional advisors and counsel pursuant to the DIP Credit Facility or this Final Order as the same become due, which payments shall not otherwise be subject to the approval of this Court, and (B) unconditionally guaranty such payments on a joint and several basis as provided in the DIP Credit Facility.

3. Upon execution and delivery of the DIP Credit Facility and entry of this Final Order, the Debtors' obligations under the DIP Credit Facility (including the Additional Notes) shall constitute final, valid and binding obligations of the Debtors, enforceable against each Debtor and its estate in accordance with the terms thereof. No obligation, payment, transfer or grant of security under the DIP Credit Facility or this Final Order shall be stayed, restrained, voided or recovered under any provision of the Bankruptcy Code (including section 502(d) of the Bankruptcy Code) or other applicable law, or shall be subject to any defense, reduction, setoff, recoupment or counterclaim.

4. Except for the Carve-Out, and upon entry of this Final Order, no costs or expenses of administration of these cases or any future proceeding that may result therefrom,

-13-

including liquidation in bankruptcy or other proceedings under any chapter of the Bankruptcy Code, shall be imposed or charged against, or recovered from, the DIP Lenders or any of the Property under section 506(c) of the Bankruptcy Code or any similar principle of law, and each of the Debtors hereby waives for itself and on behalf of its estate any and all rights under section 506(c) of the Bankruptcy Code or otherwise to assert or impose, or seek to assert or impose, any such costs or expenses of administration against the DIP Lenders or the Property.

5. The DIP Lenders are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed super-priority administrative expense claim in each of these cases (the "Super-priority Claim") for all loans, reimbursement obligations and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Lenders under the DIP Credit Facility or hereunder, including, without limitation, all principal, accrued interest, costs, fees, expenses and all other amounts (including the Additional Notes) due under the DIP Credit Facility, which Superpriority Claim (A) shall have priority over any and all administrative expense claims and unsecured claims (including without limitation, the Adequate Protection Claim) against each Debtor or its estate in these cases, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses and claims of the kind specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code, and (B) shall at all times be senior to the rights of each Debtor or its estate, and any successor trustee or other representative of any Debtor's estate in these cases or in any subsequent proceeding or case under the Bankruptcy Code, to the extent permitted by law; provided, however, that subsequent

to the closing of the Related Section 363 Transactions, claims against the Debtors' estates that have priority under sections 503(b) or 507(a) of the Bankruptcy Code, including costs and expenses of administration that are attendant to the formulation and confirmation of a liquidating chapter 11 plan, whether incurred prior or subsequent to the consummation of the Related Section 363 Transactions, shall have priority over the remaining obligations owing to the DIP Lenders under the DIP Credit Facility (up to the aggregate amount of \$950,000,000; <u>provided</u>, <u>however</u>, that any greater amount shall be subject to approval by the DIP Lenders). The Superpriority Claim shall be subject and subordinate only to the Carve-Out and the claims set forth in the preceding proviso.

6. The DIP Lenders are hereby granted, pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code, continuing, valid, binding, enforceable, and automatically perfected DIP Liens in and on any and all of the Property, with the priorities set forth in paragraph (iv) above, to secure all repayment and other obligations of the Debtors under the DIP Credit Facility and this Final Order, including the Additional Notes. Except as expressly provided in the DIP Credit Facility or this Final Order, the DIP Liens shall not be made subject to or <u>pari passu</u> with any lien on, or security interest in, the Property, and shall be valid and enforceable against any trustee appointed in these cases, in any successor case, or upon the dismissal of any of these cases. The DIP Liens shall not be subject to sections 510, 549, 550 or 551 of the Bankruptcy Code. Except as provided in the DIP Credit Facility, this Final Order, or as otherwise agreed to by the DIP Lenders, the Debtors shall not grant any liens on the Property junior to the DIP Liens. In addition, except as permitted in the DIP Credit Facility, this Final Order, or as otherwise agreed to by the DIP Lenders, the Debtors shall not incur any debt with priority equal to or greater than the DIP Credit Facility. For the avoidance of doubt,

notwithstanding anything to the contrary in this Final Order, the Interim Order or the DIP Credit Facility, the Permitted Liens shall include any valid, perfected, non-avoidable prepetition senior liens in any Property of the Debtors' estates (or non-avoidable valid liens in existence as of the Petition Date that are subsequently perfected only as permitted by section 546(b) of the Bankruptcy Code), including, but not limited to, valid, perfected, non-avoidable prepetition senior statutory and possessory liens, and recoupment and setoff rights. Further, nothing in this Final Order, the Interim Order or the DIP Credit Facility shall in any way impair the right of any claimant with respect to any alleged reclamation right or impair the ability of a claimant to seek adequate protection with respect to any alleged reclamation right; provided, however, that nothing in this Final Order, the Interim Order or the DIP Credit Facility shall prejudice any rights, defenses, objections or counterclaims that the Debtors, the DIP Lenders, any agent under the Prepetition Senior Facilities, the lender under the TARP Loan Agreement, the Committee or any other party in interest may have with respect to the validity or priority of such asserted liens or rights, or with respect to any claim for adequate protection; provided, further, that nothing in this Final Order, the Interim Order or the DIP Credit Facility shall in any way be construed to permit or authorize the DIP Lenders to seek recourse against the New GM Equity Interests at any time. Notwithstanding the foregoing, the DIP Liens shall be subject and subordinate to valid and enforceable liens of governmental units for personal property taxes, real property taxes, special taxes, special assessments, and infrastructure improvement taxes arising after the Petition Date to the extent that such liens of governmental units take priority over previously granted and perfected consensual liens or security interests in property of the Debtors under applicable nonbankruptcy law.

7. Except as expressly agreed by the DIP Lenders, the obligations of the Debtors, including, without limitation, all obligations under the Notes (as defined in the DIP Credit Facility), shall be unconditionally guaranteed on a joint and several basis by each of the entities listed on <u>Schedule 1.1B to the DIP Credit Facility</u>. Except as otherwise expressly agreed to by each DIP Lender, the obligations of the Debtors shall further be unconditionally guaranteed on a joint and several basis by each and every subsequently acquired or organized direct or indirect domestic subsidiary of any Debtor (other than GMCL and direct and indirect subsidiaries of GMCL), each of which shall be made a guarantor under the DIP Credit Facility.

8. The Existing UST Secured Parties are hereby granted, pursuant to sections 361, 362, 363, 364 and 507 of the Bankruptcy Code, the Adequate Protection Claim and the Adequate Protection Liens with the priorities set forth in paragraph (vii) hereof, in each case to the extent of any diminution in the value of the relevant Existing UST Secured Party's interests in the Debtors' interests in the Property (including Cash Collateral) occurring on or after the Petition Date.

9. The Debtors are hereby authorized to use the Cash Collateral in accordance with the Initial Budget, until the DIP Lenders have exercised remedies as a result of an Event of Default under, and as defined in, the DIP Credit Facility.

10. The DIP Liens, the Super-priority Claim, the Adequate Protection Liens and the Adequate Protection Claim shall continue in any superseding case or cases for any or all of the Debtors under any chapter of the Bankruptcy Code, and such liens, security interests and claims shall maintain their priorities as provided in this Final Order. If an order dismissing any of these cases, pursuant to section 1112 of the Bankruptcy Code or otherwise, is at any time

-17-

entered, such order shall provide that (A) the DIP Liens, the Super-priority Claim, the Adequate Protection Liens and the Adequate Protection Claim shall continue in full force and effect, shall remain binding on all parties in interest in these cases, and shall maintain their priorities as provided in this Final Order, until all obligations of the Debtors under the DIP Credit Facility (with respect to the DIP Liens and the Super-priority Claim) and the Existing UST Loan Agreements (with respect to the Adequate Protection Liens and the Adequate Protection Claim) have been paid and satisfied in full. Notwithstanding the dismissal of any or all of these cases, this Court shall retain jurisdiction with respect to enforcing the DIP Liens and the Super-priority Claim and the DIP Lenders' rights with respect thereto, and the Adequate Protection Liens and the Adequate Protection Claim and the Existing UST Secured Parties' rights with respect thereto.

11. Except as provided in this Final Order or in the DIP Credit Facility, the DIP Liens, the Super-priority Claim, the Adequate Protection Liens and the Adequate Protection Claim, and all rights and remedies of the DIP Lenders, shall not be modified, impaired or discharged by the entry of an order or orders confirming a plan or plans of reorganization in any or all of these cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, each Debtor waives any discharge as to any remaining obligations under the DIP Credit Facility and this Final Order including, without limitation, the Additional Notes.

12. This Final Order shall be sufficient and conclusive evidence of the validity, perfection and priority of the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement or other instrument or document, or the taking of any other act that otherwise may be required under state or federal law, rule, or regulation of any jurisdiction to validate or perfect the DIP Liens or the Adequate Protection Liens or to entitle the DIP Lenders and the Existing UST Secured Parties to the priorities set

forth herein. The DIP Liens and the Super-priority Claim granted to the DIP Lenders pursuant to this Final Order and the DIP Credit Facility with respect to the property of the Debtors' estates were perfected by operation of law upon entry of the Interim Order by the Court. The Debtors may execute, and the DIP Lenders or the Existing UST Secured Parties, as applicable, are hereby authorized to file or record financing statements or other instruments to evidence the DIP Liens and the Adequate Protection Liens, and the Debtors are hereby authorized and directed, promptly upon demand by any DIP Lender or Existing UST Secured Party, to execute, file and record any such statements or instruments as the DIP Lenders or such Existing UST Secured Party may request; provided, however, that no such execution, filing, or recordation shall be necessary or required in order to create or perfect the DIP Liens or any Adequate Protection Lien, and further, if the DIP Lenders or any Existing UST Secured Party, each in its sole discretion, shall choose to file such financing statements, mortgages, notices of lien or similar instruments or otherwise confirm perfection of such liens, all such documents shall be deemed to have been filed or recorded as of the Petition Date. A certified copy of this Final Order may, in the discretion of the DIP Lenders or any Existing UST Secured Party, as applicable, be filed with or recorded in any filing or recording office in addition to or in lieu of such financing statements, notices of lien or similar instruments, and all filing offices are hereby authorized to accept a certified copy of this Final Order for filing and recording, and to deem this Final Order to be in proper form for filing and recording.

13. Each and every federal, state, and local governmental agency, department or office is hereby authorized and directed to accept this Final Order and any and all documents and instruments necessary or appropriate to consummate the transactions contemplated by this Final Order or the DIP Credit Facility.

-19-

14. The automatic stay imposed by section 362(a) of the Bankruptcy Code is hereby modified to permit (A) the Debtors to grant the DIP Liens, the Super-priority Claim, the guaranties and other security provided for in the DIP Credit Facility, and to perform such acts as the DIP Lenders may request to assure the perfection and priority of the DIP Liens, (B) the Debtors to grant the Adequate Protection Liens and the Adequate Protection Claim, and to perform such acts as any Existing UST Secured Party may request to assure the perfection and priority of the Adequate Protection Liens, (C) the implementation of the terms of this Final Order and the DIP Credit Facility, (D) the repayment of the Prepetition Senior Facilities as detailed in paragraph 19 hereof, and (E) immediately upon the occurrence of an Event of Default under the DIP Credit Facility or the maturity of the credit extensions provided thereunder, the exercise by the DIP Lenders of all rights and remedies under such agreement or applicable law without further application to or order of this Court; provided, however, that prior to exercising any setoff of amounts held in any accounts maintained by any Debtor or enforcing any liens or other remedies with respect to the Property, the DIP Lenders shall provide to the Debtors (with copies to the Committee, any other statutory committee and the United States Trustee) five business days' prior written notice; provided further, however, that upon receipt of any such notice, the Debtors may only make disbursements in the ordinary course of business and with respect to the Carve-Out, but may not make any other disbursements. Upon the occurrence and during the continuance of an Event of Default under the DIP Credit Facility, the DIP Lenders and their respective representatives shall be granted access to all locations in support of the enforcement and exercise of their remedies.

15. Upon the occurrence and during the continuance of any Event of Default under the DIP Credit Facility, and subject to the five business day notice provision set forth in

-20-

paragraph 14 above, the DIP Lenders may compel any Debtor to exercise such Debtor's rights (if any) to sell any or all of the Property in its possession pursuant to section 363(b) of the Bankruptcy Code or any other applicable law, the DIP Lenders shall be entitled to exercise their right (if any) to credit bid the DIP Liens in any such sale pursuant to section 363(k) or other applicable provision of the Bankruptcy Code, or other applicable law, and the Debtors shall use best efforts (subject to applicable law) to exercise their rights (if any) to sell such Property if requested by the DIP Lenders (pursuant to section 363 of the Bankruptcy Code or otherwise).

As used in this Final Order, "Carve-Out" means, following the 16 occurrence and during the continuance of an Event of Default under the DIP Credit Facility, an amount sufficient for payment of (A) allowed professional fees and disbursements incurred by professionals retained by the Debtors, the Committee and any other statutory committee (after application of all outstanding retainers held by those professionals) and allowed expenses of members of the Committee and any other statutory committee in an aggregate amount not to exceed \$20,000,000 (plus all such professional fees and disbursements, and expenses of members of the Committee and any other statutory committee that are unpaid after application of all outstanding retainers, and that were accrued or incurred prior to the occurrence of the Event of Default, to the extent allowed by this Court at any time), (B) fees pursuant to 28 U.S.C. § 1930 and any fees payable to the clerk of this Court, (C) fees and disbursements incurred by a chapter 7 trustee (if any) not to exceed \$2,000,000, and (D) fees and expenses incurred by a privacy ombudsman retained by Appointment of Ombudsman dated June 10, 2009 [Docket No. 565]; provided, however, that, so long as an Event of Default has not occurred, the Debtors shall be permitted to pay fees and expenses allowed and payable under 11 U.S.C. §§ 330 and 331, as the same may become due and payable, and the same shall not reduce the Carve-Out;

provided further, however, that the Carve-Out shall not include any fees or disbursements related to the investigation of, preparation for, or commencement or prosecution of, any claims or proceedings against the DIP Lenders, the Existing UST Secured Parties or EDC, in its capacity as lender under the Canadian Facility (as defined in the DIP Credit Facility) and on behalf of the Governments of Ontario and Canada, or other Canadian Lender Consortium Member (as defined in the DIP Credit Facility), or the claims or security interests in or liens on the property granted under the Canadian Facility or their claims or security interests in or liens on the Property granted under the DIP Credit Facility or this Final Order.

17. The DIP Lenders have acted in good faith in connection with the DIP Credit Facility, the Interim Order and this Final Order and their reliance on the provisions of this Final Order when extending credit under the DIP Credit Facility will be in good faith. Accordingly, if any provision of this Final Order is hereafter modified, vacated, or stayed by subsequent order of this Court or any other court for any reason, the DIP Lenders are entitled to the protections provided in section 364(e) of the Bankruptcy Code. The DIP Credit Facility may not be recharacterized as an equity investment or otherwise.

18. The DIP Lenders may exercise their right (if any) to credit bid the loans and the Additional Notes under the DIP Credit Facility (pursuant to section 363(k) or other applicable provision of the Bankruptcy Code, or other applicable law), in whole or in part, in connection with any sale or other disposition of some or all of the Property in these cases.

19. (a) Upon entry of this Final Order, the Debtors shall be authorized to apply and shall apply the proceeds of the DIP Credit Facility to repay amounts outstanding under the Prepetition Senior Facilities and all second lien Hedging Obligations (as defined in the Prepetition Revolving Credit Agreement), including principal, accrued and unpaid interest, fees, letter of credit reimbursement obligations (including obligations to cash collateralize undrawn letters of credit) and any other amounts due or owed by the Debtors thereunder within three business days of entry of this Final Order.

(b) Upon payment ("**Payment**") of all obligations under the Prepetition Senior Facilities, all commitments under each of the Prepetition Senior Facilities shall be deemed irrevocably terminated. Further, upon Payment, except as set forth in subsection (c) below, the holders of such obligations (the "**Prepetition Senior Facilities Secured Parties**") shall have no further rights with respect to the Debtors, the DIP Lenders, the Property or any claims or liens relating thereto (all of which liens and claims shall be deemed automatically satisfied and released without further action), whether such claims or liens arise under the Prepetition Term Loan Agreement, Prepetition Revolving Credit Agreement, the Prepetition Gelco Loan Agreement or related documentation, and the Debtors and their estates shall have no further obligations to the Prepetition Senior Facilities Secured Parties in connection with the Prepetition Senior Facilities. Nothing in this Order shall be deemed to alter, amend, release or waive any liens against, or obligations of, any non-Debtor affiliate under the Prepetition Revolving Credit Agreement and documents related thereto.

(c) The Prepetition Senior Facilities Secured Parties' liens, claims and interests in the Property and any adequate protection claims or adequate protection liens, shall expire upon the Payment. In the event that the Committee investigates any liens of any of the Prepetition Senior Facilities Secured Parties or any third party brings an action against a Prepetition Senior Facilities Secured Party that is entitled to indemnification by the Debtors under the applicable Prepetition Senior Facility, then, notwithstanding any other provision of this Final Order, (i) the Debtors shall pay (in accordance with Paragraph 6(d) of the Prepetition

-23-

Revolving Credit Agreement Order and Paragraph 5(d) of the Prepetition Term Loan Facility Order), the reasonable fees, costs and charges incurred by the agents for the Prepetition Senior Facilities (and, in the case of Gelco, reasonable fees, costs and charges incurred by Gelco, so long as Gelco complies with the expense reimbursement procedures applicable to the agents under the other Prepetition Senior Facilities) in responding to such investigation or in defending any challenge to such liens or to their ability to retain any Payment, and (ii) the super-priority adequate protection claims granted pursuant to the Prepetition Revolving and Term Adequate Protection Orders shall remain in effect with respect to such expense reimbursement obligations, provided that such claims shall not have recourse to the New GM Equity Interests and Gelco is hereby granted superpriority adequate protection claims equivalent to those provided to the agents under the other Prepetition Senior Facilities. Nothing in this order shall affect the rights and remedies, if any, of the Prepetition Senior Facility Secured Lenders (other than Gelco and the agents under the other Prepetition Senior Facilities, whose rights and remedies shall be as described herein) to seek reimbursement of their reasonable fees, costs, and charges incurred in responding to any such investigation or in defending any challenge to such liens or Payment. Without limiting the generality of the foregoing, upon Payment, the Prepetition Senior Facilities Secured Parties (i) authorize the Debtors to file Uniform Commercial Code termination statements, mortgage releases and all other documents necessary to evidence the release of the liens against the Debtors securing the obligations under the Prepetition Senior Facilities and (ii) will take all such action and deliver all such other instruments and documents as may be reasonably requested by the Debtors or the agents under the Prepetition Senior Facilities to effectuate or evidence the termination of all such claims of the Prepetition Senior Facilities Secured Parties, in each case, at the sole cost and expense of the Debtors.

-24-

(d) Effective upon entry of this Final Order, the Debtors (on behalf of their estates) and any successor thereto release the Prepetition Senior Facilities Secured Parties and each of their directors, officers, appointees, counsel, advisors and employees serving in any capacity or function, including as a fiduciary, agents, advisors, shareholders, subsidiaries, affiliates, heirs, executors, administrators, attorneys, advisors, successors and assigns from, against and with respect to any and all actual or potential demands, claims, actions, causes of action (including derivative causes of action), suits, assessments, liabilities, losses, costs, damages, penalties, fees, charges, expenses and all other forms of liability whatsoever, in law or equity, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising under the Bankruptcy Code, state law or otherwise now existing or hereafter arising, directly or indirectly related to the Prepetition Senior Facilities and any and all dealings between the Prepetition Senior Facilities Secured Parties in connection with the Prepetition Senior Facilities, provided, however, that such release shall not apply to the Committee with respect only to the perfection of first priority liens of the Prepetition Senior Facilities Secured Parties (it being agreed that if the Prepetition Senior Facilities Secured Parties, after Payment, assert or seek to enforce any right or interest in respect of any junior liens, the Committee shall have the right to contest such right or interest in such junior lien on any grounds, including (without limitation) validity, enforceability, priority, perfection or value) (the "Reserved Claims"). The Committee shall have automatic standing and authority to both investigate the Reserved Claims and bring actions based upon the Reserved Claims against the Prepetition Senior Facilities Secured Parties not later than July 31, 2009 (the "Challenge Period"), provided, that upon the filing of any adversary proceeding prosecuting any Reserved Claim, the Challenge Period shall be extended with respect to such adversary proceeding through and until a court of competent jurisdiction

-25-

dismisses such adversary proceeding. The grant of automatic standing shall be without any further order of this Court or any requirement that the Committee file a motion seeking standing or authority to file a motion seeking standing or authority before prosecuting any such challenge. Any Prepetition Senior Facilities Secured Party accepting Payment shall submit to the jurisdiction of the Bankruptcy Court, it being understood that the respective administrative and collateral agents for the Prepetition Senior Facilities shall have no responsibility or liability for amounts paid to any Prepetition Senior Facilities Secured Parties and such agents shall be exculpated for any and all such liabilities, excluding only such funds as are retained by each such agent solely in its respective role as a lender.

(e) Immediately upon Payment, the DIP Lenders shall be deemed to have obtained a secured, non-avoidable, perfected security interest in and lien on the Prepetition Senior Facilities Collateral.

20. Notwithstanding anything herein to the contrary, none of the proceeds of any extension of credit under the DIP Credit Facility shall be used in connection with (a) any investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the DIP Lenders or the Existing UST Secured Parties or EDC, in its capacity as lender under the Canadian Facility and on behalf of the Governments of Ontario and Canada, (b) the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the DIP Lenders or the Existing UST Secured Parties or EDC, in its capacity as lender under the Canadian Facility and on behalf of the Governments of Ontario and Canada, (b) the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the DIP Lenders or the Existing UST Secured Parties or EDC, in its capacity as lender under the Canadian Facility and on behalf of the Governments of Ontario and Canada, or any of their respective affiliates with respect to any loans, extensions of credit or other financial accommodations made to any Debtor prior to, on or after the Petition Date, or (c) any loans, advances, extensions of credit, dividends or other

-26-

investments to any person not a Borrower or Guarantor other than for certain permitted exceptions set forth in the DIP Credit Facility.

21. On or substantially contemporaneous with the closing of the Related Section 363 Transactions, the Tranche C Term Loan (as such term is defined in the DIP Credit Facility) in an amount not less than \$950,000,000 shall be provided to the Borrower in accordance with section 2.14 of the DIP Credit Facility to fund the wind-down of the Debtors (the "<u>Wind-Down Facility</u>"). The funding of the Wind-Down Facility shall be subject to an appropriate amendment to the DIP Credit Facility, acceptable to the Debtors and the DIP Lenders, which amendment shall be subject to approval by this Court on three days notice after the filing of a motion seeking approval of the Wind-Down Facility. The Committee shall be copied on all drafts of the credit agreement related to the Wind-Down Facility and the Wind-Down Budget (as defined in the DIP Credit Facility) that are circulated between the Debtors and the DIP Lenders and shall be included in all substantive negotiations of the Wind-Down Facility and the Wind-Down Budget between the Debtors and the DIP Lenders.

22. In the event of any inconsistency between the terms and conditions of the DIP Credit Facility or the Interim Order and this Final Order, the terms and conditions of this Final Order shall control.

23. The parties to the DIP Credit Facility may, from time to time, enter into waivers or consents with respect thereto without further order of this Court. In addition, the parties to the DIP Credit Facility may, from time to time, enter into amendments with respect thereto without further order of this Court; <u>provided</u>, that, (A) the DIP Credit Facility, as amended, is not materially different from the form approved by this Final Order, (B) notice of all amendments is filed with this Court, and (C) notice of all amendments (other than those that are

-27-

ministerial or technical and do not adversely affect the Debtors) are provided in advance to counsel for the Committee and any other statutory committee, all parties requesting notice in these cases and the United States Trustee. For purposes hereof, a "material" difference from the form approved by this Final Order shall mean any difference resulting from a modification that operates to (1) shorten the maturity of the extensions of credit under the DIP Credit Facility or otherwise require more rapid principal amortization than is currently required under the DIP Credit Facility, (2) increase the aggregate amount of any of the commitments thereunder, (3) increase the rate of interest or any other fees or charges payable thereunder (other than to the extent contemplated in the DIP Credit Facility as in effect on the date of this Final Order), (4) add specific new Events of Default (as defined in the DIP Credit Facility) or shorten the notice or grace period in respect to any Default (as defined in the DIP Credit Facility) or Event of Default currently in the DIP Credit Facility, (5) enlarge the nature and extent of default remedies available to the DIP Lenders or agents under the DIP Credit Facility following the occurrence and during the continuance of an Event of Default, (6) add additional financial covenants or make any financial covenant or other negative or affirmative covenant or representation and warranty more restrictive on the Debtors, or (7) otherwise modify the DIP Credit Facility in a manner materially less favorable to the Debtors and their estates.

24. This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014, and shall be deemed effective and enforceable immediately upon its entry and <u>nunc pro tunc</u> to the Petition Date.

25. The rights, benefits, and privileges granted pursuant to this Final Order (including, without limitation, the DIP Liens, the Super-priority Claim, the Adequate Protection

-28-

Liens and the Adequate Protection Claim granted herein) shall attach and be enforceable against the bankruptcy estate of any direct or indirect subsidiary of the Debtors that is a party to the DIP Credit Facility and which hereafter becomes a debtor in these procedurally consolidated cases automatically and without further court order on a final basis. Except as may be provided in this Final Order, such subsidiary shall be deemed a "Debtor" hereunder effective as of the date such subsidiary files a petition and becomes a debtor in these cases.

26. Except as otherwise provided in this Final Order, the provisions of the DIP Credit Facility and the provisions of this Final Order, including all findings of fact and conclusions of law set forth herein, shall, immediately upon entry of this Final Order in these cases, become valid and binding upon the Debtors, the DIP Lenders, the Existing UST Secured Parties, all other creditors of the Debtors, the Committee, any other statutory committee and all other parties in interest in these cases and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of any Debtor's estate in these cases or in any subsequent chapter 7 case. In no event shall the DIP Lenders, whether in connection with the exercise of any rights or remedies under the DIP Credit Facility, hereunder or otherwise, be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors, so long as the actions of the DIP Lenders do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by a Debtor, or otherwise cause liability to arise to the federal or state government or the status of responsible person or managing agent to exist under applicable law (as such terms, or any similar terms, are used in the Comprehensive Environmental Response,

-29-

Compensation and Liability Act, sections 9601 et seq. of title 42, United States Code, as amended, or any similar federal or state statute).

27. The Committee shall receive the same reports provided by the Debtors to the DIP Lenders under section 5.2 of the DIP Credit Facility.

28. The Debtors have provided adequate and sufficient notice of the Final Hearing and this Final Order as required under section 364 of the Bankruptcy Code, Rule 4001 of the Bankruptcy Rules and Rule 4001-2 of the Local Bankruptcy Rules.

29. The Final Hearing was held pursuant to Rule 4001 of the Bankruptcy Rules.

30. This Court shall retain exclusive jurisdiction to interpret and enforce the provisions of the DIP Credit Facility, the Interim Order and this Final Order in all respects; <u>provided</u>, <u>however</u>, that in the event this Court abstains from exercising or declines to exercise jurisdiction with respect to any matter provided for in this paragraph or is without jurisdiction, such abstention, refusal, or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

Dated: June 25, 2009 New York, New York

> <u>/s/ Robert E. Gerber</u> HON. ROBERT E. GERBER UNITED STATES BANKRUPTCY JUDGE

# Exhibit 5

Harvey R. Miller Stephen Karotkin Joseph H. Smolinsky WEIL, GOTSHAL & MANGES LLP 767 Fifth Avenue New York, New York 10153 Telephone: (212) 310-8000 Facsimile: (212) 310-8007

Attorneys for Debtors and Debtors in Possession

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

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

#### NOTICE OF HEARING ON DEBTORS' MOTION PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a), 361, 362, 363, 364 AND 507 AND BANKRUPTCY RULES 2002, 4001 AND 6004 TO AMEND DIP CREDIT FACILITY

PLEASE TAKE NOTICE that upon the annexed Motion, dated June 29, 2009

(the "**Motion**"), of General Motors Corporation and its affiliated debtors, as debtors and debtors in possession (the "**Debtors**"), pursuant to sections 105(a), 361, 362, 363, 364 and 507, of title 11, United States Code to amend their existing DIP Facility (as defined in the Motion), as more fully set forth in the Motion, a hearing will be held before the Honorable Robert E. Gerber, United States Bankruptcy Judge, in Room 621 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, on **July 2**, **2009 at 2:00 p.m. (Eastern Time),** or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion 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-242 (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 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with General Order M-182 (which can be found at www.nysb.uscourts.gov), and served in accordance with General Order M-242, and on (i) Weil, Gotshal & Manges LLP, attorneys for the Debtors, 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 General Motors Corporation, 300 Renaissance Center, Detroit, Michigan 48265 (Attn: Lawrence S. Buonomo, Esq.); (iii) 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.); (iv) the United States Department of the Treasury, 1500 Pennsylvania Avenue NW, Room 2312, Washington, D.C. 20220 (Attn: Matthew Feldman, Esq.); (v) 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.); (vi) Kramer Levin Naftalis & Frankel LLP, attorneys for the statutory committee of unsecured creditors, 1177 Avenue of the Americas, New York, New York 10036 (Attn: Kenneth H. Eckstein, Esq., Thomas Moers Mayer, Esq., Adam C. Rogoff, Esq., and Gordon Z. Novod, Esq.); (vii) the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW"), 8000 East Jefferson Avenue, Detroit, Michigan 48214 (Attn: Daniel W. Sherrick, Esq.); (viii) Cleary Gottlieb Steen & Hamilton LLP, attorneys for the UAW, One Liberty Plaza, New York, New York 10006 (Attn: James L. Bromley, Esq.); (xi) Cohen,

2

Weiss and Simon LLP, attorneys for the UAW, 330 W. 42nd Street, New York, New York 10036 (Attn: Babette Ceccotti, Esq.); (xii) the Office of the United States Trustee for the Southern District of New York (Attn: Diana G. Adams, Esq.), 33 Whitehall Street, 21st Floor, New York, New York 10004; (xiii) 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 Matthew L. Schwartz, Esq.); and (xiv) the affected Ordinary Course Professional(s) (as defined in the Motion) listed in Exhibit C annexed to the Motion, so as to be received no later than **July 2, 2009, at 9:00 a.m.** 

#### (Eastern Time) (the "Objection Deadline").

If no objections are timely filed and served with respect to the Motion, the

Debtors may, on or after the Objection Deadline, submit to the Bankruptcy Court an order, which order may be entered with no further notice or opportunity to be heard offered to any party.

Dated: New York, New York June 29, 2009

> <u>/s/ Stephen Karotkin</u> Harvey R. Miller Stephen Karotkin Joseph H. Smolinsky

WEIL, GOTSHAL & MANGES LLP 767 Fifth Avenue New York, New York 10153 Telephone: (212) 310-8000 Facsimile: (212) 310-8007

Attorneys for Debtors and Debtors in Possession

Harvey R. Miller Stephen Karotkin Joseph H. Smolinsky WEIL, GOTSHAL & MANGES LLP 767 Fifth Avenue New York, New York 10153 Telephone: (212) 310-8000 Facsimile: (212) 310-8007

Attorneys for Debtors and Debtors in Possession

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

In re	: :
GENERAL MOTORS CORP., et al.,	:
Debtors.	:
	·x

-----X

Chapter 11 Case No. 09-50026 (REG) (Jointly Administered)

# DEBTORS' MOTION PURSUANT TO BANKRUPTCY CODE

### SECTIONS 105(a), 361, 362, 363, 364 AND 507 AND BANKRUPTCY RULES 2002, 4001 AND 6004 TO AMEND DIP CREDIT FACILITY

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

1. This Motion seeks approval of an amendment to the Debtors' DIP Credit

Facility (as defined below) to finalize the terms of the financing for the wind-down of the

Debtors' estates following the closing under the 363 Transaction (as defined below).

#### **Background**

2. On June 1, 2009, General Motors Corporation ("GM") and certain of its

subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), filed a motion

for authority to obtain debtor in possession financing (the "DIP Facility") from the United States

Department of Treasury and Export Development of Canada, and for related relief [Docket No. 81] (the "**DIP Motion**").¹

3. On June 2, 2009, the Court entered an interim order [Docket No. 292] granting the relief set forth in the DIP Motion on an interim basis.

4. On June 25, 2009, the Court entered a final order [Docket No. 2529] granting the relief set forth in the DIP Motion on a final basis (the "**Final DIP Order**"). The Final Order approved a \$33.3 billion credit facility to fund the Debtors' operations and the administration of the chapter 11 cases through the consummation of the 363 Transaction.

#### The 363 Transaction and the Wind-Down Facility

5. On June 1, 2009, the Debtors filed a motion to approve the sale of substantially all of the Debtors' assets pursuant to that certain Master Sale and Purchase Agreement, among the Debtors and Vehicle Acquisition Holdings LLC, a purchaser (the "**Purchaser**") sponsored by the United States Department of the Treasury (the "**363 Transaction**"). Subsequent to closing under the 363 Transaction, the Debtors intend to liquidate their remaining assets, resolve claims, and seek to confirm a chapter 11 plan of liquidation. The DIP Lenders have agreed to provide a facility up to \$950 million in the form of an Amended and Restated DIP Credit Facility (the "Amended DIP Facility") to fund the wind-down of the Debtors and these chapter 11 cases (the "Wind-Down").

6. The DIP Motion and DIP Facility contemplate the Amended DIP Facility. The DIP Motion provides at page 4:

<u>Wind-Down Loan</u>. The Lenders agree to provide a wind-down loan upon agreement of the wind down budget (expected to be

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the DIP Motion.

approximately \$950 million), in an amount satisfactory to a majority, by aggregate exposure, of the lenders.

7. Section 2.14 of the DIP Facility similarly provides that the Tranche C

Term Loan would be converted into a Wind-Down Facility.

8. In addition, the Final DIP Order provides at  $\P$  21:

On or substantially contemporaneous with the closing of the Related Section 363 Transactions, the Tranche C Term Loan (as such term is defined in the DIP Credit Facility) in an amount not less than \$950,000,000 shall be provided to the Borrower in accordance with section 2.14 of the DIP Credit Facility to fund the wind-down of the Debtors (the "<u>Wind-Down Facility</u>"). The funding of the Wind-Down Facility shall be subject to an appropriate amendment to the DIP Credit Facility, acceptable to the Debtors and the DIP Lenders, which amendment shall be subject to approval by this Court on three days notice after the filing of a motion seeking approval of the Wind-Down Facility.

9. The hearing on the 363 Transaction is scheduled for June 30, 2009. The

Debtors and the Purchaser desire to close the 363 Transaction as promptly as possible following the entry of an order approving the 363 Transaction, assuming that the Court decides to enter such an order. As such, the Debtors are currently finalizing the terms of the Amended DIP Facility with the DIP Lenders.

10. The Debtors are thus seeking approval of the Amended DIP Facility which reflects the Wind-Down Facility. The Debtors will file a draft of the Amended DIP Facility prior to the hearing on this Motion. The primary terms of the Amended DIP Facility as contemplated as of the date of this Motion are set forth below:

(a) <u>Borrower</u>. General Motors Corporation, the Debtor.² Wind Down Facility preamble.

(b) <u>Lenders</u>. The U.S. Treasury and EDC. Wind Down Facility preamble.

² General Motors Corporation will be changing its name at the time of the closing of the 363 Transaction.

(c) <u>Guarantors</u>. Certain domestic subsidiaries listed on Schedule 1.1B of the Wind Down Facility. Wind Down Facility Schedule 1.1B.

(d) <u>Collateral</u>. The obligations under the Wind-Down Facility are to be secured by substantially all property and assets of the Borrower and the Guarantors other than (i) any stocks, warrants, options or other equity interests issued to or held by any Debtor pursuant to the Related Section 363 Transactions (as defined in the Wind-Down Facility) and (ii) avoidance actions arising under chapter 5 of the Bankruptcy Code and applicable state law against the Prepetition Senior Facilities Secured Parties (as defined in the DIP Facility). For the avoidance of doubt, the proceeds of the Wind-Down constitute Collateral . Wind-Down Facility, § 1.1.

(e) <u>Joint Liability</u>. Subject to the limitation on recourse in paragraph (f), the Guarantors will guarantee the obligations under the Wind Down Facility on a joint and several basis pursuant to an Amended and Restated Guaranty and Security Agreement. Wind Down Facility Exhibit A.

(f) <u>Limitation on Recourse</u>. The obligations under the Wind-Down Facility will be non-recourse to the Borrower or the Guarantors, and recourse would be only to the Collateral. Wind-Down Facility, §2.1.

(g) <u>Borrowing Limits</u>. Outstanding amounts of Tranche C Term Loans, in an amount not less than \$950 million. Wind Down Facility preamble, Schedule 1.1A.

(h) Interest Rate. The non-default rate for Eurodollar loans is the sum of (a) the greater of (i) the LIBOR rate for the period of the applicable loan, adjusted for certain reserve requirements and (ii) 2.00%, plus (b) 3.00% and for ABR loans is the sum of (a) the greater of (i) the prime rate, (ii) the fed funds rate plus 0.5%, and (iii) the three month Eurodollar rate plus 1%, plus (b) 2.00%. Wind Down Facility § 2.6(a)-(b). The default interest rate for outstanding loans is the otherwise applicable non-default rate (which, at the sole discretion of the U.S. Treasury may be the rate applicable to ABR loans) plus 5.00%. The default interest rate for all other outstanding obligations is the applicable non-default rate for ABR loans plus 5.00%. Wind Down Facility § 2.6(d). Interest accruing under the Wind-Down facility will be paid by adding such interest to the principal amount outstanding thereunder. Wind-Down Facility § 2.6(f).

(i) <u>Purpose</u>. The Wind Down Facility proceeds will be used to finance working capital needs and other general corporate purposes incurred in connection with the Wind-Down, including the payment of expenses associated with the administration of the Debtors' cases. Wind Down Facility § 3.20.

(j) <u>Wind-Down Budget</u>. The Borrower and the Lenders are discussing an agreed upon wind-down budget (the "**Wind-Down Budget**"). On a quarterly basis, the Borrower will amend the Wind-Down Budget by providing the Lenders reports of projected receipts and disbursements on a rolling 12-month basis that are certified by an officer of the Borrower. Wind Down Facility § 1.1 and Annex I.

(k) <u>Maturity</u>. Maturity Date will be the date on which all claims against the Debtors have been resolved such that there are no remaining disputed claims, all assets of the Debtors (other than remaining cash) have been liquidated, all distributions on account of allowed claims

have been made, and all other actions that are required under the plan of liquidation (other than the dissolution of the last remaining Debtor) have been completed. On the Maturity Date, the plan administrator or other individual or entity charged with administering the liquidation plan shall be entitled to retain a de minimis amount of funds to complete the dissolution of the last remaining Debtor. Wind Down Facility § 1.1.

(1) <u>Voluntary Prepayments</u>. The Wind Down Facility may be prepaid, in whole or in part, without premium or penalty, subject to minimum prepayment amounts in the case of partial prepayments. Wind Down Facility § 2.4.

(m) <u>Mandatory Prepayment</u>. The Borrower is required to prepay the loans in an amount equal to the net cash proceeds of certain asset sales, extraordinary receipts, casualty and condemnation events and from the incurrence of indebtedness not permitted to be incurred under the Wind Down Facility, in each case subject to certain exceptions. Wind Down Facility § 2.5.

(n) Events of Default. The Events of Default include the following (among others): (i) any failure to pay the obligations under the Wind-Down Facility on the Maturity Date; (ii) breach of non-payment obligations or covenants not covered by another Event of Default clause, and such default has not been remedied within the applicable grace period provided therein, or if no grace period, within ten (10) business days; (iii) the appointment of a trustee, dismissal of the cases, and similar bankruptcy-related provisions; (iv) an order granting relief from the automatic stay to certain secured parties; (v) a judgment for the payment of money in excess of \$25 million shall be entered and not stayed for ten calendar days; (v) entry of any order modifying in any material respect the DIP Orders; (vi) certain ERISA-related events; and (vii) any change of control; (viii) certain insolvency triggers in respect of certain of the Debtors' affiliates. Wind Down Facility § 7.1.

(o) <u>Remedies</u>. The DIP Lenders are required to provide five (5) business days' written notice prior to exercising any setoff rights or enforcing any liens or certain other remedies. Lenders' recourse is solely to the Collateral and there shall be no other recourse to the Borrower or the Guarantors.³ Wind Down Facility § 7.2.

(p) <u>Initial Conditions</u>. Funding of the DIP Facility is contingent upon a number of conditions precedent, including, among others, (i) Lender satisfaction with the terms of the 363 sale transaction; (ii) the Final Order not having been reversed, modified, amended, stayed or vacated without Lender consent; and (iii) delivery of the Wind-Down Budget. Wind Down Facility § 4.1.

(q) <u>Indemnification</u>. The Borrower indemnifies the Lenders for any loss resulting from early termination of LIBOR contracts due to payment of the applicable loan on a date other than the last day of the applicable interest period and other circumstances. Wind Down Facility § 2.10. The Borrower also provides certain tax indemnities to the Lenders. Wind Down Facility

³ See ¶ 10(f).

§ 2.12. The Borrower also provides an indemnity in respect of certain expenses, liabilities and legal fees and breaches of environmental law. Wind Down Facility § 8.5.

#### The Amended DIP Facility Should be Approved

11. The relief requested herein was contemplated by the DIP Motion and the Final DIP Order. The terms of the Amended DIP Facility are fair and reasonable and provide financing with the flexibility necessary to fund the liquidation of the Debtors' estates in an orderly fashion to maximize value. Absent approval of the Amended DIP Facility, the Debtors would not have sufficient liquidity to continue to administer their cases in chapter 11 and seek to pursue a plan. Under such circumstances, the Debtors would likely have no choice but to convert the cases to cases under chapter 7 of the Bankruptcy Code.

12. Significantly, the DIP Lenders have agreed (i) not to take a security interest in the stock of the Purchaser that the Debtors are receiving as consideration for the 363 Transaction and (ii) not to seek recourse against the Debtors for any unpaid portion of the DIP Facility if the proceeds of the collateral security therefor are insufficient. The Debtors believe there are no other lenders willing to provide funding on these or better terms.

13. Simply stated, the Amended DIP Facility is the only source of immediate liquidity for the wind-down of these estates. The terms and provisions of the Amended DIP Facility are fair and reasonable, both economically and from the perspective of how the funds may be used. Under these circumstances, the Debtors believe that the Amended DIP Facility is in the best interests of the Debtors and their estates and should be approved.

#### **Jurisdiction**

14. 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). Venue is proper
before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

#### <u>Notice</u>

The Final DIP Order authorized that a hearing on this Motion could be 15. held on 3 days' notice. Notice of this Motion has been provided to (i) the Office of the United States Trustee for the Southern District of New York, (ii) the attorneys for the United States Department of the Treasury, (iii) the attorneys for Export Development Canada, (iv) the attorneys for the agent under GM's prepetition secured term loan agreement, (v) the attorneys for the agent under GM's prepetition amended and restated secured revolving credit agreement, (vi) the attorneys for the statutory committee of unsecured creditors appointed in these chapter 11 cases, (vii) the attorneys for the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (viii) the attorneys for the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers-Communications Workers of America, (ix) the United States Department of Labor, (x) the attorneys for the National Automobile Dealers Association, (xi) the attorneys for the ad hoc bondholders committee, (xii) the U.S. Attorney's Office, S.D.N.Y., and (xiii) all entities that requested notice in these chapter 11 cases under Fed. R. Bankr. P. 2002. The Debtors submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

16. Other than the DIP Motion, no previous request for the relief sought herein has been made by the Debtors to this or any other Court.

7

WHEREFORE the Debtors respectfully request entry of an order granting the

relief requested herein and such other and further relief as is just.

Dated: New York, New York June 29, 2009

> <u>/s/ Stephen Karotkin</u> Harvey R. Miller Stephen Karotkin Joseph H. Smolinsky

WEIL, GOTSHAL & MANGES LLP 767 Fifth Avenue New York, New York 10153 Telephone: (212) 310-8000 Facsimile: (212) 310-8007

Attorneys for Debtors and Debtors in Possession

# Exhibit 6

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK Case No. 09-50026 . _ _ _ _ _ _ - - - X In the Matter of: GENERAL MOTORS CORPORATION, et al., Debtors. - - - - x United States Bankruptcy Court One Bowling Green New York, New York July 2, 2009 9:02 AM BEFORE: HON. ROBERT E. GERBER U.S. BANKRUPTCY JUDGE

VERITEXT REPORTING COMPANY

1

		1	
1 2	HEARING re Motion of the Debtors for Entry of Order Pursuant t		JENNER & BLOCK LLP
3	11 U.S.C. § 363(b) Authorizing and Approving Settlement	3	Special Counsel for Debtors and Debtors-in-Possession
4	Agreements with Certain Unions	4	919 Third Avenue
5		5	37th Floor
6	HEARING re Debtors' Motion Pursuant to Bankruptcy Code §§	6	New York, NY 10022
7	105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002,	7	
8	4001 and 6004 to Amend DIP Credit Facility	8	BY: PATRICK J. TROSTLE, ESQ.
9		9	
10	HEARING re Continuation of GM 363 Sale Hearing	10	JENNER & BLOCK LLP
11		11	Special Counsel for Debtors and Debtors-in-Possession
12		12	330 North Wabash Avenue
13		13	Chicago, IL 60611
14		14	
15		15	BY: DANIEL R. MURRAY, ESQ.
16		16	
17		17	KRAMER LEVIN NAFTALIS & FRANKEL LLP
18		18	Attorneys for Official Committee of Unsecured Creditors
19		19	1177 Avenue of the Americas
20		20	New York, NY 10036
21		21	
22		22	BY: KENNETH ECKSTEIN, ESQ.
23		23	ADAM ROSOFF, ESQ.
24		24	THOMAS MOERS MAYER, ESQ.
25	Transcribed by: Lisa Bar-Leib	25	ROBERT T. SCHMIDT, ESQ. 4
	2		г. 
1		1	
2		-	
2	APPEARANCES:	2	UNITED STATES DEPARTMENT OF JUSTICE
2	A P P E A R A N C E S : WEIL, GOTSHAL & MANGES LLP	2 3	UNITED STATES DEPARTMENT OF JUSTICE Office of the United States Trustee
	A P P E A R A N C E S : WEIL, GOTSHAL & MANGES LLP Attorneys for Debtor General Motors Corporation		UNITED STATES DEPARTMENT OF JUSTICE Office of the United States Trustee 33 Whitehall Street
3	WEIL, GOTSHAL & MANGES LLP	3	Office of the United States Trustee
3 4	WEIL, GOTSHAL & MANGES LLP Attorneys for Debtor General Motors Corporation	3 4	Office of the United States Trustee 33 Whitehall Street
3 4 5	WEIL, GOTSHAL & MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue	3 4 5	Office of the United States Trustee 33 Whitehall Street 21st Floor
3 4 5 6	WEIL, GOTSHAL & MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue	3 4 5 6	Office of the United States Trustee 33 Whitehall Street 21st Floor
3 4 5 6 7	WEIL, GOTSHAL & MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153	3 4 5 6 7	Office of the United States Trustee 33 Whitehall Street 21st Floor New York, NY 10004
3 4 5 7 8	<ul> <li>WEIL, GOTSHAL &amp; MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153</li> <li>BY: HARVEY R. MILLER, ESQ. STEPHEN KAROTKIN, ESQ. JOSEPH H. SMOLINSKY, ESQ.</li> </ul>	3 4 5 6 7 8 9 10	Office of the United States Trustee 33 Whitehall Street 21st Floor New York, NY 10004 BY: TRACY HOPE DAVIS, ESQ. BRIAN MASUMOTO, ESQ.
3 4 5 6 7 8 9 10 11	<ul> <li>WEIL, GOTSHAL &amp; MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153</li> <li>BY: HARVEY R. MILLER, ESQ.</li> <li>STEPHEN KAROTKIN, ESQ.</li> <li>JOSEPH H. SMOLINSKY, ESQ.</li> <li>JOHN A. NEUWIRTH, ESQ.</li> </ul>	3 4 5 6 7 8 9 10 11	Office of the United States Trustee 33 Whitehall Street 21st Floor New York, NY 10004 BY: TRACY HOPE DAVIS, ESQ. BRIAN MASUMOTO, ESQ. U.S. DEPARTMENT OF JUSTICE
3 4 5 6 7 8 9 10 11 12	<ul> <li>WEIL, GOTSHAL &amp; MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153</li> <li>BY: HARVEY R. MILLER, ESQ. STEPHEN KAROTKIN, ESQ. JOSEPH H. SMOLINSKY, ESQ.</li> </ul>	3 4 5 6 7 8 9 10 11 12	Office of the United States Trustee 33 Whitehall Street 21st Floor New York, NY 10004 BY: TRACY HOPE DAVIS, ESQ. BRIAN MASUMOTO, ESQ. U.S. DEPARTMENT OF JUSTICE United States Attorney's Office
3 4 5 6 7 8 9 10 11 12 13	<ul> <li>WEIL, GOTSHAL &amp; MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153</li> <li>BY: HARVEY R. MILLER, ESQ.</li> <li>STEPHEN KAROTKIN, ESQ.</li> <li>JOSEPH H. SMOLINSKY, ESQ.</li> <li>JOHN A. NEUWIRTH, ESQ.</li> <li>IRWIN WARREN, ESQ.</li> </ul>	3 4 5 6 7 8 9 10 11 12 13	Office of the United States Trustee 33 Whitehall Street 21st Floor New York, NY 10004 BY: TRACY HOPE DAVIS, ESQ. BRIAN MASUMOTO, ESQ. U.S. DEPARTMENT OF JUSTICE United States Attorney's Office Southern District of New York
3 4 5 6 7 8 9 10 11 12 13 14	<ul> <li>WEIL, GOTSHAL &amp; MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153</li> <li>BY: HARVEY R. MILLER, ESQ.</li> <li>STEPHEN KAROTKIN, ESQ.</li> <li>JOSEPH H. SMOLINSKY, ESQ.</li> <li>JOHN A. NEUWIRTH, ESQ.</li> <li>IRWIN WARREN, ESQ.</li> <li>HONIGMAN MILLER SCHWARTZ &amp; COHN</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14	Office of the United States Trustee 33 Whitehall Street 21st Floor New York, NY 10004 BY: TRACY HOPE DAVIS, ESQ. BRIAN MASUMOTO, ESQ. U.S. DEPARTMENT OF JUSTICE United States Attorney's Office Southern District of New York 86 Chambers Street
3 4 5 6 7 8 9 10 11 12 13 14 15	<ul> <li>WEIL, GOTSHAL &amp; MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153</li> <li>BY: HARVEY R. MILLER, ESQ. STEPHEN KAROTKIN, ESQ. JOSEPH H. SMOLINSKY, ESQ. JOHN A. NEUWIRTH, ESQ. IRWIN WARREN, ESQ.</li> <li>HONIGMAN MILLER SCHWARTZ &amp; COHN Special Counsel for General Motors Corporation</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15	Office of the United States Trustee 33 Whitehall Street 21st Floor New York, NY 10004 BY: TRACY HOPE DAVIS, ESQ. BRIAN MASUMOTO, ESQ. U.S. DEPARTMENT OF JUSTICE United States Attorney's Office Southern District of New York
3 4 5 6 7 8 9 10 11 12 13 14 15 16	<ul> <li>WEIL, GOTSHAL &amp; MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153</li> <li>BY: HARVEY R. MILLER, ESQ. STEPHEN KAROTKIN, ESQ. JOSEPH H. SMOLINSKY, ESQ. JOHN A. NEUWIRTH, ESQ. IRWIN WARREN, ESQ.</li> <li>HONIGMAN MILLER SCHWARTZ &amp; COHN Special Counsel for General Motors Corporation 2290 First National Building</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15 16	<ul> <li>Office of the United States Trustee</li> <li>33 Whitehall Street</li> <li>21st Floor</li> <li>New York, NY 10004</li> <li>BY: TRACY HOPE DAVIS, ESQ.</li> <li>BRIAN MASUMOTO, ESQ.</li> <li>U.S. DEPARTMENT OF JUSTICE</li> <li>United States Attorney's Office</li> <li>Southern District of New York</li> <li>86 Chambers Street</li> <li>New York, NY 10007</li> </ul>
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	<ul> <li>WEIL, GOTSHAL &amp; MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153</li> <li>BY: HARVEY R. MILLER, ESQ.</li> <li>STEPHEN KAROTKIN, ESQ.</li> <li>JOSEPH H. SMOLINSKY, ESQ.</li> <li>JOHN A. NEUWIRTH, ESQ.</li> <li>IRWIN WARREN, ESQ.</li> <li>HONIGMAN MILLER SCHWARTZ &amp; COHN Special Counsel for General Motors Corporation 2290 First National Building 660 Woodward Avenue</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	<ul> <li>Office of the United States Trustee</li> <li>33 Whitehall Street</li> <li>21st Floor</li> <li>New York, NY 10004</li> <li>BY: TRACY HOPE DAVIS, ESQ.</li> <li>BRIAN MASUMOTO, ESQ.</li> <li>U.S. DEPARTMENT OF JUSTICE</li> <li>United States Attorney's Office</li> <li>Southern District of New York</li> <li>86 Chambers Street</li> <li>New York, NY 10007</li> <li>BY: MATTHEW L. SCHWARTZ, AUSA</li> </ul>
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	<ul> <li>WEIL, GOTSHAL &amp; MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153</li> <li>BY: HARVEY R. MILLER, ESQ. STEPHEN KAROTKIN, ESQ. JOSEPH H. SMOLINSKY, ESQ. JOHN A. NEUWIRTH, ESQ. IRWIN WARREN, ESQ.</li> <li>HONIGMAN MILLER SCHWARTZ &amp; COHN Special Counsel for General Motors Corporation 2290 First National Building</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	<ul> <li>Office of the United States Trustee</li> <li>33 Whitehall Street</li> <li>21st Floor</li> <li>New York, NY 10004</li> <li>BY: TRACY HOPE DAVIS, ESQ.</li> <li>BRIAN MASUMOTO, ESQ.</li> <li>U.S. DEPARTMENT OF JUSTICE</li> <li>United States Attorney's Office</li> <li>Southern District of New York</li> <li>86 Chambers Street</li> <li>New York, NY 10007</li> </ul>
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>WEIL, GOTSHAL &amp; MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153</li> <li>BY: HARVEY R. MILLER, ESQ.</li> <li>STEPHEN KAROTKIN, ESQ.</li> <li>JOSEPH H. SMOLINSKY, ESQ.</li> <li>JOHN A. NEUWIRTH, ESQ.</li> <li>IRWIN WARREN, ESQ.</li> <li>HONIGMAN MILLER SCHWARTZ &amp; COHN Special Counsel for General Motors Corporation 2290 First National Building 660 Woodward Avenue Detroit, MI 48226</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>Office of the United States Trustee</li> <li>33 Whitehall Street</li> <li>21st Floor</li> <li>New York, NY 10004</li> <li>BY: TRACY HOPE DAVIS, ESQ.</li> <li>BRIAN MASUMOTO, ESQ.</li> <li>U.S. DEPARTMENT OF JUSTICE</li> <li>United States Attorney's Office</li> <li>Southern District of New York</li> <li>86 Chambers Street</li> <li>New York, NY 10007</li> <li>BY: MATTHEW L. SCHWARTZ, AUSA</li> </ul>
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	<ul> <li>WEIL, GOTSHAL &amp; MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153</li> <li>BY: HARVEY R. MILLER, ESQ.</li> <li>STEPHEN KAROTKIN, ESQ.</li> <li>JOSEPH H. SMOLINSKY, ESQ.</li> <li>JOHN A. NEUWIRTH, ESQ.</li> <li>IRWIN WARREN, ESQ.</li> <li>HONIGMAN MILLER SCHWARTZ &amp; COHN Special Counsel for General Motors Corporation 2290 First National Building 660 Woodward Avenue Detroit, MI 48226</li> <li>BY: ROBERT B. WEISS, ESQ.</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	<ul> <li>Office of the United States Trustee</li> <li>33 Whitehall Street</li> <li>21st Floor</li> <li>New York, NY 10004</li> <li>BY: TRACY HOPE DAVIS, ESQ.</li> <li>BRIAN MASUMOTO, ESQ.</li> <li>U.S. DEPARTMENT OF JUSTICE</li> <li>United States Attorney's Office</li> <li>Southern District of New York</li> <li>86 Chambers Street</li> <li>New York, NY 10007</li> <li>BY: MATTHEW L. SCHWARTZ, AUSA</li> </ul>
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>WEIL, GOTSHAL &amp; MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153</li> <li>BY: HARVEY R. MILLER, ESQ.</li> <li>STEPHEN KAROTKIN, ESQ.</li> <li>JOSEPH H. SMOLINSKY, ESQ.</li> <li>JOHN A. NEUWIRTH, ESQ.</li> <li>IRWIN WARREN, ESQ.</li> <li>HONIGMAN MILLER SCHWARTZ &amp; COHN Special Counsel for General Motors Corporation 2290 First National Building 660 Woodward Avenue Detroit, MI 48226</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	<ul> <li>Office of the United States Trustee</li> <li>33 Whitehall Street</li> <li>21st Floor</li> <li>New York, NY 10004</li> <li>BY: TRACY HOPE DAVIS, ESQ.</li> <li>BRIAN MASUMOTO, ESQ.</li> <li>U.S. DEPARTMENT OF JUSTICE</li> <li>United States Attorney's Office</li> <li>Southern District of New York</li> <li>86 Chambers Street</li> <li>New York, NY 10007</li> <li>BY: MATTHEW L. SCHWARTZ, AUSA</li> </ul>
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	<ul> <li>WEIL, GOTSHAL &amp; MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153</li> <li>BY: HARVEY R. MILLER, ESQ.</li> <li>STEPHEN KAROTKIN, ESQ.</li> <li>JOSEPH H. SMOLINSKY, ESQ.</li> <li>JOHN A. NEUWIRTH, ESQ.</li> <li>IRWIN WARREN, ESQ.</li> <li>HONIGMAN MILLER SCHWARTZ &amp; COHN Special Counsel for General Motors Corporation 2290 First National Building 660 Woodward Avenue Detroit, MI 48226</li> <li>BY: ROBERT B. WEISS, ESQ.</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<ul> <li>Office of the United States Trustee</li> <li>33 Whitehall Street</li> <li>21st Floor</li> <li>New York, NY 10004</li> <li>BY: TRACY HOPE DAVIS, ESQ.</li> <li>BRIAN MASUMOTO, ESQ.</li> <li>U.S. DEPARTMENT OF JUSTICE</li> <li>United States Attorney's Office</li> <li>Southern District of New York</li> <li>86 Chambers Street</li> <li>New York, NY 10007</li> <li>BY: MATTHEW L. SCHWARTZ, AUSA</li> </ul>
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<ul> <li>WEIL, GOTSHAL &amp; MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153</li> <li>BY: HARVEY R. MILLER, ESQ.</li> <li>STEPHEN KAROTKIN, ESQ.</li> <li>JOSEPH H. SMOLINSKY, ESQ.</li> <li>JOHN A. NEUWIRTH, ESQ.</li> <li>IRWIN WARREN, ESQ.</li> <li>HONIGMAN MILLER SCHWARTZ &amp; COHN Special Counsel for General Motors Corporation 2290 First National Building 660 Woodward Avenue Detroit, MI 48226</li> <li>BY: ROBERT B. WEISS, ESQ.</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	<ul> <li>Office of the United States Trustee</li> <li>33 Whitehall Street</li> <li>21st Floor</li> <li>New York, NY 10004</li> <li>BY: TRACY HOPE DAVIS, ESQ.</li> <li>BRIAN MASUMOTO, ESQ.</li> <li>U.S. DEPARTMENT OF JUSTICE</li> <li>United States Attorney's Office</li> <li>Southern District of New York</li> <li>86 Chambers Street</li> <li>New York, NY 10007</li> <li>BY: MATTHEW L. SCHWARTZ, AUSA</li> </ul>
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<ul> <li>WEIL, GOTSHAL &amp; MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153</li> <li>BY: HARVEY R. MILLER, ESQ.</li> <li>STEPHEN KAROTKIN, ESQ.</li> <li>JOSEPH H. SMOLINSKY, ESQ.</li> <li>JOHN A. NEUWIRTH, ESQ.</li> <li>IRWIN WARREN, ESQ.</li> <li>HONIGMAN MILLER SCHWARTZ &amp; COHN Special Counsel for General Motors Corporation 2290 First National Building 660 Woodward Avenue Detroit, MI 48226</li> <li>BY: ROBERT B. WEISS, ESQ.</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<ul> <li>Office of the United States Trustee</li> <li>33 Whitehall Street</li> <li>21st Floor</li> <li>New York, NY 10004</li> <li>BY: TRACY HOPE DAVIS, ESQ.</li> <li>BRIAN MASUMOTO, ESQ.</li> <li>U.S. DEPARTMENT OF JUSTICE</li> <li>United States Attorney's Office</li> <li>Southern District of New York</li> <li>86 Chambers Street</li> <li>New York, NY 10007</li> <li>BY: MATTHEW L. SCHWARTZ, AUSA</li> </ul>
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	<ul> <li>WEIL, GOTSHAL &amp; MANGES LLP Attorneys for Debtor General Motors Corporation 767 Fifth Avenue New York, NY 10153</li> <li>BY: HARVEY R. MILLER, ESQ.</li> <li>STEPHEN KAROTKIN, ESQ.</li> <li>JOSEPH H. SMOLINSKY, ESQ.</li> <li>JOHN A. NEUWIRTH, ESQ.</li> <li>IRWIN WARREN, ESQ.</li> <li>HONIGMAN MILLER SCHWARTZ &amp; COHN Special Counsel for General Motors Corporation 2290 First National Building 660 Woodward Avenue Detroit, MI 48226</li> <li>BY: ROBERT B. WEISS, ESQ.</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	<ul> <li>Office of the United States Trustee</li> <li>33 Whitehall Street</li> <li>21st Floor</li> <li>New York, NY 10004</li> <li>BY: TRACY HOPE DAVIS, ESQ.</li> <li>BRIAN MASUMOTO, ESQ.</li> <li>U.S. DEPARTMENT OF JUSTICE</li> <li>United States Attorney's Office</li> <li>Southern District of New York</li> <li>86 Chambers Street</li> <li>New York, NY 10007</li> <li>BY: MATTHEW L. SCHWARTZ, AUSA</li> </ul>

212-267-6868

1		1	
2	ARENT FOX LLP	2	CAPLIN & DRYSDALE, CHARTERED
3	Attorneys for The Timken Company, Superior Industries	3	Attorneys for Mark Buttita
4	International, Inc., Discovery Communications, LLC,	4	375 Park Avenue
5	Harman Becker Automotive Systems and its affiliated	5	35th Floor
6	companies, Toyota Boshoku America, Inc., and JJF	6	New York, NY 10152
7	Management Services, Inc.	7	
8	1675 Broadway	8	BY: RITA C. TOBIN, ESQ.
9	New York, NY 10019	9	
10		10	CAPLIN & DRYSDALE, CHARTERED
11	BY: JAMES M. SULLIVAN, ESQ.	11	Attorneys for Mark Buttita
12		12	One Thomas Circle N.W.
13	ATTORNEY GENERAL OF TEXAS	13	Suite 1100
14	Counsel to State of Texas On Behalf of Texas Department o		Washington, DC 20005
15	Transportation	15	
16	P.O. Box 12548	16	BY: RONALD E. REINSEL, ESQ.
17	Austin, TX 78711	17	
18	DV. LOACEV DOV. ACCICTANT ATTODNESS CENEDAL	18	
19 20	BY: J. CASEY ROY, ASSISTANT ATTORNEY GENERAL	19	
20		20	
21		21	
23		22	
24		23 24	
25		24	
	6	2.5	8
1 2	BINGHAM MCCUTCHEN LLP	1 2	CLEARY GOTTLIEB STEEN & HAMILTON LLP
3	Attorneys for Wells Fargo Bank, as Indenture Trustee		Attorneys for The International Union, United Automobile
4	399 Park Avenue	4	Aerospace and Agricultural Implement Workers of America,
5	New York, NY 10022	5	AFL-CIO
6	1000 1010,101 10022	6	One Liberty Plaza
7	BY: ERIN H. MAUTNER, ESQ.		
		7	New York, NY 10006
8	D1. EKITI. MITO ITTER, EDQ.	7 8	-
8 9	CADWALADER, WICKERSHAM & TAFT LLP		-
		8	New York, NY 10006
9	CADWALADER, WICKERSHAM & TAFT LLP	8 9	New York, NY 10006 BY: AVRAM E. LUFT, ESQ.
9 10	CADWALADER, WICKERSHAM & TAFT LLP Attorneys for U.S. Treasury Auto Task Force	8 9 10	New York, NY 10006 BY: AVRAM E. LUFT, ESQ.
9 10 11	CADWALADER, WICKERSHAM & TAFT LLP Attorneys for U.S. Treasury Auto Task Force One World Financial Center	8 9 10 11	New York, NY 10006 BY: AVRAM E. LUFT, ESQ. JAMES BROMLEY, ESQ. CLIFFORD CHANCE US LLP
9 10 11 12	CADWALADER, WICKERSHAM & TAFT LLP Attorneys for U.S. Treasury Auto Task Force One World Financial Center	8 9 10 11 12	New York, NY 10006 BY: AVRAM E. LUFT, ESQ. JAMES BROMLEY, ESQ. CLIFFORD CHANCE US LLP
9 10 11 12 13	CADWALADER, WICKERSHAM & TAFT LLP Attorneys for U.S. Treasury Auto Task Force One World Financial Center New York, NY 10281	8 9 10 11 12 13	New York, NY 10006 BY: AVRAM E. LUFT, ESQ. JAMES BROMLEY, ESQ. CLIFFORD CHANCE US LLP Attorneys for ABN AMRO BANK N.V., RBS Citizens N.A., Roya
9 10 11 12 13 14	CADWALADER, WICKERSHAM & TAFT LLP Attorneys for U.S. Treasury Auto Task Force One World Financial Center New York, NY 10281	8 9 10 11 12 13 14 15 16	New York, NY 10006 BY: AVRAM E. LUFT, ESQ. JAMES BROMLEY, ESQ. CLIFFORD CHANCE US LLP Attorneys for ABN AMRO BANK N.V., RBS Citizens N.A., Roya Bank of Scotland plc
9 10 11 12 13 14 15	<ul> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force One World Financial Center New York, NY 10281</li> <li>BY: JOHN RAPISARDI, ESQ.</li> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force</li> </ul>	8 9 10 11 12 13 14 15	New York, NY 10006 BY: AVRAM E. LUFT, ESQ. JAMES BROMLEY, ESQ. CLIFFORD CHANCE US LLP Attorneys for ABN AMRO BANK N.V., RBS Citizens N.A., Roya Bank of Scotland plc 31 West 52nd Street
9 10 11 12 13 14 15 16	<ul> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force One World Financial Center New York, NY 10281</li> <li>BY: JOHN RAPISARDI, ESQ.</li> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force 1201 F Street, N.W.</li> </ul>	8 9 10 11 12 13 14 15 16 17 18	New York, NY 10006 BY: AVRAM E. LUFT, ESQ. JAMES BROMLEY, ESQ. CLIFFORD CHANCE US LLP Attorneys for ABN AMRO BANK N.V., RBS Citizens N.A., Roya Bank of Scotland plc 31 West 52nd Street
9 10 11 12 13 14 15 16 17 18 19	<ul> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force One World Financial Center New York, NY 10281</li> <li>BY: JOHN RAPISARDI, ESQ.</li> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force</li> </ul>	8 9 10 11 12 13 14 15 16 17 18 19	New York, NY 10006 BY: AVRAM E. LUFT, ESQ. JAMES BROMLEY, ESQ. CLIFFORD CHANCE US LLP Attorneys for ABN AMRO BANK N.V., RBS Citizens N.A., Roya Bank of Scotland plc 31 West 52nd Street New York, NY 10019 BY: ANDREW BROZMAN, ESQ.
9 10 11 12 13 14 15 16 17 18 19 20	<ul> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force One World Financial Center New York, NY 10281</li> <li>BY: JOHN RAPISARDI, ESQ.</li> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force 1201 F Street, N.W. Washington, DC 20004</li> </ul>	8 9 10 11 12 13 14 15 16 17 18 19 20	New York, NY 10006 BY: AVRAM E. LUFT, ESQ. JAMES BROMLEY, ESQ. CLIFFORD CHANCE US LLP Attorneys for ABN AMRO BANK N.V., RBS Citizens N.A., Roya Bank of Scotland plc 31 West 52nd Street New York, NY 10019 BY: ANDREW BROZMAN, ESQ. COHEN, WEISS AND SIMON LLP
9 10 11 12 13 14 15 16 17 18 19 20 21	<ul> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force One World Financial Center New York, NY 10281</li> <li>BY: JOHN RAPISARDI, ESQ.</li> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force 1201 F Street, N.W. Washington, DC 20004</li> <li>BY: PETER M. FRIEDMAN, ESQ.</li> </ul>	8 9 10 11 12 13 14 15 16 17 18 19 20 21	New York, NY 10006 BY: AVRAM E. LUFT, ESQ. JAMES BROMLEY, ESQ. CLIFFORD CHANCE US LLP Attorneys for ABN AMRO BANK N.V., RBS Citizens N.A., Roya Bank of Scotland plc 31 West 52nd Street New York, NY 10019 BY: ANDREW BROZMAN, ESQ. COHEN, WEISS AND SIMON LLP Attorneys for United Auto Workers
9 10 11 12 13 14 15 16 17 18 19 20 21 22	<ul> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force One World Financial Center New York, NY 10281</li> <li>BY: JOHN RAPISARDI, ESQ.</li> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force 1201 F Street, N.W. Washington, DC 20004</li> </ul>	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	New York, NY 10006 BY: AVRAM E. LUFT, ESQ. JAMES BROMLEY, ESQ. CLIFFORD CHANCE US LLP Attorneys for ABN AMRO BANK N.V., RBS Citizens N.A., Roy: Bank of Scotland plc 31 West 52nd Street New York, NY 10019 BY: ANDREW BROZMAN, ESQ. COHEN, WEISS AND SIMON LLP Attorneys for United Auto Workers 330 West 42nd Street
9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<ul> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force One World Financial Center New York, NY 10281</li> <li>BY: JOHN RAPISARDI, ESQ.</li> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force 1201 F Street, N.W. Washington, DC 20004</li> <li>BY: PETER M. FRIEDMAN, ESQ.</li> </ul>	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	New York, NY 10006 BY: AVRAM E. LUFT, ESQ. JAMES BROMLEY, ESQ. CLIFFORD CHANCE US LLP Attorneys for ABN AMRO BANK N.V., RBS Citizens N.A., Roya Bank of Scotland plc 31 West 52nd Street New York, NY 10019 BY: ANDREW BROZMAN, ESQ. COHEN, WEISS AND SIMON LLP Attorneys for United Auto Workers
9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	<ul> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force One World Financial Center New York, NY 10281</li> <li>BY: JOHN RAPISARDI, ESQ.</li> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force 1201 F Street, N.W. Washington, DC 20004</li> <li>BY: PETER M. FRIEDMAN, ESQ.</li> </ul>	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	New York, NY 10006 BY: AVRAM E. LUFT, ESQ. JAMES BROMLEY, ESQ. CLIFFORD CHANCE US LLP Attorneys for ABN AMRO BANK N.V., RBS Citizens N.A., Roya Bank of Scotland plc 31 West 52nd Street New York, NY 10019 BY: ANDREW BROZMAN, ESQ. COHEN, WEISS AND SIMON LLP Attorneys for United Auto Workers 330 West 42nd Street New York, NY 10036
9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<ul> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force One World Financial Center New York, NY 10281</li> <li>BY: JOHN RAPISARDI, ESQ.</li> <li>CADWALADER, WICKERSHAM &amp; TAFT LLP Attorneys for U.S. Treasury Auto Task Force 1201 F Street, N.W. Washington, DC 20004</li> <li>BY: PETER M. FRIEDMAN, ESQ.</li> </ul>	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	New York, NY 10006 BY: AVRAM E. LUFT, ESQ. JAMES BROMLEY, ESQ. CLIFFORD CHANCE US LLP Attorneys for ABN AMRO BANK N.V., RBS Citizens N.A., Roy: Bank of Scotland plc 31 West 52nd Street New York, NY 10019 BY: ANDREW BROZMAN, ESQ. COHEN, WEISS AND SIMON LLP Attorneys for United Auto Workers 330 West 42nd Street

212-267-6868

1		1	
2	THE COLEMAN LAW FIRM	2	DICKINSON WRIGHT PLLC
3	Attorneys for Product Liability Claimants: Callan	3	Attorneys for Multimatic Inc.
4	Campbell, Kevin Junso, et al.; Edwin Agosto, Kevin	4	301 East Liberty
5	Chadwick, et al., and Joseph Berlingieri	5	Suite 500
6	77 West Wacker Drive	6	Ann Arbor, MI 48104
7	Suite 4800	7	
8	Chicago, IL 60601	8	BY: TRENT B. COLLIER, ESQ.
9		9	
10	BY: STEVE JAKUBOWSKI, ESQ.	10	DRINKER BIDDLE & REATH LLP
11		11	Attorneys for Cross-Complainant/Defendant, Manufacturers
12	CONNOLLY BOVE LODGE & HUTZ LLP	12	and Trust Company and Wells Fargo Bank Northwest
13	Attorneys for Connecticut General	13	1500 K Street, N.W.
14	The Nemours Building	14	Washington, DC 20005
15	1007 North Orange Street	15	
16	Wilmington, DE 19899	16	BY: STEPHANIE WICKOUSKI, ESQ.
17		17	
18	BY: JEFFREY C. WISLER, ESQ.	18	FORMAN HOLT ELIADES & RAVIN LLC
19		19	Attorneys for Rose Cole, Guardian of Timothy L. Montis, a
20		20	Disabled Adult
21		21	80 Route 4 East
22		22	Paramus, NJ 07652
23		23	
24		24	BY: KIMBERLY J. SALOMON, ESQ.
25	10	25	10
	IU		12
1		1	
2	COVINGTON & BURLING LLP	2	GIBSON, DUNN & CRUTCHER LLP
3	Attorneys for Union Pacific Railroad Company	3	Attorneys for Wilmington Trust Co., as Indenture Trustee
4	The New York Times Building	4	200 Park Avenue
5	620 Eighth Avenue	5	New York, NY 10166
6	New York, NY 10018	6	
7		7	BY: MATTHEW J. WILLIAMS, ESQ.
8	BY: MARTIN E. BEELER, ESQ.	8	DAVID M. FELDMAN, ESQ.
9		9	
10	DLA PIPER US LLP	10	GORLICK, KRAVITZ & LISTHAUS, P.C.
11	Attorneys for Hewlett-Packard Company and all of its	11	Attorneys for International Union of Operating Engineers
12	Affiliates, Domestic and International, Including but not	12	Local 18S, 101S and 832S, United Steelworkers, IUE- CWA
13	Limited to Electronic Data Systems Corporation, and HP	13	17 State Street
14	Company and Hewlett-Packard Financial Services Company		4th Floor
15	550 South Hope Street	15	New York, NY 10004
16	Suite 2300	16	DV. DADDADA C MEHI GACK FOO
17	Los Angeles, CA 90071	17	BY: BARBARA S. MEHLSACK, ESQ.
18 19	BY: KAROLK DENNISTON ESO	18 19	HISCOCK & BARCLAYS
20	BY: KAROL K. DENNISTON, ESQ.	20	Attorneys for The Schaeffer Group
20		20	One Park Place
22		22	300 South State Street
23		23	Syracuse, NY 13202
24		24	5,140400,111 15202
25		25	BY: SUSAN R. KATZOFF, ESQ.
	11		13
_			

1		1	
1 2	KELLEY DRYE & WARREN LLP	1 2	MEYER, SUOZZI, ENGLISH & KLEIN, P.C.
3	Attorneys for Law Debenture Trust Company of New York, as		Attorneys for Henry Case Class Plaintiffs
4	Successor Indenture Trustee	4	1350 Broadway
5	101 Park Avenue	5	Suite 501
6	New York, NY 10178	6	New York, NY 10018
7		7	
8	BY: JENNIFER A. CHRISTIAN, ESQ.	8	BY: EDWARD J. LOBELLO, ESQ.
9	ROBERT L. LEHANE, ESQ.	9	HANAN KOLKO, ESQ.
10		10	
11	KENNEDY JENNIK AND MURRAY, PC	11	N.W. BERNSTEIN & ASSOCIATES, LLC
12	Attorneys for IUE-CWA	12	Attorneys for Environmental Conservation and Chemical
13	113 University Place	13	Corporation Site Trust Fund
14	Floor 7	14	800 Westchester Avenue
15	New York, NY 10003	15	Suite N319
16		16	Rye Brook, NY 10573
17	BY: THOMAS M. KENNEDY, ESQ.	17	
18	JOHN HOFFMAN, ESQ.	18	BY: NORMAN W. BERNSTEIN, ESQ.
19		19	
20	KIRKLAND & ELLIS LLP	20	NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
21	Citigroup Center	21	2030 M Street, NW
22	153 East 53rd Street	22	8th Floor
23	New York, NY 10022	23	Washington, DC 20036
24		24	
25	BY: MARC A. LEWINSTEIN, ESQ.	25	BY: KAREN CORDRY, ESQ.
	14		16
1		1	
2	KLEHR, HARRISON, HARVEY, BRANZBURG & ELLERS LL		PUBLIC CITIZEN LITIGATION GROUP
3	Attorneys for Manufactures Traders & Trust	3	Attorneys for Product Liability Claimants: Center for
4	260 South Broad Street	4	Auto Safety, Consumer Action, Consumers for Auto
5	Philadelphia, PA 19102	5	Reliability and Safety, National Association of Consumer
6		6	Advocates, and Public Citizen
7	BY: BRIAN CROWLEY, ESQ.	7	1600 20th Street NW
8		8	Washington, DC 20009
9	LATHAM & WATKINS LLP	9	
10	Attorneys for GE Capital Corp.	10	BY: ADINA H. ROSENBAUM, ESQ.
11	Sears Tower	11	ALLISON M. ZIEVE, ESQ.
12	Suite 5800	12	
13	233 South Wacker Drive	13	ORRICK, HERRINGTON & SUTCLIFFE LLP
14	Chicago, IL 60606	14	Attorneys for GM Unofficial Dealer Committee
15	BY: DOUGLAS BACON, ESQ.	15	Columbia Center
16 17	B1. DOUULAS DAUUN, ESQ.	16	1152 15th Street, NW Washington DC 20005
17	LAW OFFICES OF OLIVER ADDISON PARKER	17 18	Washington, DC 20005
18 19	Attorney Pro Se	18	RV. DICHADD H WVDON ESO
20	4900 North Ocean Blvd.	20	BY: RICHARD H. WYRON, ESQ.
20	Suite 421	20	ROGER FRANKEL, ESQ.
21	Lauderdale By the Sea, FL 33308	21	
22	Enducidate by the Sea, I L 55500	22	
24	BY: OLIVER A. PARKER, ESQ.	23	
25	DT. OLIVERA, IMAREN, LOQ.	24	
	15		17
	15		± /

212-267-6868

516-608-2400

1	ODDICK HEDDINGTON & SUTCHEEELLD	1 2	ROBINSON BROG LEINWAND GREENE GENOVESE & GLUCK P.C.
2 3	ORRICK, HERRINGTON & SUTCLIFFE LLP	3	Attorneys for Greater New York Automobile Dealers
4	Attorneys for Finmeccenica S.p.A. and Ansaldo Ricercke S.p.A.; Ad Hoc Dealer Committee	4	Association
5	666 Fifth Avenue	5	1345 Avenue of the Americas
6	New York, NY 10103	6	New York, NY 10105
7	1000 TOIK, 111 10105	7	
8	BY: ROBERT M. ISACKSON, ESQ.	8	BY: RUSSELL P. MCRORY, ESQ.
9	ALYSSA D. ENGLUND, ESQ.	9	
10	,	10	ROBINSON WATERS & O'DORISIO, PC
11	PATTON BOGGS LLP	11	Attorneys for Environmental Testing Corporation
12	Attorneys for Unofficial Committee of Family Bondholders	12	1099 18th Street
13	1185 Avenue of the Americas	13	Suite 2600
14	30th Floor	14	Denver, CO 80202
15	New York, NY 10036	15	
16		16	BY: ANTHONY L. LEFFERT, ESQ.
17	BY: MICHAEL P. RICHMAN, ESQ.	17	
18		18	SCHNADER HARRISON SEGAL & LEWIS LLP
19	PATTON BOGGS LLP	19	Attorneys for Ad Hoc Committee Consumer Victims
20	Attorneys for Unofficial Committee of Family Bondholders	20	1600 Market Street
21	2550 M Street, NW	21	Suite 3600
22	Washington, DC 20037	22	Philadelphia, PA 19103
23		23	
24	BY: MARK A. SALZBERG, ESQ.	24	BY: BARRY E. BRESSLER, ESQ.
25	10	25	
	18		20
1		1	
2	PATTON BOGGS LLP	2	
			SCHNADER HARRISON SEGAL & LEWIS LLP
3	Attorneys for Unofficial Committee of Family Bondholders		
3 4	Attorneys for Unofficial Committee of Family Bondholders 2001 Ross Avenue		SCHNADER HARRISON SEGAL & LEWIS LLP Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street
		3	Attorneys for Ad Hoc Committee Consumer Victims
4	2001 Ross Avenue	3 4	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street
4 5	2001 Ross Avenue Suite 3000	3 4 5	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001
4 5 6	2001 Ross Avenue Suite 3000	3 4 5 6	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001
4 5 6 7	2001 Ross Avenue Suite 3000 Dallas, TX 75201	3 4 5 6 7	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001 Wilmington, DE 19801
4 5 6 7 8	2001 Ross Avenue Suite 3000 Dallas, TX 75201 BY: JAMES CHADWICK, ESQ.	3 4 5 6 7 8	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001 Wilmington, DE 19801
4 5 7 8 9	2001 Ross Avenue Suite 3000 Dallas, TX 75201 BY: JAMES CHADWICK, ESQ. (TELEPHONICALLY) PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP	3 4 5 7 8 9	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001 Wilmington, DE 19801 BY: RICHARD A. BARKASY, ESQ.
4 5 7 8 9 10	2001 Ross Avenue Suite 3000 Dallas, TX 75201 BY: JAMES CHADWICK, ESQ. (TELEPHONICALLY) PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP Attorneys for Ad Hoc Bondholders Group	3 4 5 6 7 8 9 10	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001 Wilmington, DE 19801 BY: RICHARD A. BARKASY, ESQ. STATE OF MICHIGAN Office of the State Attorney General G. Mennen Williams Building
4 5 7 8 9 10 11 12 13	2001 Ross Avenue Suite 3000 Dallas, TX 75201 BY: JAMES CHADWICK, ESQ. (TELEPHONICALLY) PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP Attorneys for Ad Hoc Bondholders Group 1285 Avenue of the Americas	3 4 5 7 8 9 10 11 12 13	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001 Wilmington, DE 19801 BY: RICHARD A. BARKASY, ESQ. STATE OF MICHIGAN Office of the State Attorney General G. Mennen Williams Building 525 West Ottawa Street
4 5 7 8 9 10 11 12 13 14	2001 Ross Avenue Suite 3000 Dallas, TX 75201 BY: JAMES CHADWICK, ESQ. (TELEPHONICALLY) PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP Attorneys for Ad Hoc Bondholders Group	3 4 5 6 7 8 9 10 11 12 13 14	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001 Wilmington, DE 19801 BY: RICHARD A. BARKASY, ESQ. STATE OF MICHIGAN Office of the State Attorney General G. Mennen Williams Building 525 West Ottawa Street 6th Floor
4 5 7 8 9 10 11 12 13 14 15	2001 Ross Avenue Suite 3000 Dallas, TX 75201 BY: JAMES CHADWICK, ESQ. (TELEPHONICALLY) PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP Attorneys for Ad Hoc Bondholders Group 1285 Avenue of the Americas New York, NY 10019	3 4 5 6 7 8 9 10 11 12 13 14 15	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001 Wilmington, DE 19801 BY: RICHARD A. BARKASY, ESQ. STATE OF MICHIGAN Office of the State Attorney General G. Mennen Williams Building 525 West Ottawa Street
4 5 7 8 9 10 11 12 13 14 15 16	2001 Ross Avenue Suite 3000 Dallas, TX 75201 BY: JAMES CHADWICK, ESQ. (TELEPHONICALLY) PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP Attorneys for Ad Hoc Bondholders Group 1285 Avenue of the Americas New York, NY 10019 BY: ANDREW N. ROSENBERG, ESQ.	3 4 5 6 7 8 9 10 11 12 13 14 15 16	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001 Wilmington, DE 19801 BY: RICHARD A. BARKASY, ESQ. STATE OF MICHIGAN Office of the State Attorney General G. Mennen Williams Building 525 West Ottawa Street 6th Floor Lansing, MI 48909
4 5 7 8 9 10 11 12 13 14 15 16 17	2001 Ross Avenue Suite 3000 Dallas, TX 75201 BY: JAMES CHADWICK, ESQ. (TELEPHONICALLY) PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP Attorneys for Ad Hoc Bondholders Group 1285 Avenue of the Americas New York, NY 10019	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001 Wilmington, DE 19801 BY: RICHARD A. BARKASY, ESQ. STATE OF MICHIGAN Office of the State Attorney General G. Mennen Williams Building 525 West Ottawa Street 6th Floor
4 5 7 8 9 10 11 12 13 14 15 16 17 18	<ul> <li>2001 Ross Avenue Suite 3000 Dallas, TX 75201</li> <li>BY: JAMES CHADWICK, ESQ. (TELEPHONICALLY)</li> <li>PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON LLP Attorneys for Ad Hoc Bondholders Group 1285 Avenue of the Americas New York, NY 10019</li> <li>BY: ANDREW N. ROSENBERG, ESQ. JONATHAN KOEVARY, ESQ. (TELEPHONICALLY)</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001 Wilmington, DE 19801 BY: RICHARD A. BARKASY, ESQ. STATE OF MICHIGAN Office of the State Attorney General G. Mennen Williams Building 525 West Ottawa Street 6th Floor Lansing, MI 48909 BY: CELESTE R. GILL, Assistant Attorney General
4 5 7 8 9 10 11 12 13 14 15 16 17 18 19	2001 Ross Avenue Suite 3000 Dallas, TX 75201 BY: JAMES CHADWICK, ESQ. (TELEPHONICALLY) PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP Attorneys for Ad Hoc Bondholders Group 1285 Avenue of the Americas New York, NY 10019 BY: ANDREW N. ROSENBERG, ESQ. JONATHAN KOEVARY, ESQ. (TELEPHONICALLY) PENSION BENEFIT GUARANTY CORPORATION	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001 Wilmington, DE 19801 BY: RICHARD A. BARKASY, ESQ. STATE OF MICHIGAN Office of the State Attorney General G. Mennen Williams Building 525 West Ottawa Street 6th Floor Lansing, MI 48909 BY: CELESTE R. GILL, Assistant Attorney General STATE OF NEW YORK
4 5 7 8 9 10 11 12 13 14 15 16 17 18 19 20	<ul> <li>2001 Ross Avenue Suite 3000 Dallas, TX 75201</li> <li>BY: JAMES CHADWICK, ESQ. (TELEPHONICALLY)</li> <li>PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON LLP Attorneys for Ad Hoc Bondholders Group 1285 Avenue of the Americas New York, NY 10019</li> <li>BY: ANDREW N. ROSENBERG, ESQ. JONATHAN KOEVARY, ESQ. (TELEPHONICALLY)</li> <li>PENSION BENEFIT GUARANTY CORPORATION United States Government Agency</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001 Wilmington, DE 19801 BY: RICHARD A. BARKASY, ESQ. STATE OF MICHIGAN Office of the State Attorney General G. Mennen Williams Building 525 West Ottawa Street 6th Floor Lansing, MI 48909 BY: CELESTE R. GILL, Assistant Attorney General STATE OF NEW YORK Office of the Attorney General
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	<ul> <li>2001 Ross Avenue Suite 3000 Dallas, TX 75201</li> <li>BY: JAMES CHADWICK, ESQ. (TELEPHONICALLY)</li> <li>PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON LLP Attorneys for Ad Hoc Bondholders Group 1285 Avenue of the Americas New York, NY 10019</li> <li>BY: ANDREW N. ROSENBERG, ESQ. JONATHAN KOEVARY, ESQ. (TELEPHONICALLY)</li> <li>PENSION BENEFIT GUARANTY CORPORATION United States Government Agency 1200 K Street NW</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001 Wilmington, DE 19801 BY: RICHARD A. BARKASY, ESQ. STATE OF MICHIGAN Office of the State Attorney General G. Mennen Williams Building 525 West Ottawa Street 6th Floor Lansing, MI 48909 BY: CELESTE R. GILL, Assistant Attorney General STATE OF NEW YORK Office of the Attorney General The Capitol
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<ul> <li>2001 Ross Avenue Suite 3000 Dallas, TX 75201</li> <li>BY: JAMES CHADWICK, ESQ. (TELEPHONICALLY)</li> <li>PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON LLP Attorneys for Ad Hoc Bondholders Group 1285 Avenue of the Americas New York, NY 10019</li> <li>BY: ANDREW N. ROSENBERG, ESQ. JONATHAN KOEVARY, ESQ. (TELEPHONICALLY)</li> <li>PENSION BENEFIT GUARANTY CORPORATION United States Government Agency</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001 Wilmington, DE 19801 BY: RICHARD A. BARKASY, ESQ. STATE OF MICHIGAN Office of the State Attorney General G. Mennen Williams Building 525 West Ottawa Street 6th Floor Lansing, MI 48909 BY: CELESTE R. GILL, Assistant Attorney General STATE OF NEW YORK Office of the Attorney General
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<ul> <li>2001 Ross Avenue Suite 3000 Dallas, TX 75201</li> <li>BY: JAMES CHADWICK, ESQ. (TELEPHONICALLY)</li> <li>PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON LLP Attorneys for Ad Hoc Bondholders Group 1285 Avenue of the Americas New York, NY 10019</li> <li>BY: ANDREW N. ROSENBERG, ESQ. JONATHAN KOEVARY, ESQ. (TELEPHONICALLY)</li> <li>PENSION BENEFIT GUARANTY CORPORATION United States Government Agency 1200 K Street NW Washington, DC 20005</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001 Wilmington, DE 19801 BY: RICHARD A. BARKASY, ESQ. STATE OF MICHIGAN Office of the State Attorney General G. Mennen Williams Building 525 West Ottawa Street 6th Floor Lansing, MI 48909 BY: CELESTE R. GILL, Assistant Attorney General STATE OF NEW YORK Office of the Attorney General The Capitol Albany, NY 12224
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	<ul> <li>2001 Ross Avenue Suite 3000 Dallas, TX 75201</li> <li>BY: JAMES CHADWICK, ESQ. (TELEPHONICALLY)</li> <li>PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON LLP Attorneys for Ad Hoc Bondholders Group 1285 Avenue of the Americas New York, NY 10019</li> <li>BY: ANDREW N. ROSENBERG, ESQ. JONATHAN KOEVARY, ESQ. (TELEPHONICALLY)</li> <li>PENSION BENEFIT GUARANTY CORPORATION United States Government Agency 1200 K Street NW Washington, DC 20005</li> <li>BY: MICHAEL A. MARICCO, ESQ.</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001 Wilmington, DE 19801 BY: RICHARD A. BARKASY, ESQ. STATE OF MICHIGAN Office of the State Attorney General G. Mennen Williams Building 525 West Ottawa Street 6th Floor Lansing, MI 48909 BY: CELESTE R. GILL, Assistant Attorney General STATE OF NEW YORK Office of the Attorney General The Capitol
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<ul> <li>2001 Ross Avenue Suite 3000 Dallas, TX 75201</li> <li>BY: JAMES CHADWICK, ESQ. (TELEPHONICALLY)</li> <li>PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON LLP Attorneys for Ad Hoc Bondholders Group 1285 Avenue of the Americas New York, NY 10019</li> <li>BY: ANDREW N. ROSENBERG, ESQ. JONATHAN KOEVARY, ESQ. (TELEPHONICALLY)</li> <li>PENSION BENEFIT GUARANTY CORPORATION United States Government Agency 1200 K Street NW Washington, DC 20005</li> </ul>	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Attorneys for Ad Hoc Committee Consumer Victims 824 North Market Street Suite 1001 Wilmington, DE 19801 BY: RICHARD A. BARKASY, ESQ. STATE OF MICHIGAN Office of the State Attorney General G. Mennen Williams Building 525 West Ottawa Street 6th Floor Lansing, MI 48909 BY: CELESTE R. GILL, Assistant Attorney General STATE OF NEW YORK Office of the Attorney General The Capitol Albany, NY 12224

212-267-6868

1		1	
2	STATE OF NEW YORK	2	TELEPHONIC APPEARANCES:
3	Office of the Attorney General	3	ALLARD & FISH, P.C.
4	120 Broadway	4	Attorneys for Creditor Severstal North America, Inc.
5	New York, NY 10271	5	535 Griswold
6		6	Suite 2600
7	BY: KATHERINE KENNEDY, Special Deputy Attorney Genera	. 7	Detroit, MI 48226
8		8	
9	STEMBERG FEINSTEIN DOYLE & PAYNE, LLC	9	BY: DEBORAH L. FISH, ESQ.
10	Attorneys for Class Representatives in Henry Case	10	(TELEPHONICALLY)
11	1007 Mt. Royal Blvd.	11	
12	Pittsburgh, PA 15223	12	ARNALL GOLDEN & GREGORY LLP
13		13	Attorneys for Verizon Communications
14	BY: WILLIAM T. PAYNE, ESQ.	14	171 17TH Street NW
15		15	Suite 1200
16	STUTZMAN, BROMBERG, ESSERMAN & PLIFKA, P.C.	16	Atlanta, GA 30363
17	Attorneys for Ad Hoc Committee of Unsecured Creditors	17	
18	2323 Bryan Street	18	BY: DARRYL S. LADDIN, ESQ.
19	Suite 2200	19	FRANK N. WHITE, ESQ.
20	Dallas, TX 75201	20	(TELEPHONICALLY)
21		21	
22	BY: SANDER L. ESSERMAN, ESQ.)	22	
23		23	
24		24	
25		25	0.4
	22		24
1		1	
2	VEDDER PRICE P.C.	2	ATTORNEY GENERAL'S OFFICE, STATE OF CALIFORNIA
3	Attorneys for Export Development Canada	3	Attorneys for State of California
4	1633 Broadway	4	California Dept. of Justice
5	47th Floor	5	P.O. Box 744255
6	New York, NY 10019	6	Sacramento, CA 94244
7		7	
8	BY: MICHAEL L. SCHEIN, ESQ.	8	BY: MARGARITA PACFILLA, ESQ.
9		9	(TELEPHONICALLY)
10	WILMER CURLER PICKERING HALE AND DORR LLP	10	
11	Attorneys for Pension Benefit Guaranty Corporation	11	ATTORNEY GENERAL'S OFFICE, STATE OF ILLINOIS
12	399 Park Avenue	12	Attorneys for State of Illinois
13	New York, NY 10022	13	100 West Randolph Street
14		14	Chicago, IL 60601
15	BY: PHILIP D. ANKER, ESQ.	15	
16		16	BY: JAMES NEWBOLD, ESQ.
17	WINDELS MARK LANE & MITTENDORF, LLP	17	(TELEPHONICALLY)
18	Attorneys for Lloyd Good; Plastic Omanna et al.;	18	
19	Progressive Stamping Company; Morgan Adhesives Co. d/b/	a 19	
20	MACTAC; Western Flyer Express	20	
21	156 West 56th Street	21	
22	New York, NY 10019	22	
23		23	
24	BY: LESLIE S. BARR, ESQ.	24	
25		25	
I	23		25

212-267-6868

1		1	
2	ATTORNEY GENERAL'S OFFICE, STATE OF MICHIGAN	2	DAVIS POLK & WARDWELL
3	State of Michigan Department of Treasury	3	Attorneys for Interested Party Ford Motor Company
4	G. Mennen Williams Building	4	450 Lexington Avenue
5	7th Floor	5	New York, NY 10017
6	525 West Ottawa Street	6	
7	Lansing, MI 48909	7	BY: BRIAN M. RESNICK, ESQ.
8		8	(TELEPHONICALLY)
9	BY: JULIUS O. CURTING, ESQ.	9	
10	(TELEPHONICALLY)	10	DLA PIPER LLP U.S.
11		11	Attorneys for Creditor Hewlett Packard
12	ATTORNEY GENERAL'S OFFICE, STATE OF NEW JERSEY	12	550 South Hope Street
13	Attorneys for State of New Jersey Department of	13	Suite 2300
14	Environmental Protection Agency	14	Los Angeles, CA 90071
15	Richard J. Hughes Justice Complex	15	
16	8th Floor, West Wing	16	BY: KAROL K. DENNISTON, ESQ.
17	25 Market Street	17	(TELEPHONICALLY)
18	Trenton, NJ 08625	18	
19		19	
20	BY: RACHEL LEHR, ESQ.	20	
21	(TELEPHONICALLY)	21	
22		22	
23		23	
24		24	
25	26	25	28
	20		20
1		1	
2	ATTORNEY GENERAL'S OFFICE, STATE OF TENNESSER	2	FOLEY & LARDNER LLP
3	Attorneys for Tennessee Department of Revenue	3	Attorneys for Toyota Motor Corp.
4	Office of the Attorney General	4	One Detroit Center
5	P.O. Box 20207	5	500 Woodward Avenue
6	Nashville, TN 37202	6	Suite 2700
7		7	Detroit, MI 48226
8	BY: MARVIN CLEMENTS, ESQ.	8	
9	(TELEPHONICALLY)	9	BY: KATHERINE R. CALANESE, ESQ.
10		10	JOHN A. SIMON, ESQ.
11	ATTORNEY GENERAL'S OFFICE, STATE OF TEXAS	11	(TELEPHONICALLY)
12			
13	Attorneys for Texas Department of Transportation Motor	12	
	Vehicle Division	13	FOLEY & LARDNER LLP
14 15	Vehicle Division 300 West 15th Street	13 14	Attorneys for Toyota Motor Corp.
15	Vehicle Division	13 14 15	Attorneys for Toyota Motor Corp. 407 West Broadway
15 16	Vehicle Division 300 West 15th Street Austin, TX 78701	13 14 15 16	Attorneys for Toyota Motor Corp. 407 West Broadway Suite 2100
15 16 17	Vehicle Division 300 West 15th Street Austin, TX 78701 BY: HAL F. MORRIS, ESQ.	13 14 15 16 17	Attorneys for Toyota Motor Corp. 407 West Broadway
15 16 17 18	Vehicle Division 300 West 15th Street Austin, TX 78701 BY: HAL F. MORRIS, ESQ. RON DEL VENTO, ESQ.	13 14 15 16 17 18	Attorneys for Toyota Motor Corp. 407 West Broadway Suite 2100 San Diego, CA 92101
15 16 17	Vehicle Division 300 West 15th Street Austin, TX 78701 BY: HAL F. MORRIS, ESQ.	13 14 15 16 17 18 19	Attorneys for Toyota Motor Corp. 407 West Broadway Suite 2100 San Diego, CA 92101 BY: MATTHEW J. RIOPELLE, ESQ.
15 16 17 18 19	Vehicle Division 300 West 15th Street Austin, TX 78701 BY: HAL F. MORRIS, ESQ. RON DEL VENTO, ESQ.	13 14 15 16 17 18 19 20	Attorneys for Toyota Motor Corp. 407 West Broadway Suite 2100 San Diego, CA 92101
15 16 17 18 19 20	Vehicle Division 300 West 15th Street Austin, TX 78701 BY: HAL F. MORRIS, ESQ. RON DEL VENTO, ESQ.	13 14 15 16 17 18 19 20 21	Attorneys for Toyota Motor Corp. 407 West Broadway Suite 2100 San Diego, CA 92101 BY: MATTHEW J. RIOPELLE, ESQ.
15 16 17 18 19 20 21	Vehicle Division 300 West 15th Street Austin, TX 78701 BY: HAL F. MORRIS, ESQ. RON DEL VENTO, ESQ.	13 14 15 16 17 18 19 20 21 22	Attorneys for Toyota Motor Corp. 407 West Broadway Suite 2100 San Diego, CA 92101 BY: MATTHEW J. RIOPELLE, ESQ.
15 16 17 18 19 20 21 22	Vehicle Division 300 West 15th Street Austin, TX 78701 BY: HAL F. MORRIS, ESQ. RON DEL VENTO, ESQ.	13 14 15 16 17 18 19 20 21 22 23	Attorneys for Toyota Motor Corp. 407 West Broadway Suite 2100 San Diego, CA 92101 BY: MATTHEW J. RIOPELLE, ESQ.
15 16 17 18 19 20 21 22 23	Vehicle Division 300 West 15th Street Austin, TX 78701 BY: HAL F. MORRIS, ESQ. RON DEL VENTO, ESQ.	13 14 15 16 17 18 19 20 21 22	Attorneys for Toyota Motor Corp. 407 West Broadway Suite 2100 San Diego, CA 92101 BY: MATTHEW J. RIOPELLE, ESQ.
15 16 17 18 19 20 21 22 23 24	Vehicle Division 300 West 15th Street Austin, TX 78701 BY: HAL F. MORRIS, ESQ. RON DEL VENTO, ESQ.	13 14 15 16 17 18 19 20 21 22 23 24	Attorneys for Toyota Motor Corp. 407 West Broadway Suite 2100 San Diego, CA 92101 BY: MATTHEW J. RIOPELLE, ESQ.

212-267-6868

1     1       2     FREEBORN & PETERS LLP       2     HANGLEY ARONCHICK SE	
6         Chicago, IL 620606         6         27th Floor           7         7         Philadelphia, PA 19103	
8 BY: THOMAS R. FAWKES, ESQ. 8	
9 (TELEPHONICALLY) 9 BY: MATTHEW A. HAMER	MESH ESO
10 (TELEPHONICALLY) 10 (TELEPHONICALLY)	IME511, E5Q.
1010(TELET HOMERLET)11FROST BROWN TODD LLC11	
11FROST BROWN TODD LEC1112Lexington Financial Center1212KEMP KLEIN LAW FIRM	
12Lexington Financial Center12KLini KElli CAW Findu13250 West Main13Attorneys for Custom Auto	motive Services Inc
13250West Main15Attorneys for Custom Auto14Suite 280014201 West Big Beaver Road	
5	
15         Lexington, KY 40507         15         Suite 600           16         Troy, MI 48084	
	0
18(TELEPHONICALLY)18BY: GLORIA M. CHON, ESG19(TELEPHONICALLY)19(TELEPHONICALLY)	<i>ر</i> .
23 24 23	
25 25 30	32
1 1	
2 FULBRIGHT & JAWORSKI L.L.P 2 MASTROMARCO FIRM	
3 Attorneys for Bell Atlantic 3 Attorneys for Gerald Haynor	
4 2200 Ross Avenue 4 1024 North Michigan Avenu	ie
5 Suite 2800 5 Saginaw, MI 48602	
6 Dallas, TX 75201 6	
7 7 BY: VICTOR MASTROMAR	CO, ESQ.
8 BY: ELIZABETH N. BOYDSTON, ESQ. 8 (TELEPHONICALLY)	
9 (TELEPHONICALLY) 9	
10 10 MCDONALD HOPKINS CO.,	
11 Attorneys for Swegalok Con	npany
12GOULSTON & STORRS P.C.1239533 Woodward Avenue	
13         Attorneys for Creditor 767 Fifth Partners, LLC         13         Bloomfield Hills, MI 48304	
14     400 Atlantic Avenue     14	
15 Boston, MA 02110 15 BY: JAYSON B. RUFF, ESQ.	
16 (TELEPHONICALLY)	
17 BY: DOUGLAS B. ROSNER, ESQ.	
18 (TELEPHONICALLY) 18 MCNAMEE, LOCHNER, TITU	JS & WILLIAMS, PC
19   19   Attorneys for The Saint Region	is Mohawk Tribe
1919Attorneys for The Saint Regi2020677 Broadway	is Mohawk Tribe
1919Attorneys for The Saint Regi2020677 Broadway2121Albany, NY 12201	is Mohawk Tribe
1919Attorneys for The Saint Regi2020677 Broadway2121Albany, NY 12201222222	
19       19       Attorneys for The Saint Regination         20       20       677 Broadway         21       21       Albany, NY 12201         22       22       22         23       23       BY: JACOB F. LAMME, ESQ	
19       19       Attorneys for The Saint Regi         20       20       677 Broadway         21       21       Albany, NY 12201         22       22       22         23       23       BY: JACOB F. LAMME, ESQ         24       24       (TELEPHONICALLY)	
19       19       Attorneys for The Saint Regination         20       20       677 Broadway         21       21       Albany, NY 12201         22       22       22         23       BY: JACOB F. LAMME, ESQ	

Т

# VERITEXT REPORTING COMPANY

212-267-6868

Г

1		1	
1 2	MILLER, CANFIELD, PADOCK AND STONE, P.L.C.	1 2	PEPPER HAMILTON LLP
3	Attorneys for Creditor Ford Motor Company	3	Attorneys for Creditor SKF USA Inc.
4	150 West Jefferson	4	400 Berwyn Park
5	Suite 2500	5	899 Cassatt Road
6	Detroit, MI 48226	6	Berwyn, PA 19312
7	,	7	
8	BY: MARC N. SWANSON, ESQ.	8	BY: HENRY J. JAFFE, ESQ.
9	(TELEPHONICALLY)	9	(TELEPHONICALLY)
10		10	
11	MORRIS JAMES LLP	11	PERDUE, BRANDON, FIELDER, COLLINS & MOTT LLP
12	Attorneys for Monster Worldwide	12	Attorneys for Arlington ISD et al.
13	500 Delaware Avenue	13	4025 South Woodland Park Boulevard
14	Suite 1500	14	Suite 300
15	Wilmington, DE 19801	15	Arlington, TX 76013
16		16	
17	BY: CARL N. KUNZ, III, ESQ.	17	BY: ELIZABETH BANDA, ESQ.
18	(TELEPHONICALLY)	18	(TELEPHONICALLY)
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25	34	25	36
1		1	
2	OFFICE OF SANTA CLARA COUNTY COUNSEL	2	ROTH & DEMPSEY P.C.
3	Attorneys for County of Santa Clara Tax Collector	3	Attorneys for Burton Taft
4	70 West Hedding Street	4	436 Jefferson Avenue
5	9th Floor, East Wing	5	Scranton, PA 18510
6	San Jose, CA 95110	6	
7		7	BY: MICHAEL G. GALLACHER, ESQ.
8	BY: NEYSA A. FIGOR, ESQ.	8	(TELEPHONICALLY)
9	(TELEPHONICALLY)	9	
10		10	SCHIFF HARDIN LLP
11	OHIO ATTORNEY GENERAL'S OFFICE	11	Attorneys for Columbia Gas of Ohio; Columbia Gas o
12	Attorneys for State of Ohio State Office Tower	12 13	Virginia 233 South Wacker Drive
13 14	30 East Broad Street	13	Suite 6600
14	17th Floor	15	Chicago, IL 60606
16	Columbus, OH 43215	16	Cineago, 12 00000
17	Columbus, 011 <del>1</del> 5215	17	BY: JASON TORF, ESQ.
18	BY: LUCAS C. WARD, ESQ.	18	(TELEPHONICALLY)
19	(TELEPHONICALLY)	19	
20	· /	20	
21		21	
22		22	
23		23	
24		24	
25		25	
	35		37

212-267-6868

1		1	it will assume or reject these leases. This stipulation
1 2	SINCED & LEVICE D.C.	2	permits the use of this equipment post closing in the period
2	SINGER & LEVICK, P.C.	3	before a decision is made as to whether to assume and assign or
4	Attorneys for ACS Affiliated Computers Services, Inc	4	reject these leases. All rights and interests of the parties
4 5	16200 Addison Road Suite 140	5	are protected and we believe that this is a stipulation that is
		6	very much in the interest of both constituents. I would ask
6 7	Addison, TX 75001	7	that the Court approve it.
	DV. LADDVA LEVICY ESO	8	THE COURT: Okay, Mr. Weiss. Anybody else want to
8 9	BY: LARRY A. LEVICK, ESQ.	9	comment? Mr. Schmidt, creditors' committee?
	(TELEPHONICALLY)	10	MR. SCHMIDT: Good morning, Your Honor. Robert
10	WOLESON DOLTON DLLC	11	Schmidt, Kramer Levin, on behalf of the committee. Your Honor
11	WOLFSON BOLTON PLLC	12	Mr. Weiss presented the stip to me a little while ago. He's
12	Attorneys for Guardian Industries	13	represented that one of my colleagues has signed off on it. I
13	3150 Livernois	14	
14	Suite 275	14	have no reason to not believe that but I just want to take a quick look at it and we'll advise the Court at a break.
15	Troy, MI 48084	16	
16	DV. COOTT & WOLFCON FOO	17	THE COURT: I'm going to be tied up for the next hour
17	BY: SCOTT A. WOLFSON, ESQ.		or two
18	(TELEPHONICALLY)	18 19	MR. SCHMIDT: I suspect we'll have plenty of time to
19		20	read it.
20		20	THE COURT: Fair enough. Mr. Weiss, would it be
21		21	helpful more than just that? Would it be necessary would
22		22	you like an order entered on that today assuming the creditors'
23			committee is so (indiscernible)?
24		24	MR. WEISS: Yes, we would, Your Honor. And I can
25	38	25	represent to the Court that, as Mr. Bacon can attest to, we had $40$
	50		ÛF
1	P R O C E E D I N G S	1	a number of different conversations with Adam Rogoff. And he
2	THE COURT: Good morning, folks.	2	has, in fact, signed off on the stipulation in the form in
3	MR. MILLER: Good morning.	3	which we're going to present it.
4	THE COURT: Have seats, everybody. Come on up,	4	MR. BACON: And by email as well.
5	please.	5	THE COURT: Sure. The practical problem that a lot
6	MR. WEISS: Good morning, Your Honor. Robert Weiss	6	of parties are having in this case is that this is a
7	of Honigman Miller Schwartz & Cohen, special counsel for	7	complicated case. You can't do it with one lawyer. And people
8	General Motors Corporation.	8	have to kind of have enough time to talk to each other when
9	THE COURT: Right, Mr. Weiss.	9	they're so busy on other things.
10	MR. WEISS: When we ended last evening, I indicated	10	MR. WEISS: Sure.
11	that we had arrived upon a stipulation order resolving	11	THE COURT: So that's fine. Mr. Schmidt, could I
12	objection to sale motion with regard to GECC and some equipmen		simply ask you if either you or Mr. Rogoff or somebody
13	leases that are critical to the sale of the company should it	13	communicate with my chambers perhaps by lunchtime just to give
14	proceed based upon this Court's order.	14	me comfort that you guys are okay with it?
15	I'm pleased to advise the Court that we have come to	15	MR. SCHMIDT: Absolutely, Your Honor.
16	a final resolution in the form of a stipulation and order	16	THE COURT: Thank you. Thank you.
17	resolving objection to sale motion. We have consulted with	17	MR. WEISS: Your Honor, shall I
18	receiving cojection to bare motion. We have consulted with		THE COURT: Yes, Mr. Weiss?
	counsel for the creditors' committee whose input is	18	
13	counsel for the creditors' committee whose input is incorporated within the final terms of the stipulation.	18 19	
19 20	incorporated within the final terms of the stipulation.	19	MR. WEISS: Would you like me to present to the Court
20	incorporated within the final terms of the stipulation. Your Honor, just very briefly, if I may, the subject	19 20	MR. WEISS: Would you like me to present to the Court a copy of the stip and order at this time?
20 21	incorporated within the final terms of the stipulation. Your Honor, just very briefly, if I may, the subject of the leases are very substantial equipment for both	19 20 21	MR. WEISS: Would you like me to present to the Court a copy of the stip and order at this time? THE COURT: Well, actually, giving it to me is not
20 21 22	incorporated within the final terms of the stipulation. Your Honor, just very briefly, if I may, the subject of the leases are very substantial equipment for both manufacturing and assembly that's included in a number of	19 20 21 22	MR. WEISS: Would you like me to present to the Court a copy of the stip and order at this time? THE COURT: Well, actually, giving it to me is not going to be that helpful right now. So, yeah, you can give it
20 21 22 23	incorporated within the final terms of the stipulation. Your Honor, just very briefly, if I may, the subject of the leases are very substantial equipment for both manufacturing and assembly that's included in a number of different General Motors facilities. The stipulation is only	19 20 21 22 23	MR. WEISS: Would you like me to present to the Court a copy of the stip and order at this time? THE COURT: Well, actually, giving it to me is not going to be that helpful right now. So, yeah, you can give it to me but I won't really be able to look at it until next
20 21 22 23 24	incorporated within the final terms of the stipulation. Your Honor, just very briefly, if I may, the subject of the leases are very substantial equipment for both manufacturing and assembly that's included in a number of different General Motors facilities. The stipulation is only effective if the Court approves the sale and the sale closes.	19 20 21 22 23 24	MR. WEISS: Would you like me to present to the Court a copy of the stip and order at this time? THE COURT: Well, actually, giving it to me is not going to be that helpful right now. So, yeah, you can give it to me but I won't really be able to look at it until next recess at the earliest or maybe after we're done today.
20 21 22 23	incorporated within the final terms of the stipulation. Your Honor, just very briefly, if I may, the subject of the leases are very substantial equipment for both manufacturing and assembly that's included in a number of different General Motors facilities. The stipulation is only	19 20 21 22 23	MR. WEISS: Would you like me to present to the Court a copy of the stip and order at this time? THE COURT: Well, actually, giving it to me is not going to be that helpful right now. So, yeah, you can give it to me but I won't really be able to look at it until next

212-267-6868

1	THE COURT: Oh, sure. Sure. Thank you.	1	THE COURT: Okay. And I assume all of your opponents
2	MR. WEISS: So just so I understand, assuming that	2	also have.
3	the creditors' committee confirms that the form of the order is	3	MR. WARREN: Yes. They all have been provided copie
4	satisfactory to them, we need to appear before the Court again	4	and they'll have the designations which are filed. Thank you,
5	on this matter?	5	Your Honor.
6	THE COURT: I wouldn't think you need to.	6	THE COURT: Thank you, Mr. Warren.
7	MR. WEISS: Okay. Thank you, Your Honor.	7	MR. JONES: Sorry, Your Honor. Very quickly. David
8	MR. SCHMIDT: Thank you, Your Honor.	8	Jones.
9	THE COURT: Thank you. Do we have other housekeeping	9	THE COURT: Mr. Jones?
10	matters before yes?	10	MR. JONES: Let me note that on the Wilson
11	MR. WARREN: Good morning, Your Honor. Irwin Warren	ı, 11	designations, we're in the process of doing the same thing. We
12	Weil Gotshal & Manges, for the debtors. Two housekeeping	12	don't have it in hand yet. The designations are filed and
13	matters. On the record yesterday, I believe it was, there was	13	we'll provide it as soon as possible.
14	discussion about provisions of the loan security agreement	14	THE COURT: Okay.
15	between the Treasury and the debtors, in particular with	15	MR. LEHANE: Good morning, Your Honor. Robert
16	respect to the question of what collateral did or did not have	16	LeHane, Kelly Drye & Warren, on behalf of the debtors' landlor
17	liens. Going to Mr. Parker's question, we advised the Court we	17	and its Roanoke, Texas distribution facility.
18	would provide a letter with the relevant sections. And if I	18	THE COURT: Good morning, Mr. LeHane.
19	may hand that up to Your Honor, we have done that. We've	19	MR. LEHANE: Your Honor, we filed a limited objection
20	provided it to Mr. Parker and to all other counsel for the	20	that raised three issues: cure, adequate assurance and the
21	objectors. The particularly important provision is the	21	debtors' ability to remain in the premises prior to a
22	exclusion of collateral which is in here and the definition of	22	designation of the lease. The parties have, we believe,
23	excluded collateral basically says it's any property to the	23	arrived at a business decision, a business settlement. There's
24	extent that the grant of a lien on it would give rise to a lien	24	a lease amendment that has yet to be executed. But the
25	under any other document. So it's sort of elegant in its	25	settlement involves the debtor confirming for the record, one
	42		44
1	simplicity of addressing the question of whether a lien has	1	of the issues raised in the adequate assurance objection. Your
2	been granted. If it would grant a lien and it would have done	2	Honor, the debtors agreed to assume the lease and assume the
3	what Mr. Parker says, the government doesn't have it.	3	lease at closing and that in connection with the assumption of
4	If I may hand up that letter?	4	the lease, the debtor agrees that it will assume all of the
5	THE COURT: Yes, Mr. Warren. Thank you.	5	obligations to indemnify the landlord whether or not those
6	MR. WARREN: The second housekeeping matter, Your	6	relate to incidents that may have occurred pre-closing or pre-
7	Honor, is Mr. Bressler had indicated that rather than putting a	7	petition. The debtors also agreed to pay all tax obligations
8	witness on for certain of the questioning, he would designate	8	under the lease. Specifically, in Texas, the real estate taxes
9	certain testimony from the depositions and Your Honor had said		are billed at the end of the year and they may relate to
10	we should counter designate by this morning. The IUE also	10	periods pre-petition and pre-closing and the debtors agreed
11	chose to designate not just with respect to Mr. Henderson but	11	that it would confirm for the record that it has agreed to
12	with respect to Mr. Raleigh. We have put together our counter	12	assume all of those obligations. If debtors' counsel would
13	designations. Those will be filed but Your Honor had asked	13	simply confirm that for the record, we can
14	that marked copies of the transcripts be provided color-coded	14	THE COURT: Okay. Anybody have any problems with
15	to indicate who are the objectors.	15	what Mr. LeHane said. Mr. Smolinsky?
16	THE COURT: I say color coded. I simply meant so	16	MR. SMOLINSKY: Good morning, Your Honor. Joe
17	that I could tell whose is what.	17	Smolinsky, Weil Gotshal & Manges for the debtors. Your Honor
18	MR. WARREN: We figured the easiest	18	we have a number of contract resolutions, of cure disputes,
19	THE COURT: Black and white, that's equally	19	that are on the calendar today. We were hoping to do it in a
20	satisfactory.	20	streamline fashion, so as not to cause a stampede, one at a
21	MR. WARREN: We thought color might work. We have		time. We are in the process of working out with LBA the terms
22	taken the liberty of taking all of the objectors designations	22	of a modified lease amendment. I think the statements that
23	and put them in yellow. Ours are in pink. And if I may hand	23	were made are accurate to the extent that there's an unknown
24	those up to Your Honor, these are the Henderson and Raleigh	24	indemnity event that occurs prior to closing that that to
25	transcripts. Hopefully, this will be of assistance.	25	the extent it's covered any indemnity agreement under the
	43		45

212-267-6868

1	lease, the purchaser is assuming that liability.	1	Chapter 11 not according equal and ratable treatment to
2	I didn't want to upset the flow of this hearing	2	different groups of claimants whose claims are legally similar.
3	today. And to the extent that we want to deal with these	3	They do not understand how our legal system can permit the
4	issues now or deal with them later, we can.	4	government to resort to Chapter 11 and yet choose to favor some
5	THE COURT: You know, you're reading my mind, Mr.	5	constituencies over others.
6	Smolinsky. And, frankly, I didn't know what Mr. LeHane was	6	The government's answer is that it is purchasing the
7	coming up to say. That's fine, Mr. LeHane. I think you've got	7	best assets under Section 363. So it has the right to take
8	it done, though. But, folks, what we have here now, which is	8	what it wants, leave what it doesn't want and make special
9	what appears to be a line of people who want to get up on	9	deals by allocating its equity in order to take care of the
10	relatively minor matters, important to you all, of course, but	10	constituencies that it needs to operate the new company. The
11	smaller in the scheme of things, it raises the risk of really	11	new company doesn't need the old company's bondholders. It
12	spiraling out of control and undercutting, if not undoing,	12	doesn't need or want a lot of other things. Provisions of
13	everything I've been trying to accomplish in the last couple of	13	Chapter 11 that might require a restructuring to recognize that
14	days in terms of triaging these matters and dealing with the	14	the value of New GM belongs to all of Old GM and its estates to
15	most important issues first.	15	be allocated in a more equal and ratable way are simply
16	Unless there are any other things of major	16	inconvenient.
17	importance, such as modifying any of the arguments that I've	17	The debtors argue that this Court has the power to
18	already heard, I'm going to ask all of the people who are on	18	authorize this transaction if it finds that there is an
19	line to speak to sit down until I can hear from Mr. Richman and		articulated business justification. The business judgment must
20	Mr. Parker and reply by the movants. And then rest assured	20	be reasonable and the purchaser must have good faith. This
21	that before I leave today, we will have dealt with everybody.	21	derives from Lionel and its progeny.
22	Okay, folks.	22	But, Your Honor, I submit that assumes a genuine
23	MR. SMOLINSKY: And, Your Honor, I think I could	23	sale. That assumes independence between a purchaser and a
24	later present a streamlined approach to the cure objections so	24	seller. That assumes that a debtor has a real choice other
25	that we can make sure we cover everybody's concerns in the	25	than to bend to the will of its lender and its purchaser
	46		48
1	fastest possible way.	1	whereas here, the record shows an utter dominance of the
2	THE COURT: Sure. Thank you, Mr. Smolinsky.	2	debtors including the fact that the principal negotiators for
3	MR. SMOLINSKY: Thank you.	3	the debtors are also to be the principal managers of the new GM
4	THE COURT: All right. Mr. Richman, I think you're	4	negotiating with the owner of New GM, the protestations of
5	up.	5	arm's length negotiations and good faith are simply irrelevant.
6	MR. RICHMAN: Good morning, Your Honor. Your Honor	, 6	The absence of real choice and the dominance of the government
7	Michael Richman, Patton Boggs, for the unofficial committee of	7	creates an environment unique in this case in which those
8	family and dissident GM bondholders. Your Honor, our principal	8	factors that are required for a 363 sale cannot credibly exist.
9	argument, which I'm going to focus on this morning, is that the	9	Indeed, the testimony was that the sale price was not
10	debtors have not satisfied their burdens to demonstrate the	10	·
	destors have not suttoried men surdens to demonstrate me	10	so much negotiated as derived on the basis of asset values, but
11	right to use Section 363 to effectuate a sale of substantially	11	so much negotiated as derived on the basis of asset values, but was rather derived on the basis of the minimum amounts needed
11 12			5
	right to use Section 363 to effectuate a sale of substantially	11	was rather derived on the basis of the minimum amounts needed
12	right to use Section 363 to effectuate a sale of substantially all their assets in the first month of the case.	11 12	was rather derived on the basis of the minimum amounts needed to settle the claims of the favored constituencies. That this
12 13	right to use Section 363 to effectuate a sale of substantially all their assets in the first month of the case. After the briefing and the evidence, a related and	11 12 13	was rather derived on the basis of the minimum amounts needed to settle the claims of the favored constituencies. That this later turned out to be supported by a fairness opinion is
12 13 14	right to use Section 363 to effectuate a sale of substantially all their assets in the first month of the case. After the briefing and the evidence, a related and central question that seems to be unique to this case is where	11 12 13 14	was rather derived on the basis of the minimum amounts needed to settle the claims of the favored constituencies. That this later turned out to be supported by a fairness opinion is irrelevant to the fact that it wasn't negotiated as any real
12 13 14 15	right to use Section 363 to effectuate a sale of substantially all their assets in the first month of the case. After the briefing and the evidence, a related and central question that seems to be unique to this case is where the government seeks to rescue a failing company through a	11 12 13 14 15	was rather derived on the basis of the minimum amounts needed to settle the claims of the favored constituencies. That this later turned out to be supported by a fairness opinion is irrelevant to the fact that it wasn't negotiated as any real sale of assets would be. Your Honor asked yesterday why there
12 13 14 15 16	right to use Section 363 to effectuate a sale of substantially all their assets in the first month of the case. After the briefing and the evidence, a related and central question that seems to be unique to this case is where the government seeks to rescue a failing company through a corporate restructuring under Chapter 11 of the Bankruptcy Code	11 12 13 14 15 16	was rather derived on the basis of the minimum amounts needed to settle the claims of the favored constituencies. That this later turned out to be supported by a fairness opinion is irrelevant to the fact that it wasn't negotiated as any real sale of assets would be. Your Honor asked yesterday why there was a fairness opinion at all if there were no other bidders.
12 13 14 15 16 17	right to use Section 363 to effectuate a sale of substantially all their assets in the first month of the case. After the briefing and the evidence, a related and central question that seems to be unique to this case is where the government seeks to rescue a failing company through a corporate restructuring under Chapter 11 of the Bankruptcy Code may have circumvent the Code's various creditors' rights and	11 12 13 14 15 16 17	was rather derived on the basis of the minimum amounts needed to settle the claims of the favored constituencies. That this later turned out to be supported by a fairness opinion is irrelevant to the fact that it wasn't negotiated as any real sale of assets would be. Your Honor asked yesterday why there was a fairness opinion at all if there were no other bidders. It's clear from the response that the fairness opinion and the
12 13 14 15 16 17 18	right to use Section 363 to effectuate a sale of substantially all their assets in the first month of the case. After the briefing and the evidence, a related and central question that seems to be unique to this case is where the government seeks to rescue a failing company through a corporate restructuring under Chapter 11 of the Bankruptcy Code may have circumvent the Code's various creditors' rights and protections by labeling its restructuring a sale and then	11 12 13 14 15 16 17 18	was rather derived on the basis of the minimum amounts needed to settle the claims of the favored constituencies. That this later turned out to be supported by a fairness opinion is irrelevant to the fact that it wasn't negotiated as any real sale of assets would be. Your Honor asked yesterday why there was a fairness opinion at all if there were no other bidders. It's clear from the response that the fairness opinion and the liquidation analysis was window dressing for the board, and
12 13 14 15 16 17 18 19	right to use Section 363 to effectuate a sale of substantially all their assets in the first month of the case. After the briefing and the evidence, a related and central question that seems to be unique to this case is where the government seeks to rescue a failing company through a corporate restructuring under Chapter 11 of the Bankruptcy Code may have circumvent the Code's various creditors' rights and protections by labeling its restructuring a sale and then conditioning its rescue on a quick sale to itself.	11 12 13 14 15 16 17 18 19	was rather derived on the basis of the minimum amounts needed to settle the claims of the favored constituencies. That this later turned out to be supported by a fairness opinion is irrelevant to the fact that it wasn't negotiated as any real sale of assets would be. Your Honor asked yesterday why there was a fairness opinion at all if there were no other bidders. It's clear from the response that the fairness opinion and the liquidation analysis was window dressing for the board, and maybe for the Court.
12 13 14 15 16 17 18 19 20	right to use Section 363 to effectuate a sale of substantially all their assets in the first month of the case. After the briefing and the evidence, a related and central question that seems to be unique to this case is where the government seeks to rescue a failing company through a corporate restructuring under Chapter 11 of the Bankruptcy Code may have circumvent the Code's various creditors' rights and protections by labeling its restructuring a sale and then conditioning its rescue on a quick sale to itself. We understand the argument that but for the	11 12 13 14 15 16 17 18 19 20	was rather derived on the basis of the minimum amounts needed to settle the claims of the favored constituencies. That this later turned out to be supported by a fairness opinion is irrelevant to the fact that it wasn't negotiated as any real sale of assets would be. Your Honor asked yesterday why there was a fairness opinion at all if there were no other bidders. It's clear from the response that the fairness opinion and the liquidation analysis was window dressing for the board, and maybe for the Court. In this case, no one came to the company offering to
12 13 14 15 16 17 18 19 20 21	right to use Section 363 to effectuate a sale of substantially all their assets in the first month of the case. After the briefing and the evidence, a related and central question that seems to be unique to this case is where the government seeks to rescue a failing company through a corporate restructuring under Chapter 11 of the Bankruptcy Code may have circumvent the Code's various creditors' rights and protections by labeling its restructuring a sale and then conditioning its rescue on a quick sale to itself. We understand the argument that but for the government's rescue effort, we and many other stakeholders	11 12 13 14 15 16 17 18 19 20 21	was rather derived on the basis of the minimum amounts needed to settle the claims of the favored constituencies. That this later turned out to be supported by a fairness opinion is irrelevant to the fact that it wasn't negotiated as any real sale of assets would be. Your Honor asked yesterday why there was a fairness opinion at all if there were no other bidders. It's clear from the response that the fairness opinion and the liquidation analysis was window dressing for the board, and maybe for the Court. In this case, no one came to the company offering to buy any assets. The government came to GM with financial
12 13 14 15 16 17 18 19 20 21 22	right to use Section 363 to effectuate a sale of substantially all their assets in the first month of the case. After the briefing and the evidence, a related and central question that seems to be unique to this case is where the government seeks to rescue a failing company through a corporate restructuring under Chapter 11 of the Bankruptcy Code may have circumvent the Code's various creditors' rights and protections by labeling its restructuring a sale and then conditioning its rescue on a quick sale to itself. We understand the argument that but for the government's rescue effort, we and many other stakeholders would have nothing. And so, we should be grateful for	11 12 13 14 15 16 17 18 19 20 21 22	was rather derived on the basis of the minimum amounts needed to settle the claims of the favored constituencies. That this later turned out to be supported by a fairness opinion is irrelevant to the fact that it wasn't negotiated as any real sale of assets would be. Your Honor asked yesterday why there was a fairness opinion at all if there were no other bidders. It's clear from the response that the fairness opinion and the liquidation analysis was window dressing for the board, and maybe for the Court. In this case, no one came to the company offering to buy any assets. The government came to GM with financial rescue, not to buy assets. The government then came up with a
12 13 14 15 16 17 18 19 20 21 22 23	right to use Section 363 to effectuate a sale of substantially all their assets in the first month of the case. After the briefing and the evidence, a related and central question that seems to be unique to this case is where the government seeks to rescue a failing company through a corporate restructuring under Chapter 11 of the Bankruptcy Code may have circumvent the Code's various creditors' rights and protections by labeling its restructuring a sale and then conditioning its rescue on a quick sale to itself. We understand the argument that but for the government's rescue effort, we and many other stakeholders would have nothing. And so, we should be grateful for receiving anything. But that is not the way that bondholders	11 12 13 14 15 16 17 18 19 20 21 22 23	was rather derived on the basis of the minimum amounts needed to settle the claims of the favored constituencies. That this later turned out to be supported by a fairness opinion is irrelevant to the fact that it wasn't negotiated as any real sale of assets would be. Your Honor asked yesterday why there was a fairness opinion at all if there were no other bidders. It's clear from the response that the fairness opinion and the liquidation analysis was window dressing for the board, and maybe for the Court. In this case, no one came to the company offering to buy any assets. The government came to GM with financial rescue, not to buy assets. The government then came up with a restructuring plan with union and bondholder settlements. But
12 13 14 15 16 17 18 19 20 21 22 23 24	right to use Section 363 to effectuate a sale of substantially all their assets in the first month of the case. After the briefing and the evidence, a related and central question that seems to be unique to this case is where the government seeks to rescue a failing company through a corporate restructuring under Chapter 11 of the Bankruptcy Code may have circumvent the Code's various creditors' rights and protections by labeling its restructuring a sale and then conditioning its rescue on a quick sale to itself. We understand the argument that but for the government's rescue effort, we and many other stakeholders would have nothing. And so, we should be grateful for receiving anything. But that is not the way that bondholders and other creditors and stakeholders look at what is being	11 12 13 14 15 16 17 18 19 20 21 22 23 24	was rather derived on the basis of the minimum amounts needed to settle the claims of the favored constituencies. That this later turned out to be supported by a fairness opinion is irrelevant to the fact that it wasn't negotiated as any real sale of assets would be. Your Honor asked yesterday why there was a fairness opinion at all if there were no other bidders. It's clear from the response that the fairness opinion and the liquidation analysis was window dressing for the board, and maybe for the Court. In this case, no one came to the company offering to buy any assets. The government came to GM with financial rescue, not to buy assets. The government then came up with a restructuring plan with union and bondholder settlements. But it concluded that implementing it through a Chapter 11 plan

212-267-6868

1	possibility of longer time than if it could be implemented as a	1	consider the extraordinary manner in which these hearings have
2	sale. So they made a conscious strategic decision to label	2	been held in the last couple of days, discovery over the
3	their restructuring a sale and a conscious strategic decision	3	weekend, shortened times for everything. The same thing could
4	to bypass and circumvent the Chapter 11 plan process.	4	be done in an accelerated plan if the same arguments were being
5	The evidence shows that Treasury's lawyers presented	5	made but creditors' rights would be accorded to that.
6	to Treasury alternative means of restructuring the company	6	I can't tell you standing here right now of a
7	including through a Chapter 11 plan and that 363 was chosen fo	7	specific case where I know that that was done. Honestly, I
8	strategic purposes.	8	haven't had time to look for that. We did cite cases where the
9	THE COURT: Pause, please, Mr. Richman. You've been	9	record showed confirmation within so many days of filing all of
10	around the block a few times. To what extent either in this	10	which were within thirty, sixty, ninety days, some of which
11	court or Delaware or anywhere else in the country have you eve	11	were a couple of days. Most of those were pre-packs; some wer
12	seen a Chapter 11 case? Put aside a large one like this, even	12	pre-nego I believe some were pre-negotiated plans. I'd have
13	medium size one, even cases in the fifty million dollar,	13	to check and we could submit something afterwards, if Your
14	hundred million dollar range that has ever gone from filing	14	Honor wishes.
15	to confirmation within a period of ninety days.	15	But the other thing that I think is a useful response
16	MR. RICHMAN: Well, Your Honor, what we mention ir	16	to Your Honor, if the goal here that everybody says they want
17	the briefs is pre-packs and pre-negotiated plans certainly have	17	is to create spinoff New GM, and it has to be done quickly
18	been confirmed very rapidly. And this restructuring plan was	18	because that'll get it out of the bankruptcy environment and
19	fundamentally a pre-negotiated plan. There were agreements in	19	allow public to understand that there's a new GM in place, that
20	place with the union, important agreements in place with some	20	could have been done without allocating the equity. The
21	of the senior bondholders. This could have been filed as a	21	company could have spun off the assets into a New GM. It could
22	pre-negotiated plan and put on an accelerated time frame.	22	do so today. It could do so under 363. But it could retain
23	Not only that, Your Honor, if the business objective	23	the equity so that all the equity all the interest holders
24	here, both on the	24	in this case would still have a stake in it and that equity
25	THE COURT: Pause. Forgive me. Can you give me any	25	allocation could then be done later pursuant to a plan so that
	50		52
1	more specificity than that? Ninety days is a very short time.	1	full creditors' rights are protected. And that would achieve
2	A pre-negotiated plan, by definition, is, aside from the fact	2	all of the objectives that the government and the debtors claim
3	that you haven't solicited your votes from the disclosure yet,	3	that they have to achieve. It would be outside the bankruptcy
4	I get so-called pre-negotiated plans all the time where there	4	environment but instead of the government holding the equity
5	have been pre-negotiated secured debt or with major elements of	5	and determining how it gets allocated, the debtors would hold
6	the unsecured creditor community. But when they've been filed	6	the equity until a plan could determine how it should be
7	that way, I can't count the number of times, even in my pre-	7	allocated.
8	packs, where one issue or another comes up and I'm trying to	8	Your Honor, the evidence shows that Treasury's
9	think of any specific example to any you know which have been	9	lawyers presented various alternative means of effectuating the
10	able to meet that time frame. We have testimony, as I	10	restructuring including through a plan and that 363 was a
11	understand it, from Mr. Wilson that he had gone to and I'll	11	deliberate strategic choice. It was only at that time, after
12	have to look at the record for the number any number of	12	they decided to effectuate the restructuring through 363, that
13	people experienced in Chapter 11. And the view was unanimous		the format of a sale was devised with a shell company and the
14	subject to me checking the record, that it would be suicidal to	14	sale format was plugged in to fit the strategy. Once Treasury
15	expect it to be completed in that period of time.	15	mandated a restructuring using a 363 sale strategy, the script
16	MR. RICHMAN: There were two alternatives. Well,	16	was written in order to make that work. The company and its
17	first, let me respond to that, Your Honor. I have complete	17	advisors analyzed only two options: the sale or a liquidation.
18	confidence that, with the resources available here, that (a)a	18	They conspicuously failed to analyze or to present to the board
19	pre-negotiated plan with the agreements that are in place and	19	the possibility of spinning off GM's best assets to a new GM,
20	sought to be approved with the sale could have been filed on	20	as I just indicated, or in an accelerated plan process.
	June 1st; and that Your Honor, upon cause shown, would have	21	The evidence shows that the government decided to use
21	,		363 not for any goal that a real purchaser would have but as a
	accelerated the timetable and all of the objections and issues	22	
22	accelerated the timetable and all of the objections and issues and creditors' rights issues and many of the things that we're	22 23	
	and creditors' rights issues and many of the things that we're	23	restructuring tool. The government doesn't want to buy, own o
22 23	-		

212-267-6868

516-608-2400

1	under 363 then the government can take control more easily,	1	asserted need to effectuate a new GM very quickly or at least
2	quickly and without providing value or distributions of a type	2	by July 10, is not supported by evidence of declining value.
3	or amount that conceivably otherwise would be required in a	3	Indeed, it's clear from the testimony of both Mr. Henderson and
4	Chapter 11 plan.	4	Mr. Wilson that the debtors' and the government's first day
5	It's a good strategy. We understand why they did it.	5	fears about the negative effects that Chapter 11 would have on
6	They have nothing to lose. They told the public, as did the	6	GM were greatly exaggerated and unsupported at least over the
7	White House, that they hope to emerge from Chapter 11 in sixty	7	first thirty days. And we presume over the first sixty to
8	to ninety days. So if this Court decides that in the unusual	8	ninety days that they predicted that the case would last and
9	circumstances of this case including very distinguishing factor	9	inform the public that the case would last. What we see in the
10	from Chrysler, the absence of any independent third party	10	evidence is that because the parties attempted at all cost to
11	purchaser whose commercial needs are driving the deadlines, if	11	justify the need for a fast track sale, there were a number of
12	this Court decides that there is insufficient support under	12	conclusory statements and predictions of dire consequences that
13	Lionel and Chrysler to restructure under 363, the government	13	turned out not to be true.
14	and the debtors can easily spin this as a temporary setback but	14	Mr. Henderson's first day affidavit in evidence as
15	still well within their initial time frames. This case tests	15	Debtors' Exhibit 15 states at paragraph 82 that "The value of
16	the very meaning of Lionel and its limits.	16	and consumer confidence in the GM brand and its products and
17	These were the very concerns that the Second Circuit	17	support systems are fragile and will be subject to significant
18	had in articulating the Lionel guidelines, a balancing of	18	value erosion unless they are expeditiously transferred to New
19	tensions between the need to preserve a business and the need	19	GM and its operations start fee from the stigma of bankruptcy.
20	to protect creditors' rights. Lionel gave us six nonexclusive	20	Any delay will result in irretrievable revenue perishability
21	factors for evaluating the propriety of 363 sales to dispose of	21	and loss of market share to the detriment of all economic
22	substantially all of the debtors' assets. But just before	22	interest. It will exacerbate and entrench consumer resistance
23	reciting those factors, the Second Circuit cited to the Supreme	23	to General Motors products." Mr. Wilson said that his concern
24	Court opinion in Committee for Independent Stockholders of TMT	24	about timing were informed by articles from commentators who
25	Trailer against Anderson for the proposition that, and I quote,	25	predicted GM could not survive Chapter 11.
	54		56
1	"The need for expedition is not a justification for abandoning	1	But as we have seen from the evidence, these first
2	proper standards." The president of the United States made a	2	day predictions turned out not to be true. It is evidence and
3	similar statement in his inaugural address which we quoted in	3	not prophecy on which this Court should rely.
4	our brief. In essence, we should not compromise our principles	4	Though GM's overall financial performance was in
5	for the sake of expediency.	5	decline over a long period of time and clearly it is today on a
6	Then the Second Circuit had to say, in words that	6	year-over-year basis below what it was a year ago, it enjoyed
7	apply fully to the situation we face today, and I quote, "A	7	improved performance in the first month of bankruptcy over the
8	bankruptcy judge must not blindly follow the hue and cry of the	8	month of May. Some of this may be attributable, as Mr.
9	most vocal special interest groups; rather, he should consider	9	Henderson testified, to the government backstopping of
10			renderson testified, to the government backstopping of
	all salient factors pertaining to the proceeding and,	10	warranties which occurred earlier and independently of any
11	all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the	10 11	
11 12			warranties which occurred earlier and independently of any
	accordingly, act to further the diverse interests of the	11	warranties which occurred earlier and independently of any bankruptcy filing. Some of it may also be attributable to
12	accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike."	11 12	warranties which occurred earlier and independently of any bankruptcy filing. Some of it may also be attributable to business strategies that Mr. Henderson and his team pursued
12 13	accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike." As the case law has subsequently developed and as	11 12 13 14	warranties which occurred earlier and independently of any bankruptcy filing. Some of it may also be attributable to business strategies that Mr. Henderson and his team pursued more recently. So the assets are not wasting or spoiling or
12 13 14	accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike." As the case law has subsequently developed and as reflected in these hearings and the arguments, the criteria	11 12 13 14	warranties which occurred earlier and independently of any bankruptcy filing. Some of it may also be attributable to business strategies that Mr. Henderson and his team pursued more recently. So the assets are not wasting or spoiling or deteriorating.
12 13 14 15	accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike." As the case law has subsequently developed and as reflected in these hearings and the arguments, the criteria considered most important are a sound business judgment and the	11 12 13 14 : 15	warranties which occurred earlier and independently of any bankruptcy filing. Some of it may also be attributable to business strategies that Mr. Henderson and his team pursued more recently. So the assets are not wasting or spoiling or deteriorating. Now, echoing his first day fears when he testified,
12 13 14 15 16	accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike." As the case law has subsequently developed and as reflected in these hearings and the arguments, the criteria considered most important are a sound business judgment and the question whether the assets in question are declining in value.	11 12 13 14 15 16	warranties which occurred earlier and independently of any bankruptcy filing. Some of it may also be attributable to business strategies that Mr. Henderson and his team pursued more recently. So the assets are not wasting or spoiling or deteriorating. Now, echoing his first day fears when he testified, Mr. Henderson said that he thought one reason why the business
12 13 14 15 16 17	accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike." As the case law has subsequently developed and as reflected in these hearings and the arguments, the criteria considered most important are a sound business judgment and the question whether the assets in question are declining in value. The need to preserve value, particularly where there is	11 12 13 14 15 16 17	warranties which occurred earlier and independently of any bankruptcy filing. Some of it may also be attributable to business strategies that Mr. Henderson and his team pursued more recently. So the assets are not wasting or spoiling or deteriorating. Now, echoing his first day fears when he testified, Mr. Henderson said that he thought one reason why the business was doing better than expected in June was customer expectation
12 13 14 15 16 17 18	accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike." As the case law has subsequently developed and as reflected in these hearings and the arguments, the criteria considered most important are a sound business judgment and the question whether the assets in question are declining in value. The need to preserve value, particularly where there is evidence of deterioration, is often argued and cited to support	11 12 13 14 ; 15 16 17 18	warranties which occurred earlier and independently of any bankruptcy filing. Some of it may also be attributable to business strategies that Mr. Henderson and his team pursued more recently. So the assets are not wasting or spoiling or deteriorating. Now, echoing his first day fears when he testified, Mr. Henderson said that he thought one reason why the business was doing better than expected in June was customer expectation that the bankruptcy process would go quickly but he later
12 13 14 15 16 17 18 19	accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike." As the case law has subsequently developed and as reflected in these hearings and the arguments, the criteria considered most important are a sound business judgment and the question whether the assets in question are declining in value. The need to preserve value, particularly where there is evidence of deterioration, is often argued and cited to support unusual speed, particularly when the sale is sought so early in	11 12 13 14 15 16 17 18 19	warranties which occurred earlier and independently of any bankruptcy filing. Some of it may also be attributable to business strategies that Mr. Henderson and his team pursued more recently. So the assets are not wasting or spoiling or deteriorating. Now, echoing his first day fears when he testified, Mr. Henderson said that he thought one reason why the business was doing better than expected in June was customer expectation that the bankruptcy process would go quickly but he later conceded that that was pure conjecture. Indeed, it became
12 13 14 15 16 17 18 19 20	accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike." As the case law has subsequently developed and as reflected in these hearings and the arguments, the criteria considered most important are a sound business judgment and the question whether the assets in question are declining in value. The need to preserve value, particularly where there is evidence of deterioration, is often argued and cited to support unusual speed, particularly when the sale is sought so early in the case as it is here.	11 12 13 14 15 16 17 18 19 20	warranties which occurred earlier and independently of any bankruptcy filing. Some of it may also be attributable to business strategies that Mr. Henderson and his team pursued more recently. So the assets are not wasting or spoiling or deteriorating. Now, echoing his first day fears when he testified, Mr. Henderson said that he thought one reason why the business was doing better than expected in June was customer expectation that the bankruptcy process would go quickly but he later conceded that that was pure conjecture. Indeed, it became clear from Mr. Henderson's testimony, as well as Mr. Wilson's,
12 13 14 15 16 17 18 19 20 21	accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike." As the case law has subsequently developed and as reflected in these hearings and the arguments, the criteria considered most important are a sound business judgment and the question whether the assets in question are declining in value. The need to preserve value, particularly where there is evidence of deterioration, is often argued and cited to support unusual speed, particularly when the sale is sought so early in the case as it is here. The only evidence before the Court demonstrates that	11 12 13 14 15 16 17 18 19 20 21	warranties which occurred earlier and independently of any bankruptcy filing. Some of it may also be attributable to business strategies that Mr. Henderson and his team pursued more recently. So the assets are not wasting or spoiling or deteriorating. Now, echoing his first day fears when he testified, Mr. Henderson said that he thought one reason why the business was doing better than expected in June was customer expectation that the bankruptcy process would go quickly but he later conceded that that was pure conjecture. Indeed, it became clear from Mr. Henderson's testimony, as well as Mr. Wilson's, that the fears of business decline that they said motivated
12 13 14 15 16 17 18 19 20 21 22	accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike." As the case law has subsequently developed and as reflected in these hearings and the arguments, the criteria considered most important are a sound business judgment and the question whether the assets in question are declining in value. The need to preserve value, particularly where there is evidence of deterioration, is often argued and cited to support unusual speed, particularly when the sale is sought so early in the case as it is here. The only evidence before the Court demonstrates that since filing Chapter 11, GM's assets are not wasting. They are	11 12 13 14 ; 15 16 17 18 19 20 21 22	warranties which occurred earlier and independently of any bankruptcy filing. Some of it may also be attributable to business strategies that Mr. Henderson and his team pursued more recently. So the assets are not wasting or spoiling or deteriorating. Now, echoing his first day fears when he testified, Mr. Henderson said that he thought one reason why the business was doing better than expected in June was customer expectation that the bankruptcy process would go quickly but he later conceded that that was pure conjecture. Indeed, it became clear from Mr. Henderson's testimony, as well as Mr. Wilson's, that the fears of business decline that they said motivated their desire for a fast track 363 as distinct from any
12 13 14 15 16 17 18 19 20 21 22 23	accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike." As the case law has subsequently developed and as reflected in these hearings and the arguments, the criteria considered most important are a sound business judgment and the question whether the assets in question are declining in value. The need to preserve value, particularly where there is evidence of deterioration, is often argued and cited to support unusual speed, particularly when the sale is sought so early in the case as it is here. The only evidence before the Court demonstrates that since filing Chapter 11, GM's assets are not wasting. They are not deteriorating; they are not melting. Chapter 11 has	11 12 13 14 15 16 17 18 19 20 21 22 23	warranties which occurred earlier and independently of any bankruptcy filing. Some of it may also be attributable to business strategies that Mr. Henderson and his team pursued more recently. So the assets are not wasting or spoiling or deteriorating. Now, echoing his first day fears when he testified, Mr. Henderson said that he thought one reason why the business was doing better than expected in June was customer expectation that the bankruptcy process would go quickly but he later conceded that that was pure conjecture. Indeed, it became clear from Mr. Henderson's testimony, as well as Mr. Wilson's, that the fears of business decline that they said motivated their desire for a fast track 363 as distinct from any alternative were based on worries over a prolonged case
12 13 14 15 16 17 18 19 20 21 22 23 24	accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike." As the case law has subsequently developed and as reflected in these hearings and the arguments, the criteria considered most important are a sound business judgment and the question whether the assets in question are declining in value. The need to preserve value, particularly where there is evidence of deterioration, is often argued and cited to support unusual speed, particularly when the sale is sought so early in the case as it is here. The only evidence before the Court demonstrates that since filing Chapter 11, GM's assets are not wasting. They are not deteriorating; they are not melting. Chapter 11 has apparently, so far, stabilized the company and sales have	11 12 13 14 15 16 17 18 19 20 21 22 23 24	warranties which occurred earlier and independently of any bankruptcy filing. Some of it may also be attributable to business strategies that Mr. Henderson and his team pursued more recently. So the assets are not wasting or spoiling or deteriorating. Now, echoing his first day fears when he testified, Mr. Henderson said that he thought one reason why the business was doing better than expected in June was customer expectation that the bankruptcy process would go quickly but he later conceded that that was pure conjecture. Indeed, it became clear from Mr. Henderson's testimony, as well as Mr. Wilson's, that the fears of business decline that they said motivated their desire for a fast track 363 as distinct from any alternative were based on worries over a prolonged case "prolonged" was a word in the testimony one where the

212-267-6868

1	was concerned about a "traditional" Chapter 11 process.	1	government offer. Simply inconceivable. And we're not
2	Mr. Miller spent argument time warning of dire	2	criticizing the fact that the debtors have chosen this course.
3	consequences as well, not in the record of evidence but in Mr.	3	And we're not criticizing the fact that they sensibly decided
4	Miller's opinion, and concluded with the point that a Delphi-	4	not to liquidate. We're objecting to the form of the
5	like case would be bad for the business. That's not really	5	transaction.
6	debatable but it's not the point.	6	Even though the debtor had no choice, this Court
7	The debtors argue that this transaction is the only	7	does. This Court can look through the form to the substance,
8	alternative to a liquidation but is it fair to say that there	8	through the evidence to the truth and through the magic in
9	is no viable alternative to a sale where you deliberately limit	9	order to stand for the Chapter 11 process.
10	your alternatives? I understand an aversion to a traditional	10	Now yesterday, Your Honor commented about our
11	plan process. But here, where there was already the equivalent	11	familiar experiences with overbearing lenders. I believe the
12	of a pre-negotiated plan, an accelerated plan process could	12	comment was that lenders frequently overreach. In many such
13	have been and could yet be attempted. But no advisors were	13	situations the debtor, in dire need of financing, is in no
14	asked to consider that or value it or present it as an option	14	position to negotiate effectively. As here, the debtor is
15	to the board. Mr. Repko agreed that the value of a new GM	15	given no real choice. Where the debtors' will is overborne,
16	under a plan could be comparable to the value under the 363	16	the Court can and does step in. We see that all the time with
17	transaction.	17	DIP financing and purchase 363 purchase provisions.
18	Now, Mr. Miller said that our suggestion of a Chapter	18	Desperate debtors agree to things demanded of them because the
19	11 process that could be concluded within ninety days was	19	have to. But the Courts will not hesitate to push back and
20	magical. Yet, as I indicated before, and I'd be prepared to	20	tell the lenders, sorry, I'm not approving those provisions.
21	supplement the record with some further research, we know that	t 21	THE COURT: I've done this a few times, Mr. Richman.
22	many cases with pre-packs and pre-negotiated plans have been	22	When you say we don't hesitate, I think that understates it a
23	completed in that time frame without magic. And there is no	23	little. Every time a judge rules on a DIP, he's rolling the
24	doubt that the debtors and the government have the resources to	24	dice that he's going to crater the whole case if he messes
25	do that here, to at least try that here. Perhaps the magic	25	around with economic terms. If you give them extra time to do
	58		60
1	that he was referring was making creditor objections disappear.	1	investigations so they can bring their avoidance actions, we
2	And if that's what he meant, then I agree that you couldn't do	2	make individualized adjustments as to whether 506(c) labors are
3	that in a plan process. But this Court could have easily dealt	3	appropriate or handing over the proceeds of avoidance actions
4	with as easily such issues in an accelerated plan time frame as	4	are appropriate. But I cannot think of a single time in the
5	the Court demonstrated it could do with these hearings	5	nine years I've been on the bench or the nearly four years I've
6	especially in an extraordinary case like this. If there was	6	been doing this where I've ever told seen a judge tell a
7	any magic here, it was the debtors and the government taking a	7	lender that he has to agree to different deal terms.
8	magic wand to a restructuring and saying poof, now you're a	8	MR. RICHMAN: I wasn't suggesting that, Your I
9	sale. And with that, creditors' rights and plan protections	9	actually agree with Your Honor up to that point in the sense I
10	disappeared.	10	wasn't suggesting that you tell what the deal should be. But
11	Since the evidence does not establish that the	11	Courts do and Your Honor has pushed back on provisions that
12	business is deteriorating, the debtors' business judgment, if	12	Your Honor was being told we're absolutely required by the
13	it actually has any judgment of that sort in a case like this,	13	purchaser with the DIP lender. And Your Honor has said and
14	is narrowed to its asserted belief that the business	14	other judges have said, I want to prove those even though there
15	opportunity, if what the government is offering could even be	15	was the threat, difficult threat to deal with that the party
16	characterized as a business opportunity, is limited and	16	would walk away because the Court stands for the law and the
17	perishable. The government's offer of financing will expire on	17	parties understand that they have to follow those dictates if
18	July 10. If the debtors do not comply with the government's	18	they want to do a transaction under Chapter 11. My only point,
19	dictates, liquidation will inevitably follow. The important	19	which I think Your Honor was agreeing with, is that it's not
20	question is whether this Court has any power to disbelieve	20	uncommon. When the debtor doesn't have the ability or leverag
21	that. From the debtors' perspective, we completely understand	21	or the independence of will to be able to fight back over
22	the argument that they have to try this. They have to advocate	22	onerous provisions or even a mandated sale, the Court still has
0.0	it and believe it. It's not business judgment, though, because	23	the power and authority to do so.
23			D 1 4 11 11 00 01 111 1 1
23 24	there's no real choice involved. It's inconceivable that any	24	Bankruptcy courts call the bluffs of billing lenders
	there's no real choice involved. It's inconceivable that any company would choose to liquidate in the face of such a	24 25	and purchasers all the time. And that brings me to footnote 15

212-267-6868

1		1	
1	of Judge Gonzales' opinion in Chrysler In Chrysler, as here,	1	dollars including DIP lending. It told the public it was on a
2	the main argument was that the debtor had no viable options bu	: 2 3	sixty to ninety day track. Like any powerful lender or
3	a sale or a liquidation. Now, in that footnote, the Court	4	purchaser, it says, my way or the highway.
4	commented on a third option raised by dissenting creditors.	4 5	Mr. Wilson said that if the sale order was not
5	And I quote: "Based upon the U.S. government's substantial		approved, Treasury would cut its losses. Now, I submit that
6	interest in preserving the automobile industry, jobs and	6	Mr. Wilson's credibility was open to question on some points.
7	retiree benefits, the intimation is that the government was	7	His demeanor was markedly different from the other witnesses.
8	bluffing when it indicated that it would walk away from	8	He's smart enough to know what findings the Court needs to make
9	exploring other options if the Fiat did not close quickly."	9	to approve the transaction and I believe and I submit that he
10	The proposed third option is that the debtors could have	10	answered some questions in ways designed to serve the end. For
11	refused to accede to the government's terms in the hope that	11	example, he said that his understanding of the term
12	the government would capitulate and agree to consider other	12	"languishing" meant anything more than thirty to forty days.
13	alternatives. The Court concludes that gambling on the	13	Most of his testimony was carefully couched in terms of present
14	possibility that the government was bluffing and listing the	14	intentions and beliefs.
15	potential for a lesser recovery in a resulting liquidation	15	But while the drop dead threat is out there, there is
16	would have been a breach of the debtor's fiduciary duty.	16	nothing that binds the government to abandoning GM and the
17	Judge Gonzales did not, however, say that he or any	17	government can and will react to a decision here, a decision of
18	other judge would be without power to call such a bluff. We	18	law by this court, in a manner that is both politically and
19	are not challenging the debtors' choice which was a non-choice	19	economically sensible. Their agreement on funding
20	to proceed with the strategy. But we do say that in the	20	administrative expenses was limited to 950 million dollars.
21	circumstances of this case, the Court has the power and	21	But we heard Mr. Koch testify that he had a feeling or a belief
22	authority to push back. Many people say that Chrysler is the	22	that they would step up and do something more. It wasn't in
23	blueprint for GM and that the cases are the same. They are	23	writing but there may be a number of unwritten understandings
24	not. And they are completely distinguishable in the most	24	here as part of the strategy of how the parties are going
25	fundamental of ways. The deadline pressures in Chrysler were	25	forward. And the clear impression from the sixty to ninety day
	62		64
1	in the main driven by the commercial needs of an independent	1	pronouncements from both GM and the White House is that while
2	purchaser. The business opportunity was legitimate, commercia	12	Treasury may not be obligated to fund beyond July 10, they will
3	and limited. By contrast, there is no real purchaser in this	3	step up and do so if they have to. They have to threaten to
4	case. The government is not setting any deadlines with	4	cut off financing.
5	reference to commercial exigencies of the automotive	5	THE COURT: Pause, please. Can you repeat that? And
6	marketplace; it has no experience running a car company. The	6	say a little slower. And if you had a particular reference to
7	deadlines were set to support the strategy of a 363	7	something, I ask you to repeat that as well.
8	restructuring.	8	MR. RICHMAN: Yes, Your Honor. I said the clear
9	If you go to a Broadway musical, you expect an	9	impression from the sixty to ninety day pronouncements, which
10	orchestra. For a 363 fast track sale, you need a drop dead	10	we quoted in our brief from the outset of the case, is that
11	date. It's part of the scenery; part of the show.	11	while Treasury may not be obligated to fund beyond July 10,
12	As distinct from the dissenters in Chrysler, we are	12	they will step up if they have to. And to expand on that, it's
13	not suggesting that the debtor should have refused to attempt	13	inconceivable to me that the White House press secretary or
14	the 363 transaction. We don't see how they could have. They	14	GM's CEO would be telling the public sixty to ninety days if
15	had no choice. As the evidence has showed, and as other	15	they didn't have some assurance of financing beyond July 10th.
16	parties have argued, the principal decision makers and senior	16	THE COURT: Okay. You preceded the words about clear
17	management were not acting with any independence. They were		impression. It's an inference you want me to draw
18	across the table from their new employer. They were arguing	18	MR. RICHMAN: Yes.
19	with their new owner.	19	THE COURT: or, in fact, is it something somebody
20	But this Court can push back. This Court can call	20	said?
21	the bluff in the overriding interest of upholding the Chapter	21	MR. RICHMAN: That's correct, Your Honor.
22	11 process. Consider: the government has repeatedly said it	22	THE COURT: Okay. Continue.
23	will not allow GM to fail. It has said it is committed to	23	MR. RICHMAN: The government has to threaten to cut
24	creating New GM. It has already invested 19.4 billion dollars	24	off the financing in order to limit the debtors' options and
	steaming their office into an early invested 17.4 officent dollars		on the manening in order to mint the debtors options and
2.2		2.5	perhaps those of this Court as well But I don't think and I
25	pre-petition and perhaps as much as thirty three billion 63	25	perhaps those of this Court as well. But I don't think and I $65$

212-267-6868

C	tand the record, it makes sense to me because one could
	hat the overall settlement in terms of the amendments to
	lective bargaining agreement are an asset of the estate
4 way. It's not credible to think that the White House will say 4 and that	at the VEBA deal is part of a consideration that should
5 tomorrow, we've now decided to let GM fail because we don't 5 actual	y go to the estate. But if you keep them legally
6 want to follow the law. We didn't get our way in court on an 6 separat	te such that the VEBA is not inextricably intertwined
7 attempted fast track sale so we're going to give up 7 then m	aybe you create a better argument that the VEBA is like
8 sacrifice three-quarters of our investment and flush GM away 8 the equ	ivalent of giving stock to somebody by the purchaser and
9 and the thousands of jobs with it and the dealer network and 9 isn't re-	ally consideration for the modification and then the
10 the dependent suppliers and so on and so on. All the same 10 assump	otion and assignment of the collective bargaining
11 considerations that the debtors have argued are important 11 agreem	nent.
12reasons to approve the transaction are at least equally12	THE COURT: Help me on that a little more, because I
13 important reasons why the government will obey the law if Your 13 though	t the duty to the UAW's VEBA was in the ballpark of
14 Honor determines that the law is that 363 can't be used on a 14 twenty	billion bucks and it was a liability rather than an
15fast track under these circumstances.15asset.	
16Now, there was a related power or leverage threat16	MR. RICHMAN: Your Honor, all I can say is we didn't
17 that seemed to come through in the hearings, something like an 17 find an	y linkage that would cause that to fail in any way. And
18 additional drop dead threat that might be added, pressure for 18 in any	event
19 approval of the transaction. And that was the suggestion that 19	THE COURT: Your basic point is that, if you read the
20 the UAW agreements to modify their collective bargaining 20 docum	ents, you're questioning whether Mr. Curson's right in his
21 agreement were in some way conditioned upon and could be 21 view th	hat he's got a package deal here.
22 rescinded or undone by a failure to approve the sale order by 22	MR. RICHMAN: Exactly. It goes to the question of
23 July 10. And I thought that's what Mr. Curson said in his 23 whether	er there's some further dire consequence that Your Honor
24 testimony. 24 should	consider would result if Your Honor did not approve this
25 Your Honor, we checked the documents that were 25 transact	tion by July 10. And I submit that it's not a dire
66	68
1 submitted in evidence in the records and we could not find 1 conseq	uner hannes of the lash of links on And if there's a
	uence because of the lack of linkage. And if there's a e agreement on the VEBA, that separate agreement, I
	now that it's conditioned on a July 10 approval, but ably that would still be in play for a plan process.
r	THE COURT: Go on, please.
	MR. RICHMAN: As we've seen from the hearings, there
	ny other questions and issues that a plan process could
	address: Why is the government getting full credit for
5 5 5 1	
	tion loans that could be challenged as equity? Doesn't
	Il for more cash to be put into any deal, whether under a plan? Other counsel have raised serious questions
-	he bypassing of rights under Section 1114 of the Code
	attempts to shed successor liability. And we've also
	other arguments in our brief, to which we continue to
	, including that the transaction should also be rejected
	b rosa plan.
	THE COURT: Okay. Pause, please. On the
	acterization point, are you contending that not only the
	ition secured debt ballpark or nineteen billion bucks
	e to check, or maybe it's thirteen billion, I'd have to
	the exact figure on that should be recharacterized?
	u also contending that the thirty-three billion bucks of
	ad Canadian DIP financing also has to be recharacterized?
	MR. RICHMAN: Only the pre-petition debt, Your Honor
25 deal. And I understand if it is, at least again as I 25 I think	that in a case that wasn't moving at quite this
67	69

212-267-6868

1	lightning speed where parties had a real opportunity to	1	of the professional advisors on that issue.
2	negotiate allocations and distributions, that there would be	2	And we appreciate that GM would already be liquidated
3	greater focus on the priority of that pre-petition loan as	3	if the government had not come in late last year to provide
4	compared to other creditors. I partic	4	financing that no one else could provide. We wouldn't be here
5	THE COURT: But stick with me for a second. Suppose	5	discussing this today if the government wasn't committed to
6	the U.S. government had only bid thirty-three credit bid	6	saving GM. But that does not earn the government an exemption
7	thirty-three billion instead of fifty-nine billion. I'm not	7	from the law. Our gratitude to the government rescue does not
8	aware of there being any bids in the wings that could have	8	include sacrificing our legal principles. Perhaps the
9	trumped a credit bid if it was low as thirty-three billion	9	government could nationalize GM, and we would all be left with
10	as low as.	10	nothing, but they chose Chapter 11. And once you choose
11	MR. RICHMAN: And we know, we know, as a fact that -	. 11	Chapter 11, you should comply with all of Chapter 11. The
12	THE COURT: as thirty-three billion as well.	12	government should not be permitted to cherry-pick which
13	MR. RICHMAN: We know as a fact that there weren't.	13	provisions of Chapter 11 it will use and which it will not use.
14	I think that the way I would answer that is if the debtors have	14	Right now, the value of New GM rightfully belongs to
15	produced a fairness opinion that indicates that the fair value	15	the estates and all of its creditors. New companies are spun
16	for the company is 90 billion dollars or 70 billion dollars,	16	off through Chapter 11 reorganizations all the time. In that
17	and then you back out 19.4 billion dollars, it suggests that	17	normal process, all of the major constituencies participate in
18	the consideration is short by 19.4 billion dollars and that	18	negotiations concerning overall value and allocations of that
19	there either has to be a reallocation of the equity or the	19	value. The final results are accompanied by full disclosure.
20	infusion of additional funds in order to meet the fair price.	20	Parties-in-interest have protection against oppressive results
21	But I agree with Your Honor that had this gone	21	through Section 1129. These negotiations would determine how
22	differently as a real transaction might have gone remember,	22	much equity in New GM the Old GM should award to the governme
23	this wasn't negotiated as a sale of assets. This was a	23	or the union or to other parties. That's the essence of the
24	determination of how much money it would take to reach	24	Congressionally-mandated corporate reorganization process of
25	settlement agreements with the favored constituencies, and	25	Chapter 11.
	70		72
1	everything else was backed into that. And then, so, a price	1	By taking what would otherwise be a deliberative
2	was derived on the back end.	2	reorganization involving all major parties on an accelerated
3	We also argued, Your Honor, that the transaction	3	basis and calling it a sale that must be completed by June 10
4	should be rejected as a sub rosa plan. I'm not going to spend	4	to avoid dire consequences, the debtors and the other favored
5	a lot of time on that. The debtors' answer to that is that it	5	parties in the allocation of values are engaged in a fiction,
6	doesn't predetermine a plan because, the way this transaction	6	in a pretext, in a subterfuge to avoid a plan process in which
7	is designed, the 10 percent of stock and the warrants to	7	the allocations of value might be determined differently.
8	acquire another 15 percent and, I guess, the 950 million	8	We get their arguments. If you accept that this
9	dollars for administrative expenses is being left behind to be	9	transaction is a legitimate sale, then of course the purchaser
10	distributed in the normal course.	10	can choose to divide up the ownership any way it likes. And
11	But, Your Honor, if you engage in a transaction which	11	therefore, of course, its arrangement with the UAW and the
12	removes from the plan matrix an important class of creditors	12	Canadian and Ontario governments, parties who are providin
13	and give them favored treatment outside of the plan process,	13	unique present and future value to the new business, is its
14	that's as much predetermining the plan as leaving them in the	14	prerogative. But if it's not a legitimate sale, or if the
15	plan process. You are still predetermining and creating the	15	other tests of 363 are not met, then these important allocation
16	construct of a plan but you're doing it through extra plan	16	decisions would not be the purchaser's to make.
17	provisions. So I don't think just because this doesn't	17	If this Court does not have the freedom to push back,
18	dictate distributions to every class doesn't mean that somehow	18	if any distressed company can be diverted into Section 363 ir
19	it's not a sub rosa plan.	19	order to avoid plan confirmation requirements by overbearing
20	I want to be clear about an important point, and it's	20	lenders or purchasers setting arbitrary deadlines or, more
21	another distinction from the Chrysler case, particularly in	20	importantly for the facts of this case, by an overbearing
21	respect of parties who stand in the position of bondholders, as	21	government, then the Court does not truly have discretion.
22	respect of parties who stand in the position of bolidholders, as		
23	our clients do We've never argued and we don't contand that	22	We have seen before in our history hour in times of
23	our clients do. We've never argued, and we don't contend, that	23	We have seen before in our history how in times of
24	GM should liquidate. We support the creation of a New GM. We	24	stress and extraordinary circumstances government asserts
	-		

212-267-6868

1	substance, this appears to be an historic first attempt at a	1	of I object to the process, and I've objected in my
2	Chapter 11 nationalization. GM has no ability to resist that	2	objections, to the process chosen by the debtor. This is not a
3	power. In our system of government, it is the judicial system	3	criticism of the Court or of yourself; this is a criticism of
4	which is the primary check on that power. This Court can and	4	the process they chose.
5	should draw the line and hold that this transaction goes too	5	I don't believe that there has been adequate time to
6	far. Doing so is consistent with Lionel and with Chrysler.	6	prepare a response to their motion. For example, and after
7	Such a holding which recognizes the important distinctions	7	making the example I'll move onto another point, for example,
8	between this and every case that has gone before sends a	8	they criticize, or in their oral argument to the Court they
9	powerful message that even in the bankruptcy courts of the	9	have emphasized, that they're the only ones who've provided any
10	nation's commercial capitol there are limits and that due	10	valuation scenarios for General Motors. Well, of course, they
11	process and creditors' rights are important values not to be	11	had several months to prepare those valuation scenarios. We've
12	sacrificed in the interest of expediency. Thank you, Your	12	had less than thirty days. The time frame I mean, I filed
13	Honor.	13	my objection on June 19th, so I've basically had eleven days.
14	THE COURT: Thank you. Thank you, Mr. Richman.	14	In eleven days you can't find an expert, have an expert get
15	All right, Mr. Parker, I'll hear from you. Mr.	15	access to the records and create a valuation report. I don't
16	Parker, on anything that Mr. Richman addressed, I'll ask you to	16	think it can be done. So I'm objecting on those grounds.
17	limit yourself to anything where you think Mr. Richman failed	17	But I'll move on. One of the things I'm objecting
18	to do an adequate job.	18	to, and I believe I'm the only one who's objecting on this, is
19	MR. PARKER: Okay, Your Honor. If I may, may I begin	19	the limitation-on-liens argument. The I rest upon two
20	by asking the Court to for time reasons, and because I think	20	documents well, three documents: first, the 1995 indenture,
21	certain things have been adequately argued already, I'm not	21	which I believe is Debtors' Exhibit 10 in evidence, if my notes
22	going to argue some points that I've raised in my objections,	22	are correct. Section 1408 provides that it's governed by New
23	but I'd like to preserve those points.	23	York and is to be interpreted by New York law. Section 406
24	THE COURT: Of course. Anything anybody said in a	24	contains a limitation-on-liens provision, which I think the
25	brief or in a pleading is deemed to have been asserted. I	25	Court can read; I don't think the Court needs me to repeat it.
	74		76
1	mean, the purpose of oral argument, in my court, is not to	1	In addition, there's Parker's Exhibit 1 in evidence,
2	repeat or to have to say again what you said in your papers.	2	which I believe is my only exhibit, which is a prospectus
3	It's to give me orally anything which helps me better	3	supplement dated June 26, 2003 for six and a quarter Series C
4	understand the papers or answer things where you're plugging	4	convertible debentures due in 2033, with an attached prospectus
5	the holes.	5	dated June 19th, 2003. If you look at page 23 of the June 19th
6	MR. PARKER: Okay. So I'm not waiving anything, any	6	prospectus, the one that's attached to the supplement, you'll
7	points	7	find that the identical limitation-on-liens provision is found
8	THE COURT: Right.	8	in that prospectus and that it applies to my bonds. The
9	MR. PARKER: by not mentioning it.	9	prospectus also states that my bonds are issued under the 1995
10	THE COURT: That's what I said.	10	indenture.
11	MR. PARKER: I know, I'm just clarifying for myself.	11	Now, the third document that I'm relying upon is I
12	I'd also like to also incorporate by reference the arguments of	12	believe it's Debtors' Exhibit 6. Again, back there it's
13	Mr. Kennedy and of	13	difficult to keep track of which exhibit is which, but it's the
14	THE COURT: To the extent you need to, it's done.	14	loan and security agreement dated December 31st, 2008. And i
15	MR. PARKER: Okay, and also my immediate predecessor		you'll give me one second to get the agreement. Here we go.
16	up here.	16	If you go to page 35 of Exhibit 6, which and I'm using the
17	THE COURT: Same.	17	numbers on the top right-hand corner
18	UNIDENTIFIED SPEAKER: Mr. Richman.	18	THE COURT: Go on.
19	MR. PARKER: Mr. Richman, right.	19	MR. PARKER: Do yours have the same pagination?
20	Thank you, Your Honor. Your Honor, basically I want	20	Otherwise, I'll use the pagination from the original document.
21	to address four points, if I may, four points that I don't	21	THE COURT: Why don't you speak to it, because it'll
22	think have been addressed. One I wish to address very, very	22	take me a little bit of time to find it. But
23	briefly, and I'll begin it with apologizing to the Court for my	23	MR. PARKER: Sure, if I may.
24	less-than-stellar performance on Tuesday. But I think that	24	THE COURT: I'll assume, unless somebody
25	less-than-stellar performance is at least partly the result	25	disagrees, that you're accurately reading to me. And I'm
	75	20	77

212-267-6868

1	familiar with the issue. What I want you to focus on is	1	lien would give rise to a lien in favor of a person as set
2	excluded assets within the meaning of the December 31st, 2008	2	forth in schedule 30 hereto. By the way, schedule 30 hereto is
3	agreement.	3	also blank.
4	MR. PARKER: Yes, sir, I know, I'm getting there.	4	It seems to me that they have, whether they were
5	Paragraph or I should say section 4.01(a) creates a lien on	5	allowed to or not, and whether they've excused themselves from
6	all real and personal property wherever located, except where	6	doing it or not, filed liens on two classes of property that I
7	excluded. Okay, section subsection - sub-subsection (a)(6)	7	would like to bring to the Court's attention. The first class
8	provides a lien on all personalty; it gives a nonexclusive	8	of property is listed in schedule 6.25, which is the UCC
9	definition of personalty, including equipment and instruments.	9	filings. They have filed the UCC filing lien on the
10	Section 4.02 provides that General Motors is to	10	following on the manufacturing and equipment of the
11	provide UCC filings in order to perfect the government's liens	11	following localities: the Doraville Assembly Center, the
12	on all equipment. And there's a schedule of all the properties	12	Janesville Assembly Center, the Moraine Assembly Center, the
13	where equipment is located that UCC liens are to be filed for;	13	Massena Castings, Pittsburg Metal Stamping, Grand Rapids Metal
14	that's section .402 (sic) on page 36. And, again, I'm using	14	Stamping, Spring Hill Manufacturing Campus, Wilson Run (ph.)
15	the pagination 36 of 111 in the top right-hand corner.	15	PDC, Latsina (ph.) PDC, Pontiac North Pitt 17, Pontiac North
16	Section 6.09 has excluded collateral, and it refers	16	PC, Yps I can't even pronounce it Ypsilanti Vehicle
17	one to schedule 6.29. It states that section 6.29 is a	17	Center, Beavertown PDC, Grand Blanc Metal Center, Former Cherry
18	complete and accurate list by the way, that's 6.29, I'm	18	Town Assembly, Former Validation Center, Former Lansing Plants
19	sorry, not 6.09. Section 6.29, which is on page 51 of 111,	19	1, 2, 3, and 6.
20	states that, on excluded collateral, "See, set forth on	20	Finally, Your Honor, under schedules 1.1 and 1.2,
21	Schedule 6.29, is a complete and accurate list of all excluded	21	they've made it clear that among the assets that have been
22	collateral of each property." When you go to schedule 6.29,	22	liened are Saturn. Saturn is at least according to the
23	you get a blank page. It says "Schedule 6.29, Blank". So	23	testimony of Mr. Fritz Henderson, Saturn is the only
24	apparently there is no excluded property.	24	manufacturing American manufacturing subsidiary of General
25	It then goes on	25	Motors. They've liened that. And indeed, because they liened
	78		80
1	THE COURT: Mr. Parker, are you going to eventually	1	that, I believe that Saturn is a has an accompanying
2	get to subsection v	2	bankruptcy proceeding that's consolidated with this one.
3	MR. PARKER: Yes, yes.	3	Now, I realize they say they gave themselves an
4	THE COURT: romanette v, one of the definitions of	4	escape clause and if we lien something and we shouldn't have it
5	excluded collateral?	5	as liened. But in point of fact, they did lien it. And the
6	MR. PARKER: Yes, sir, but okay. I am eventually.	6	escape clause shows that they knew that they had obligations
7	My point about what I to summarize, I was going through the	7	not to lien it. And when they liened it, when they liened
8	documents to show you I realize that there is a subsection v	8	these facilities and when they liened Saturn, under the terms
9	on bear with me a second section 4.01, subsection v,	9	of the bond indenture, the 1995 bond indenture, the bondholders
10	defines excluded has a definition of excluded property but	10	acquired liens equal and ratable to that of the government.
11	says "any property, including any debt or equity interest, any	11	THE COURT: Mr. Parker, do you think that if Mr.
12	manufacturing plant or facility which is located within the	12	Schwartz had come in to me and said I got a lien on that stuff
13	continental United States, to the extent that the grant of a	13	and any other party-in-interest in the case showed me romanette
14	security interest therein to secure the obligations will result	14	v he wouldn't have been left out of court?
15	in a lien or an obligation to grant a lien in such property to	15	MR. PARKER: I don't know, Your Honor. I do know
16	secure other obligation". I understand that that's there.	16	that they attempted to perfect a lien on these assets even
17	What I'm trying to show the Court is that even though that's	17	though they were prohibited from doing so. And, Your Honor, i
18	there they still went and filed liens on property. And I don't	18	nothing else, I believe that that goes toward the issue of bad
19	think you can file liens on property and get an excuse for it	19	faith. I believe which, by the way, gets us to the next
20	by saying oh, well, I filed someplace else a statement that if	20	issue that I wish to discuss.
21	I did it I didn't mean it.	21	THE COURT: Good time to do it.
22	The documents show that I might add, if you go to	22	MR. PARKER: Pardon?
23	section 6.30, Mortgaged Real Estate, that's actually the only	23	THE COURT: Go ahead, please.
24	section that I've been able to find where they have language	24	MR. PARKER: Give me a second to get there.
25	that says we do not have a lien on mortgaged real estate if the	25	In order to approve a 363 sale, the government must
	79		81

212-267-6868

1	allege and prove good faith. In looking at good faith, the	1	have standing to object, I didn't object. However, I am harmed
2	Court, I believe, needs to take a look at the totality of the	2	by the government's proposed sale procedure, and because I an
3	circumstances concerning not only the sale but of the events	3	harmed if they are going to use a credit bid of roughly
4	leading up to the sale under the arrangement between the lender	4	forty-nine billion dollars of TARP money to purchase GM. So
5	and the debtor. Even if they did not succeed in acquiring	5	they are using TARP money to make a purchase.
6	liens on the properties on that long list of manufacturing	6	If my argument, as set out in the objection, is
7	equipment that I listed and on Saturn, the only to the	7	correct, they are not authorized to use TARP money. They may
8	best of my knowledge, and according to Mr. Henderson's	8	use TARP money to buy a bank; they may use it to buy all sort
9	testimony, the only manufacturing subsidiary of GM, they	9	of financial institutions. But whatever else General Motors
10	attempted to acquire liens. They made UCC filing statements.	10	may be, it is not a financial institution. The use of money to
11	Schedule 6.25 shows the places where they scheduled and what	11	do something that they are not authorized to do is evidence of
12	they the places where they liened the equipment and what	12	bad faith.
13	they liened. Doing so, attempting to do so, Your Honor, is an	13	Finally, Your Honor further, Your Honor, on bad
14	attempt to violate the covenants of our indentures.	14	faith, I have argued in my brief that there are Constitutional
15	In addition, the further evidence of bad faith is	15	probl that there are Fifth Amendment taking problems with
16	found in the fact that their 363 sale procedure is tantamount	16	the proposed proceeding. I'm not going to repeat those
17	to a distribution plan which discriminates in favor of certain	17	arguments here. But, again, those concerns are evidence of bac
18	favored creditors against others, as has been previously argued	18	faith.
19	by others. Also, their 363 plan, as argued by Mr. Kennedy, is	19	Which gets me to my final point. I'm trying to go as
20	designed to avoid a Section 114 hearing and the effects of the	20	quickly as possible; I'm trying not to use too much time. My
21	114 hearing.	21	final point, Your Honor, if I can find it oh, yes. I need
22	THE COURT: 114?	22	to refer to one more exhibit, if I may. Here we go. My final
23	MR. PARKER: 1114, I'm sorry. 1114. Further, Your	23	complaint, Your Honor and by the way, I my final
24	Honor, as ably argued by	24	complaint refers to the scheme of distribution, the
25	UNIDENTIFIED SPEAKER: Mr. Richman.	25	distribution of the sale proceeds of this 363 proceeding. Now,
	82		84
1	MR. PARKER: Mr. Richman, sorry. You can obviously	1	I want to make clear, I'm not objecting to the sale price. As
2	tell there's not been much coordination between us. As ably	2	I understand it and I'm referring now to the declaration of
3	argued by Mr. Richman, there is no real purchaser. There is no	3	Stephen Worth, Debtors' Exhibit 3, Exhibit F, page 15. I don't
4	real there's been there's no real purchaser, there's been	4	know what exhibit number Stephen Worth I don't know what
5	no real negotiation. This is basically the government selling	5	exhibit number it is, but his declaration is in evidence he
6	GM to itself.	6	testified Exhibit F, page 15. It is an analysis of the
7	Furthermore, Your Honor, and I guess this gets me to	7	proposed transaction. It shows that the United States Treasury
8	my next point, I've argued in my objection that the government	8	is paying 104.5 billion dollars. By the way, I'm using the
9	is not authorized to purchase General Motors under EESA, that	9	lower numbers in these calculations. There's a difference; he
10	is, the Emergency Economic Stabilization Act, or under TARP,	10	gives a range of it's usually only two to three billion
11	the Trouble Assets Recovery Program. The as Mr. Wilson	11	dollars different; I'm using the lower number. You can redo
12	testified, the loans that were given to General Motors were	12	the calculations with the larger number if you prefer.
13	given from TARP funds. I have argued and I'm not going to	13	He gives a bid of 104.5 billion dollars. That's
14	repeat the arguments here, I'm going to rest upon the argument	14	what, according to him, the Treasury is paying for General
15	in the objection I have argued that the government is not	15	Motors. I think that's a fair price for General Motors; I'm
16	authorized, was not authorized to make those loans under TARP	16	not quibbling over that. According to him, the way that the
17	Making loans that it is not authorized to make is also evidence	17	government is paying it is they're making a credit bid of 48.7
18	of bad faith.	18	billion dollars of secured lending. Now, I don't think he
19	I realize that there is some question of whether I	19	quite explained to you how that number comes about, so I'd like
-	*	20	to explain it to the Court, if I may. The total secured
	have standing to raise this issue, and I'd like to address that	-	
20	have standing to raise this issue, and I'd like to address that very briefly. I do not believe that I have standing to	21	indebtedness, excluding my argument about bonds, the total
20 21	very briefly. I do not believe that I have standing to	21 22	indebtedness, excluding my argument about bonds, the total secured indebtedness is approximately fifty-six billion
20 21 22	very briefly. I do not believe that I have standing to challenge the use of TARP money for the DIP lending, for the	22	secured indebtedness is approximately fifty-six billion
20 21 22 23	very briefly. I do not believe that I have standing to challenge the use of TARP money for the DIP lending, for the DIP loans. I believe you entered an order authorizing DIP	22 23	secured indebtedness is approximately fifty-six billion dollars. The way you get that number is you take the 19.4, you
20 21 22	very briefly. I do not believe that I have standing to challenge the use of TARP money for the DIP lending, for the	22	secured indebtedness is approximately fifty-six billion

212-267-6868

1	come into approximately fifty-six billion dollars.	1	that, they would all get sixty-six cents on the dollar.
2	The government is taking back a loan, a secured loan,	2	Furthermore, Your Honor so, Your Honor, that, I
3	from General Motors, the New General Motors, of approximatel	r 3	believe, is my final point. The government is not only showing
4	seven billion dollars. They're also taking back two billion	4	favoritism with regard to the VEBA; they're showing favoritism
5	dollars in preferred stock. If you take those two numbers out,	5	with regard to other unsecured claims. In a Chapter 1129
6	you come up with the 48.7 billion dollars that is listed here	6	proceeding, those unsecured claims would be treated like all
7	on page 15 of Exhibit F of Stephen Worth's declaration.	7	other unsecured claims. And this, by the way, gets back to
8	Now, I fully recognize that secured lenders should be	8	good faith. In order for the government to be showing good
9	paid first. So out of the 104 billion dollars they should get	9	faith, they must be treating all unsecured creditors fairly.
10	their 48 billion. The problem is that when you look at the	10	Now, allegedly they have a good business reason for
11	sheet you realize that he that the other way, the other	11	treating the VEBA differently. I don't buy it; you may. I'm
12	consideration given, is that and if you look at the second	12	not arguing that for this second. I don't agree with it. I've
13	column the government is assuming and paying in full, or	13	argued otherwise in my objection. But putting that to one
14	agreeing to pay in full, 48.4 million (sic) dollars of	14	side, they still have an obligation to treat all the remaining
15	unsecured debt, which, by the way, according to the testimony	15	creditors fairly, and they're not doing so. They're picking
16	of everybody who's been up here, does not include the debt of	16	winners and losers. And they've given no business
17	the UAW VEBA.	17	justification for these other winners that they've picked.
18	Now, personally, I find that testimony to be I	18	And for these reasons, Your Honor, I would urge you
19	question the testimony. It seems to me that if the UAW VEBA is	19	to reject the sale. And I will make clear, I want General
20	getting 20.5 million dollars and is releasing its claim of	20	Motors to reorganize. It is not in my interest or any
21	20 did I say million? I meant billion 20.5 billion	21	bondholder's interest to see General Motors liquidated,
22	dollars and releasing its claim of 20.5 billion dollars in the	22	although we have not had time to make a liquidation analysis.
23	estate, that seems to me to be a payment.	23	All we want is an opportunity to negotiate in good faith with
24	For the purpose of this argument at the moment	24	the government to come up with a plan that is fair, fair to all
25	though, I'm not going there. I've argued that in my objection;	25	unsecured creditors.
	86		88
1	I will obviously have argued that here. I agree with that	1	With that, thank you very much, Your Honor, and I
2	argument. But I'm arguing something slightly different. If	2	want to thank you for your indulgence over the past three days
3	you take since the 20.5 billion is gone, according to this	3	THE COURT: Very well. Thank you.
4	sheet the total indebtedness for General Motors, that is, I	4	All right, Mr. Bernstein?
5	guess, real indebtedness, not just pro forma indebtedness, is	5	MR. BERNSTEIN: I'll try to be brief, Your Honor.
6	roughly 104.5 billion dollars, excluding the no, that's not	6	THE COURT: Yes, I understand the issues. The main
7	right, it's 48 and 48 makes 96; 97 plus 35 makes roughly 132	7	thing I want to hear from you on is whether there's recall
8	billion; I may be off by a billion or two because I did a fast	8	authority supporting the idea that the consent decree
9	calculation in my head. The real debt in General Motors is 132	9	obligation is something other than a monetary obligation.
10	billion, excluding the 20.5 billion that's owed to the VEBA.	10	MR. BERNSTEIN: Yes, Your Honor. First thing that
11	The government's getting 48.7 billion to pay off secured	11	supports it is that may I approach the bench, Your Honor?
12	lenders. That leaves 83.4 billion dollars in unsecured debt	12	THE COURT: Yes, sir.
13	that needs to be taken care of. 48.4 billion is being paid 100	13	MR. BERNSTEIN: Nolan entered a joint stipulation,
14	percent on the dollar; 35 billion, including the 28 billion in	14	modified the consent decree and then entered the pack of them
15	bonds and by the way, they keep saying it's 27, but when you	15	as a final judgment of the United States District Court for the
16	do the math with interest to June 1st or May 31st, take your	16	Southern District of Indiana.
17	pick, 2009, it actually comes to 28 billion. The 28 billion	17	PENINA 1:24:32
18	dollar debt is getting 7.4 billion dollars; roughly 20 cents on	18	THE COURT: Is this new evidence, or is this
19	the dollar.	19	MR. BERNSTEIN: I believe you can take judicial
20	So under the sale procedure, some unsecured	20	notice of this. We found this last night in response to Your
21	creditors, favored unsecured creditors, and we're not talking	21	Honor's question, and you'll see the second as the final
22	about the VEBA now, are getting a hundred cents on the dollar		judgment, Your Honor. It was entered by Judge Nolan under
23	while others are getting twenty cents on the dollar. My	23	54(b).
24	objection is let's take the purchase price but let's treat all	24	THE COURT: All right. Pause, please, Mr. Bernstein.
25			
	the unsecured creditors equally and ratably. And if you do	25	Mr. Miller, do you object to me considering this?
	the unsecured creditors equally and ratably. And if you do 87	25	Mr. Miller, do you object to me considering this? 89

212-267-6868

1	MR. MILLER: No, Your Honor.	1	discharge of a debt?
2	THE COURT: Okay.	2	MR. BERNSTEIN: I misunderstood the question that you
3	UNIDENTIFIED ATTORNEY: I'm sorry, Your Honor, we		raised yesterday. I thought you were raising the question
4	don't have a copy of the judgment	4	whether this was a mere contract or whether it was
5	MR. BERNSTEIN: I can give you I have extra copies	5	THE COURT: That was, for better or for worse,
6	for you, I'd be glad to provide them. Here's the stipulation	6	another way of saying the same thing. And if I didn't say it
7	and order, and let's see if I have copies and here's an	7	as well as I should have, I owe everybody in the room an
8	extra copy of the final judgment.	8	apology. But as I understand the issue, a consent decree
9	The second point, Your Honor, the legal context is	9	issued by a federal court required the debtor to pay money.
10	set by the Supreme Court of the United States. One of the	10	MR. BERNSTEIN: That is correct, Your Honor.
11	leading cases is Rufo v. Inmates of Suffolk County Jail. The	11	THE COURT: And the question that I need help in is,
12	citation is 502 U.S. 367. And the relevant citation is at page	12	is this like a lot of the other the debtors' other
13	378: "There's no suggestion in these cases that a consent	13	contractual debts which, at least, seemingly fall within the
14	decree is not subject to Rule 60(b)." I have Rule 60(b) as a	14	unsecured creditor community, or whether there's something
15	rule for modifying judgments.	15	special about a monetary obligation that's been created by a
16	THE COURT: Right. And	16	federal court decree that makes me analyze it in a different
17	MR. BERNSTEIN: Right. "A consent decree, no doubt	17	way?
18	embodies an agreement of the parties, and thus in some respects	18	MR. BERNSTEIN: I would answer it this way, Your
19	is contractual in nature. But it is an agreement the parties	19	Honor. This is a judgment, and the deliberate refusal by
20	desire and expect will be reflected in and be enforceable as a	20	General Motors to honor that judgment was inequitable conduct
21	judicial decree that is subject to the rules generally	21	indeed conduct potentially punishable by civil contempt. And
22	applicable to other judgments and decrees."	22	therefore the Court has good grounds to modify on an equitable
23	The case counsel cited was one of these cases	23	basis, the sale agreement to provide for the small adjustment
24	involving an interpretation of the language of a consent order	24	we requested. And of course, Mr. Wilson yesterday testified it
25	or a consent decree, and yes, to that narrow context, the	25	was unlikely that the transaction the financing would be
	90		92
1	courts look to contractual reasons, because the judgment	1	affected by that.
1 2	courts look to contractual reasons, because the judgment reflects an agreement of the parties. But in terms of	1 2	affected by that. THE COURT: Okay.
	reflects an agreement of the parties. But in terms of		
2	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v.	2	THE COURT: Okay. MR. BERNSTEIN: Thank you.
2 3	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a	2 3	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes?
2 3 4 5	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v.	2 3 4	THE COURT: Okay. MR. BERNSTEIN: Thank you.
2 3 4 5 6	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit	2 3 4 5	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski
2 3 4 5 6 7	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the	2 3 4 5 6 7	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone,
2 3 4 5 6 7 8	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree	2 3 4 5 6 7 8	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue
2 3 4 5 6 7 8 9	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context.	2 3 4 5 6 7	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us.
2 3 4 5 6 7 8 9 10	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context. "The respect due to the federal judgment is not	2 3 4 5 6 7 8 9 10	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us. MS. WICKOUSKI: Um
2 3 4 5 6 7 8 9 10 11	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context. "The respect due to the federal judgment is not lessened because the judgment was entered by consent. The	2 3 4 5 6 7 8 9 10 11	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us. MS. WICKOUSKI: Um THE COURT: And that your predecessors haven't done
2 3 4 5 6 7 8 9 10 11 12	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context. "The respect due to the federal judgment is not lessened because the judgment was entered by consent. The plaintiff's suit alleged denial of their Constitutional rights.	2 3 4 5 6 7 8 9 10 11 12	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us. MS. WICKOUSKI: Um THE COURT: And that your predecessors haven't done it adequately.
2 3 4 5 6 7 8 9 10 11 12 13	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context. "The respect due to the federal judgment is not lessened because the judgment was entered by consent. The plaintiff's suit alleged denial of their Constitutional rights. When the defendants chose to consent to a judgment rather thar	2 3 4 5 6 7 8 9 10 11 12 12	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us. MS. WICKOUSKI: Um THE COURT: And that your predecessors haven't done it adequately. MS. WICKOUSKI: yes, Your Honor. And my name is
2 3 4 5 6 7 8 9 10 11 12 13 14	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context. "The respect due to the federal judgment is not lessened because the judgment was entered by consent. The plaintiff's suit alleged denial of their Constitutional rights. When the defendants chose to consent to a judgment rather thar have a district court adjudicate the merits of the plaintiff's	2 3 4 5 6 7 8 9 10 11 12 13 14	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us. MS. WICKOUSKI: Um THE COURT: And that your predecessors haven't done it adequately. MS. WICKOUSKI: yes, Your Honor. And my name is Stephanie Wickouski. I'm here on behalf of two of the
2 3 4 5 6 7 8 9 10 11 12 13 14 15	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context. "The respect due to the federal judgment is not lessened because the judgment was entered by consent. The plaintiff's suit alleged denial of their Constitutional rights. When the defendants chose to consent to a judgment rather thar have a district court adjudicate the merits of the plaintiff's claims, the result was a fully enforceable, federal judgment,	2 3 4 5 6 7 8 9 10 11 12 13 14 15	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us. MS. WICKOUSKI: Um THE COURT: And that your predecessors haven't done it adequately. MS. WICKOUSKI: yes, Your Honor. And my name is Stephanie Wickouski. I'm here on behalf of two of the indenture trustees on certain leverage lease transactions,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context. "The respect due to the federal judgment is not lessened because the judgment was entered by consent. The plaintiff's suit alleged denial of their Constitutional rights. When the defendants chose to consent to a judgment rather thar have a district court adjudicate the merits of the plaintiff's claims, the result was a fully enforceable, federal judgment, that overrides any conflicting state laws or state order.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us. MS. WICKOUSKI: Um THE COURT: And that your predecessors haven't done it adequately. MS. WICKOUSKI: yes, Your Honor. And my name is Stephanie Wickouski. I'm here on behalf of two of the indenture trustees on certain leverage lease transactions, manufactures and Traders' Trust Company and Wells Fargo Bank
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context. "The respect due to the federal judgment is not lessened because the judgment was entered by consent. The plaintiff's suit alleged denial of their Constitutional rights. When the defendants chose to consent to a judgment rather thar have a district court adjudicate the merits of the plaintiff's claims, the result was a fully enforceable, federal judgment, that overrides any conflicting state laws or state order. The"	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us. MS. WICKOUSKI: Um THE COURT: And that your predecessors haven't done it adequately. MS. WICKOUSKI: yes, Your Honor. And my name is Stephanie Wickouski. I'm here on behalf of two of the indenture trustees on certain leverage lease transactions, manufactures and Traders' Trust Company and Wells Fargo Bank Northwest. We filed objections to the sale, but through, I
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context. "The respect due to the federal judgment is not lessened because the judgment was entered by consent. The plaintiff's suit alleged denial of their Constitutional rights. When the defendants chose to consent to a judgment rather thar have a district court adjudicate the merits of the plaintiff's claims, the result was a fully enforceable, federal judgment, that overrides any conflicting state laws or state order. The" THE COURT: I hear you, Mr. Bernstein. But where I	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us. MS. WICKOUSKI: Um THE COURT: And that your predecessors haven't done it adequately. MS. WICKOUSKI: yes, Your Honor. And my name is Stephanie Wickouski. I'm here on behalf of two of the indenture trustees on certain leverage lease transactions, manufactures and Traders' Trust Company and Wells Fargo Bank Northwest. We filed objections to the sale, but through, I think, innocent inadvertence on the part of debtors' counsel,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context. "The respect due to the federal judgment is not lessened because the judgment was entered by consent. The plaintiff's suit alleged denial of their Constitutional rights. When the defendants chose to consent to a judgment rather thar have a district court adjudicate the merits of the plaintiff's claims, the result was a fully enforceable, federal judgment, that overrides any conflicting state laws or state order. The" THE COURT: I hear you, Mr. Bernstein. But where I need help from both sides	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us. MS. WICKOUSKI: Um THE COURT: And that your predecessors haven't done it adequately. MS. WICKOUSKI: yes, Your Honor. And my name is Stephanie Wickouski. I'm here on behalf of two of the indenture trustees on certain leverage lease transactions, manufactures and Traders' Trust Company and Wells Fargo Bank Northwest. We filed objections to the sale, but through, I think, innocent inadvertence on the part of debtors' counsel, they were not addressed in the omnibus objection by oversight.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context. "The respect due to the federal judgment is not lessened because the judgment was entered by consent. The plaintiff's suit alleged denial of their Constitutional rights. When the defendants chose to consent to a judgment rather thar have a district court adjudicate the merits of the plaintiff's claims, the result was a fully enforceable, federal judgment, that overrides any conflicting state laws or state order. The" THE COURT: I hear you, Mr. Bernstein. But where I need help from both sides MR. BERNSTEIN: Yes, sir.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us. MS. WICKOUSKI: Um THE COURT: And that your predecessors haven't done it adequately. MS. WICKOUSKI: yes, Your Honor. And my name is Stephanie Wickouski. I'm here on behalf of two of the indenture trustees on certain leverage lease transactions, manufactures and Traders' Trust Company and Wells Fargo Bank Northwest. We filed objections to the sale, but through, I think, innocent inadvertence on the part of debtors' counsel, they were not addressed in the omnibus objection by oversight. This came to our attention on the eve of the hearing,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context. "The respect due to the federal judgment is not lessened because the judgment was entered by consent. The plaintiff's suit alleged denial of their Constitutional rights. When the defendants chose to consent to a judgment rather than have a district court adjudicate the merits of the plaintiff's claims, the result was a fully enforceable, federal judgment, that overrides any conflicting state laws or state order. The" THE COURT: I hear you, Mr. Bernstein. But where I need help from both sides MR. BERNSTEIN: Yes, sir. THE COURT: is whether when a federal court	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us. MS. WICKOUSKI: Um THE COURT: And that your predecessors haven't done it adequately. MS. WICKOUSKI: yes, Your Honor. And my name is Stephanie Wickouski. I'm here on behalf of two of the indenture trustees on certain leverage lease transactions, manufactures and Traders' Trust Company and Wells Fargo Bank Northwest. We filed objections to the sale, but through, I think, innocent inadvertence on the part of debtors' counsel, they were not addressed in the omnibus objection by oversight. This came to our attention on the eve of the hearing, and we've had subsequent discussions that I think have
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context. "The respect due to the federal judgment is not lessened because the judgment was entered by consent. The plaintiff's suit alleged denial of their Constitutional rights. When the defendants chose to consent to a judgment rather thar have a district court adjudicate the merits of the plaintiff's claims, the result was a fully enforceable, federal judgment, that overrides any conflicting state laws or state order. The" THE COURT: I hear you, Mr. Bernstein. But where I need help from both sides MR. BERNSTEIN: Yes, sir. THE COURT: is whether when a federal court proceeding gives rise to a judgment, consent or otherwise, that	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us. MS. WICKOUSKI: Um THE COURT: And that your predecessors haven't done it adequately. MS. WICKOUSKI: yes, Your Honor. And my name is Stephanie Wickouski. I'm here on behalf of two of the indenture trustees on certain leverage lease transactions, manufactures and Traders' Trust Company and Wells Fargo Bank Northwest. We filed objections to the sale, but through, I think, innocent inadvertence on the part of debtors' counsel, they were not addressed in the omnibus objection by oversight. This came to our attention on the eve of the hearing, and we've had subsequent discussions that I think have partially resolved and expect to resolve over the next week,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context. "The respect due to the federal judgment is not lessened because the judgment was entered by consent. The plaintiff's suit alleged denial of their Constitutional rights. When the defendants chose to consent to a judgment rather thar have a district court adjudicate the merits of the plaintiff's claims, the result was a fully enforceable, federal judgment, that overrides any conflicting state laws or state order. The" THE COURT: I hear you, Mr. Bernstein. But where I need help from both sides MR. BERNSTEIN: Yes, sir. THE COURT: is whether when a federal court proceeding gives rise to a judgment, consent or otherwise, that creates a monetary obligation	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us. MS. WICKOUSKI: Um THE COURT: And that your predecessors haven't done it adequately. MS. WICKOUSKI: yes, Your Honor. And my name is Stephanie Wickouski. I'm here on behalf of two of the indenture trustees on certain leverage lease transactions, manufactures and Traders' Trust Company and Wells Fargo Bank Northwest. We filed objections to the sale, but through, I think, innocent inadvertence on the part of debtors' counsel, they were not addressed in the omnibus objection by oversight. This came to our attention on the eve of the hearing, and we've had subsequent discussions that I think have partially resolved and expect to resolve over the next week, our objections. So I wanted to indicate what has been
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context. "The respect due to the federal judgment is not lessened because the judgment was entered by consent. The plaintiff's suit alleged denial of their Constitutional rights. When the defendants chose to consent to a judgment rather thar have a district court adjudicate the merits of the plaintiff's claims, the result was a fully enforceable, federal judgment, that overrides any conflicting state laws or state order. The" MR. BERNSTEIN: Yes, sir. THE COURT: is whether when a federal court proceeding gives rise to a judgment, consent or otherwise, that creates a monetary obligation MR. BERNSTEIN: Yes, sir.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us. MS. WICKOUSKI: Um THE COURT: And that your predecessors haven't done it adequately. MS. WICKOUSKI: yes, Your Honor. And my name is Stephanie Wickouski. I'm here on behalf of two of the indenture trustees on certain leverage lease transactions, manufactures and Traders' Trust Company and Wells Fargo Bank Northwest. We filed objections to the sale, but through, I think, innocent inadvertence on the part of debtors' counsel, they were not addressed in the omnibus objection by oversight. This came to our attention on the eve of the hearing, and we've had subsequent discussions that I think have partially resolved and expect to resolve over the next week, our objections. So I wanted to indicate what has been discussed. I'm also here with counsel
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	reflects an agreement of the parties. But in terms of enforcement, a leading case in the Second Circuit is Badgley v. Santa Croce I'll spell out the name, because I'm making a hash of pronouncing it, I think. It's B-A-D-G-L-E-Y v. S-A-N-T-A C-R-O-C-E. And in that case, the Second Circuit reversed a decision of the district court denying the enforcement of contempt proceedings in a civil consent decree context. "The respect due to the federal judgment is not lessened because the judgment was entered by consent. The plaintiff's suit alleged denial of their Constitutional rights. When the defendants chose to consent to a judgment rather thar have a district court adjudicate the merits of the plaintiff's claims, the result was a fully enforceable, federal judgment, that overrides any conflicting state laws or state order. The" THE COURT: I hear you, Mr. Bernstein. But where I need help from both sides MR. BERNSTEIN: Yes, sir. THE COURT: is whether when a federal court proceeding gives rise to a judgment, consent or otherwise, that creates a monetary obligation	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	THE COURT: Okay. MR. BERNSTEIN: Thank you. THE COURT: Thank you very much. All right. Yes? MS. WICKOUSKI: Your Honor, I'm Stephanie Wickouski THE COURT: Well, I need you to come to a microphone, please. I take it you're coming up because you wanted to argue on any of the issues we have before us. MS. WICKOUSKI: Um THE COURT: And that your predecessors haven't done it adequately. MS. WICKOUSKI: yes, Your Honor. And my name is Stephanie Wickouski. I'm here on behalf of two of the indenture trustees on certain leverage lease transactions, manufactures and Traders' Trust Company and Wells Fargo Bank Northwest. We filed objections to the sale, but through, I think, innocent inadvertence on the part of debtors' counsel, they were not addressed in the omnibus objection by oversight. This came to our attention on the eve of the hearing, and we've had subsequent discussions that I think have partially resolved and expect to resolve over the next week, our objections. So I wanted to indicate what has been

212-267-6868

1	much this is consistent with what I said before. If you have a	1	this isn't a sale of assets that will meld assets into an
2	deal, and you're telling me that you're working it out, this	2	existing business. It is, instead, a standalone, complete
3	isn't the time that I wanted to deal with matters of that	3	continuation of the exact same business enterprise. It is the
4	character. And I don't want to be a jerk or a martinet, but I	4	same products; it is the same employees; it's the same
5	am trying very hard in a case with 850 objections, to deal with	5	management; it's the same marketing; it's the same logos. And
6	them in a way so that I can triage the matters before m.	6	to accomplish what the debtor and Treasury has indicated they
7	MS. WICKOUSKI: I understand, Your Honor. And I	7	want is "a seamless transition in the eyes of consumers." In
8	apologize. It was my misunderstanding that the indenture	8	other words, New GM is just the same Old GM.
9	trustees were not being heard at this time.	9	Yet, they want to escape the strictures of potential
10	THE COURT: Well, if you're saying you've got a lien	10	continuation of liability as a successor of existing GM. They
11	and that your lien has to be addressed, and you've either got	11	look in the order that they're going to present to you,
12	to get satisfaction of the lien or a carry-through on the lien,	12	while we haven't seen any final order yet, but we've seen what
13	or something like that, that doesn't strike me as rising to the	13	they're looking for. And that is complete, but not just an
14	level of controversy as a lot of the other matters that I have.	14	approval of a sale, but protection from specific factual
15	Now, if I'm understating your legal concerns, and you	15	findings that may lead subsequent state courts to find that
16	want to argue a legal point, I'm not going to but a sock in	16	there is continuation of liability under relevant state law;
17	your mouth. But if you're telling me that you and the debtor	17	despite the fact that many of those findings fly specifically
18	are having a dialogue that lenders and debtors have all the	18	in the face of the evidence that we heard here, that could well
19	time to address issues of this character, I applaud that, and I	19	lead a state court to find such continuing liability.
20	simply say, if you want to confirm your understanding at the	20	Secondly, Judge, as you noted yesterday also in that
21	end, when I deal with other similar confirmations, I'd be happy	21	order, they're looking for an injunction. And you asked if
22	to hear that.	22	that injunction didn't kind of sound like a duck like the
23	MS. WICKOUSKI: Yes, Your Honor. And my apologies	23	injunction under 524(g). Well, Your Honor, it not only sounds
24	I misunderstood in terms of the course for proceedings, and I -	24	like a duck, it quacks like a duck, it walks like a duck, it
25	-	25	flies like a duck, and leaves feathers behind it like a duck.
	94		96
1	THE COURT: I understand that I don't always speak	1	It is completely the injunction as to future asbestos liability
2	with perfect clarity. And no offense intended. But certainly	2	that was provided for in Section 524(g).
3	I want to deal with it, Ms. Wickouski.	3	Now, aside from the discriminatory treatment that's
4	MS. WICKOUSKI: Understood, Your Honor. Thank you		provided here, they're trying to get protections under the code
5	THE COURT: Thank you. Okay. Do I have any other	5	without complying with the code's requirements. Now, Mr.
6	substantive objections that are actually being argued that I	6	Miller pointed out that this is not an asbestos case. This is
7	haven't heard yet? Mr. Schulman? Mr. Mayer?	7	not an asbestos-driven case, and that they're not seeking
8	MR. MAYER: Yes, Your Honor. If I may. Well, this -	8	relief under they're not including Section 524 treatment
9	-	9	here. All of that is absolutely true. The point is, however,
10	THE COURT: Oh, another asbestos objection.	10	they're trying to get equivalent relief without complying with
11	MR. REINSEL: Your Honor, Ron Reinsel on behalf of	11	the statutory requirements. And that goes both to the ability
12	Mark Buttita. I will try not to rehash anything Mr. Esserman	12	to even give the relief, as well as the effective notice and
13	said or anything the very eloquent Mr. Jakubowski said. I want	13	due process requirements that are required in order to get that
14	to make just a couple of points and a clarification.	14	relief.
15	We have objected on a number of grounds, including	15	Let's distinguish some of those cases the other
16	sub rosa plan, and the extent to which the requested sale	16	cases. White Motors, it acknowledges, found that 363 did not
17	extends pat the bounds of 363, specifically to claims, and most	17	provide a basis to sell assets free and clear of claims. And
18	importantly to future claims; that they are not interests in	18	it went on to find that in order to do that, however this is
19	-	19	certainly beyond the express statutory language the statue
エン	property, and a certainly that future claim that has not come		
20	property, and a certainly that future claim that has not come into existence, has not arisen, goes so far beyond the pale of	20	says "free and clear of interest in that property."
			says "free and clear of interest in that property." Now, whether or not claims become interest in
20	into existence, has not arisen, goes so far beyond the pale of	20	• • • •
20 21	into existence, has not arisen, goes so far beyond the pale of an "interest in property" even if that is permitted. But I	20 21 22	Now, whether or not claims become interest in
20 21 22	into existence, has not arisen, goes so far beyond the pale of an "interest in property" even if that is permitted. But I want to concentrate on just a couple of points that distinguish	20 21 22	Now, whether or not claims become interest in property, cited in other cases. But it found that 363 didn't
20 21 22 23	into existence, has not arisen, goes so far beyond the pale of an "interest in property" even if that is permitted. But I want to concentrate on just a couple of points that distinguish this case both from Chrysler and TWA, and also the White Moto	20 21 22 : 23	Now, whether or not claims become interest in property, cited in other cases. But it found that 363 didn't provide that basis. We had to look to Section 105 of the code,

212-267-6868

2         MR. REINSEL: All right. But here's where 1 vanted         2         folks, by the creation of a specific representative in th           3         to get with that, Judge. White Motors was decided in 1987. In         3         court.           1         1994 Congress encide Getion 524(g). Section 524(g) proceeding. All on one is representing them here. I         Class week you were asked to appoint someone           6         claims specifically, both present, and more importantly, future         6         futures representative to look out after the interests of a future folks. You declined. You wild we may look at the week you were asked to appoint someone           7         that from exposer to actually mainfisting a disease, finding the proceeding. All on one is representing them here. I         7           10         out that you have a claim, is a matter of decades. Ten,         10         10           11         out that you have a claim, is a matter of decades. Ten,         11         10         10           11         elaimants. In fact, mark 224(g) if's         16         But let me be clar about the impact of 524(g) if's           12         there, Judge, we're nothere in a position where we         10         acequate due process to claimants, and not presentative of the code to get apute the interests of any in the code in about the import of 524(g) if's           13         these proceed to bot out the import of proceed apute the motoco- in fact, we asked Mr. Henderson - one of ig the proceed toms					
3         to get with that, Judge. White Motors was decided in 1987. In         3         court.           4         1994 Congress enacted Section 524(g). Section 524(g) provides         5         Last week you were asked to appoint someone           a comprehensive design by Congress for dealing with absets         5         futures representing to look out affer the interests of on one here looking ou           0         injury entity, protecting, You can't give effective notice of this           1         out that you have a claim, is a matter of decides. Entity, thirty, forty years. Such that those folks who will         10           1         develop disease, who will become claimants, are not presently         11         be clear, I am representing a single current absets           1         the problem of recognizing of how to give adequate         11         be clear, J am representing a single current absets           1         the groups and how to give adequate for the optice, bridge, we're not here in a position where we           1         the problem of recognizing of how to give adequate         12           1         the way entities and could be affected. But he recognized           2         the way entities and could be affected. But he recognized           2         the way entities and could be affected. But he recognized           2         the way endisease, don't know they have           2         the way endisea	1 N	Mr. Jakubowski.		524(g), provided mechanisms to provide due process to the	ose
4       1994 Congress emacted Section 524(g) Provides       4       Last week you were asked to appoint someone         5       a comprehensive design by Congress for dealing with absetso       futures representative to look out after the interests of         6       claims specifically, both present, and more importantly, future       futures representative to look out after the interests of         7       later. But the point is, there is no one here to looking ot         8       went into commerce, and it has a very long latency period, such         9       proceeding. And no one is representing them here. I         10       proceeding. And no one is representing them here. I         11       out data you have a claim, is a matter of decades. Ten,         12       twenty, hirty, forty years. Such that those folks who will         13       claimants. In fact, the nature of their potential future         14       claimants. In fact, the nature of their potential future         15       illness is specifically excluded from the definition of a claim         16       more present their interests in this case.         17       refered to a demand.         18       The problem of recognizing of how to give adequate         19       the few questions 1 asked here, was, you gave broad notice of their         12       give them notice - in fact, we asked Mr. Hendersono - use of		-		folks, by the creation of a specific representative in the	
<ul> <li>a comprehensive design by Congress for dealing with asbestos</li> <li>claims specifically, both present, and more importantly, furiter</li> <li>claims, looking at the unique situation that that did of</li> <li>injury entails, particularly that it's an insidious product, it</li> <li>went into commerce, and it has a very long latency period, such</li> <li>that from exposure to actually manifesting a disease, finding</li> <li>out that you have a claim, is a mater of decades. Ten,</li> <li>to wenty, thirry, forty years. Such that those folks who will</li> <li>develop disease, who will become claimants are not presentili</li> <li>develop disease, who will become claimants are not presentili</li> <li>durier the Bankruptcy Code. And in fact, under 524(g) it's</li> <li>referred to a demand.</li> <li>The problem of recognizing of how to give adequate</li> <li>due process to those future potential claimants, those demand</li> <li>give them notice - in fact, we asked Mr. Henderson - one of</li> <li>the few questions I asked here, was, you gave broad notice of</li> <li>the few questions I asked here, was, you gave broad notice of</li> <li>that GM has 650 million dollars-worth of projected abeatos</li> <li>that many of those claimants, many of those potential</li> <li>that many of those claimants, many of those potential</li> <li>that many of those claimants, many of those potential</li> <li>that many of those claimants, many of those potential</li> <li>that many of those claimants, many of those potential</li> <li>that many of those other there is a specific statute would have done there the there, hance, and you, Yadege, and Yave</li> <li>fainky shorthift. There's one - the yeak webeen discusse</li> <li>fainky shorthift. There's one - the yeak webeen discusse</li> <li>fainky shorthift. There's one - the yeak webeen discusse</li> <li>fainky short shift. There's one - the yeak webeen discusse.</li> <l< td=""><td></td><td></td><th></th><td></td><td></td></l<></ul>					
6         claims specifically, both present, and more importantly, future         future folks. You declined. You said we may look at           7         claims; looking at the unique situation that that kind of         injury entails, particularly that it's an insidious product, it           8         went into commerce, and it has a very long latency period, such         proceeding. And no one is propresenting them here. I           11         out that you have a claim, is a matter of decades. Ten,         twenty, thiry, fory years. Such that those folks wo will           12         twenty, thiry, fory years. Such that those folks wo will         claimants. In fact, the nature of their potential future           13         develop disease, who will become claimants, are not presently         claimants. We're not advocating other than saying           14         claimants. In fact, the nature of their potential future         future folks. You declined. You said we may look at           15         induces is specifically excluded from the definition of a claim         future folks. You declined. You said we may look at           16         under the Bankruptcy Code. And in fact, under 524(g) it's         future folks. You declined.           17         referred to a demand.         future of the you set adequate notice, because you can't           17         there questions I asked her, was you gave broad notice of         future down to give adequate notice of their         future folks. You declipter the framover Bank				Last week you were asked to appoint someone a	
7       claims; looking at the unique situation that that kind of injury entails, particularly that if s an insidious product, it went into commerce, and it has a very long latency period, such that from exposure to actually manifesting a disease, finding. You can't give effective notice of this proceeding. You can't give effective notice of this proceeding. And no one is representing single current asbests claimants. In fact, the nature of their potential future to there, Judge, we're not here in a position where we tasonably represent their interests in this case.         10       develop disease, who will develop disease, who will become claimants, are not presenting interest to a demand.         11       under the Bankruptey Code. And in fact, under 524(g) it's under the Bankruptey Code. And in fact, under 524(g) it's the problem of recognizing of how to give adequate holders, and how to give adequate notice, decuase you can't give them notice in fact, we asked Mr. Henderson one of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the these proceedings in order to give everyone notice of their good whatsever.       1       question if's up to the debtor, and in this case, and the bayer, to devide if they want to include those sets of relevant protections. If they don't protections for the claimants, don't presently have a disease, don't know they have a claim, and that whatever publication notice was given to them, wouldn't have reached them and would have done them soft fairly short shrift. There's one they deal with it in about two sentences on page III of that decision, simply holding that is decision in Mullane v. Central Hanover Bank.       1       question if's up to the debtor, and in this case, and the bayer, to decide if they want to include those sets of relevant	5 a	a comprehensive design by Congress for dealing with asbestos	5	futures representative to look out after the interests of those	e
<ul> <li>injury entails, particularly that it's an insidious product, it</li> <li>went into commerce, and it has a very long latency period, such</li> <li>that from exposure to actually manifesting a disease, finding</li> <li>out that you have a claim, is a matter of decades. Ten,</li> <li>their interests today. They didn't get notice of this</li> <li>proceeding. You can't give effective notice of this</li> <li>develop disease, who will become claimants, ran ot presently</li> <li>develop disease, who will become claimants, ran to presently</li> <li>referred to a demand.</li> <li>The problem of recognizing of how to give adequate</li> <li>due process to those future potential claimants, those demand</li> <li>holders, and how to give adequate notice, because you can't</li> <li>give the motice - in fact, wa asked Mr. Henderson - out</li> <li>the few questions I asked here, was, you gave broad notice of</li> <li>the few questions I asked here, was, you gave broad notice of</li> <li>that GM has 650 million dollars-worth of projected asbestos</li> <li>that GM has 650 million dollars-worth of projected asbestos</li> <li>liability going out over a period of at least ten years, and</li> <li>that many of those claimants, many of those potential</li> <li>claimants, don't presently have a disease, don't know they have</li> <li>that GM has 650 million dollars-worth of projected asbestos</li> <li>good whatsoever.</li> <li>Inhy short shrift. There's one - they deal with it in about</li></ul>	6 c	claims specifically, both present, and more importantly, future	6	future folks. You declined. You said we may look at that	
<ul> <li>went into commerce, and it has a very long latency period, such that from exposure to actually manifesting a disease, finding</li> <li>out that you have a claim, is a matter of decades. Ten,</li> <li>twenty, thirry, forty years. Such that those folks who will</li> <li>develop disease, who will become claimants, are not presently</li> <li>claimants. In fact, the nature of their potential future</li> <li>under the Bankruptcy Code. And in fact, under 524(g) it's</li> <li>referred to a demand.</li> <li>The problem of recognizing of how to give adequate</li> <li>holders, and how to give adequate notice, because you can't</li> <li>give them notice in fact, we asked Mr. Henderson - one of</li> <li>the few questions I asked here, was, you gave broad notice of</li> <li>thes proceedings in order to give everyone notice of their</li> <li>that GM has 650 million dollars-worth of projected abestos</li> <li>liability going out over a period of at least ten years, and</li> <li>that many of those claimants, many of those potential</li> <li>that many of those claimants, many of those potential</li> <li>fairly short shrift. There's on e- they deal with it in about</li> <li>fairly short shrift. There's on e- they deal with it in about</li> <li>fairly short shrift. There's on e- they deal with it in about</li> <li>wide circulation, and the Supreme Court has held that</li> <li>wide circulation, and the Supreme Court has held that</li> <li>wide circulation, and the Supreme Court has held that</li> <li>wide circulation for foice in such mexspapers provide sufficient</li> <li>wide circulation, and the Supreme Court has held that</li> <li>wide circulation, and the Supreme Court has held that</li> <li>wide circulation of notice in such mexspapers provide sufficient</li> <li>fairdy short shrift. There's on e- they deal with tim about</li> <li>wide circulatin and that ecase. You either held funds</li> <li>wide ci</li></ul>	7 c	claims; looking at the unique situation that that kind of	7	later. But the point is, there is no one here looking out for	
10       that from exposure to actually manifesting a disease, finding       10       proceeding. And no one is representing them here. I         11       out that you have a claim, is a matter of decades. Ten,       11       be clear, I am representing a single current absets or         12       twenty, thiry, forty years. Such that those folks who will       12       Mr. Esserman was representing single current absets or         12       twenty, thiry, forty years. Such that those folks who will       claimants. We're not advocating a - other than saying         14       claimants. We're not advocating a - other than saying       not here, Judge, we're not here in a position where we         15       mothere, Judge, we're not here in a position where we       resumbly represent their interests in this case.         16       under the Bankruptcy Code. And in fact, under 524(g) ir's       requirement that the debtor use 524(g) here. Howeve         16       the motice in fact, we asked Mr. Henderson - one of       12       adequate notice, adequate to ice, adequate notice, adequate notine, useseadeton mate adesuse notice, adequate notice, a	8 i	njury entails, particularly that it's an insidious product, it	8	their interests today. They didn't get notice of this	
11       out that you have a claim, is a matter of decades. Ten,       11       be clear, I am representing a single current asbestos c         12       twenty, thirty, forty years. Such that those folks who will       12       Mr. Esserman was representing single current asbestos         13       develop disease, who will become claimants, are not present       13       claimants. We're not advocating other than saying         14       the Bankruptey Code. And in fact, under 524(g) it's       referred to a demand.       14         15       mot ber, Judge, we're not here in a position where we       reasonably represent their interests in this case.         16       under the Bankruptey Code. And in fact, under 524(g) it's       Tere about the impact of 524(g) there.         16       the problem of recognizing of how to give adequate       10         12       give them notice in fact, we asked Mr. Henderson or of       21         23       these proceedings in order to give everyone notice of their       21         24       that GM has 650 million dollars-worth of projected asbestos       23         25       that Make soft mill deliamants, many of those potential       1         26       liability going out over a period of at least ten years, and       1         26       liability going out over a period of at least ten years, sing, in ther wanto include those sorts of         27	9 v	went into commerce, and it has a very long latency period, such	9	proceeding. You can't give effective notice of this	
12       twenty, thirty, forty years. Such that those folks who will       12       Mr. Esserman was representing single current asbesto         13       develop disease, who will become claimants, are not presently       12       Mr. Esserman was representing single current asbesto         14       claimants. In fact, the nature of their potential future       13       claimants. We're not have not avocating other than saying         16       under the Bankruptey Code. And in fact, under 524(g) it's       referred to a demand.       16         17       referred to a demand.       17       As we said, this is not an asbestos-driven case. There         19       the reduce view of their potential claimants, those demand       16       As we said, this is not an asbestos-driven case. There         12       give them notice in fact, we asked Mr. Henderson one of       17       As we said, this is not an abestos claimants, the         12       the few questions I asked here, was, you gave broad notice of       12       don't get the protections that that section of the code to p         12       this BM man of those claimants, many of those potential       17       don't get the protections that that section provides. Y         13       that many of those claimants, many of those potential       1       question it's up to the debtor, and in this case, and the         16       that dwatseever.       10       question it's up	0 t	hat from exposure to actually manifesting a disease, finding	10	proceeding. And no one is representing them here. I want	to
13       develop disease, who will become claimants, are not presently       13       claimants. In fact, the nature of their potential future       13       claimants. We're not advocating other than saying         14       claimants. In fact, the nature of their potential future       14       not here, Judge, we're not here in a position where we         15       illness is specifically excluded from the definition of a claim       16       But let me be clear about the impact of 524(g)         16       under the Bankruptcy Code. And in fact, under 524(g) it's       16       But let me be clear about the impact of 524(g)         17       As we said, this is not an asbestos-driven case. There       requirement that the debtor use 524(g) here. Howeve         19       point is, if they don't if fuey don't employ the proce       10         20       that congress designed in that section of the code to p         21       rights were at issue and could be affected. But he recognized       20         22       that GM has 650 million dollars-worth of projected asbestos       21         23       that general tose claimants, don't presently have a disease, don't know they have       1         24       them, wouldn't have reached them and would have done them notice issue       1         35       rights short shrift. There's one - they deal with it in about       1       question it's up to the debtor, and in this case, and the	.1 c	out that you have a claim, is a matter of decades. Ten,	11	be clear, I am representing a single current asbestos claima	nt.
14claimants. In fact, the nature of their potential future14not here, Judge, we're not here in a position where we15illness is specifically excluded from the definition of a claim14not here, Judge, we're not here in a position where we16illness is specifically excluded from the definition of a claim15reasonably represent their interests in this case.16The problem of recognizing of how to give adequate16But let me be clear about the impact of 524(g) 1718The problem of recognizing of how to give adequate17As we said, this is not an absetos-driven case. There19due process to those future potential claimants, those demand19point is, if they don't if they don't employ the proce20the few questions I asked here, was, you gave broad notice of21adequate notice, adequate due process to claimants, dit21these proceedings in order to give everyone notice of their21adequate notice, adequate due process to claimants, dit23these proceedings in order to give everyone notice of their22don't get the protections that that section provides. Ye24that GM has 650 million dollars-worth of projected asbestos981liability going out over a period of at least ten years, and1question it's up to the debtor, and in this case, and the25them, wouldn't have reached them and would have done them no5relevant protections. If they don't protections for the26claimants, don't presently have a disease, don't know they have1question it's up to the debtor, and in this case, and th	.2 t	wenty, thirty, forty years. Such that those folks who will	12	Mr. Esserman was representing single current asbestos	
15illness is specifically excluded from the definition of a claim15reasonably represent their interests in this case.16under the Bankruptcy Code. And in fact, under 524(g) it's16But let me be clear about the impact of 524(g) 117referred to a demand.17As we said, this is not an asbestos-driven case. There18The problem of recognizing of how to give adequate notice, because you carl'16But let me be clear about the impact of 524(g) here. Howeve19they process to those future potential claimants, those demand10As we said, this is not an asbestos-driven case. There20the few questions I asked here, was, you gave broad notice of20that Congress designed in that section of the code to p21give them notice in fact, we asked Mr. Henderson one of21adequate notice, adequate due process to claimants, th22these proceedings in order to give everyone notice of their22don't get the protections that that section provides. Y23these proceedings in order to give everyone notice of their23don't get the protections that that section provides. Y24rights were at issue and could be affected. But he recognized981liability going out over a period of at least ten years, and1question if's up to the debtor, and in this case, and the2buyer, to decide if they want to include those sorts of3relaimants, don't presently have a disease, don't know they have3claimants, don't presently have a disease, don't know they have4claimants, don't presently have a disease, don't know they h	.3 d	develop disease, who will become claimants, are not presently	13	claimants. We're not advocating other than saying they're	re
16       under the Bankruptey Code. And in fact, under 524(g) it's       16       But let me be clear about the impact of 524(g) 1         17       referred to a demand.       17       As we said, this is not an asbestos-driven case. There requirement that the debtor use 524(g) here. However         19       due process to those future potential claimants, those demand       18       requirement that the debtor use 524(g) here. However         19       bolders, and how to give adequate notice, because you can't       19       point is, if they don't if they don't employ the proce         12       the few questions I asked here, was, you gave broad notice of       22       don't get the injunction that they're looking for, at least         24       that GM has 650 million dollars-worth of projected asbestos       98       1       liability going out over a period of at least ten years, and       1         1       liability going out over a period of at least ten years, and       1       question it's up to the debtor, and in this case, and the         2       buyer, to decide if they want to include those sorts of       16         3       relevant protections for the       18         4       claimants, don't presently have a disease, don't know they have       19         4       claimants, don't presently have a disease, don't know they have       10         5       fairly short shrift. There's one they deal	.4 c	claimants. In fact, the nature of their potential future	14	not here, Judge, we're not here in a position where we can	
17       referred to a demand.       17       As we said, this is not an asbestos-driven case. There is the process to those future potential claimants, those demand is deprocess to those future potential claimants, those demand is the few questions I asked here, was, you gave broad notice of their rights were at issue and could be affected. But he recognized is that GM has 650 million dollars-worth of projected asbestos       17       As we said, this is not an asbestos-driven case. There is adequate notice, adequate notice, secause you can't is up to the question I asked here, was, you gave broad notice of their rights were at issue and could be affected. But he recognized is that GM has 650 million dollars-worth of projected asbestos       18       As we said, this is not an asbestos-driven case. There is the protections that that section of the code to proceed ings in order to give everyone notice of their rights were at issue and could be affected. But he recognized is that GM has 650 million dollars-worth of projected asbestos         11       liability going out over a period of at least ten years, and 2 that many of those claimants, many of those potential claimants, dnort presently have a disease, don't know they have a claim, and that whatever publication notice was given to 5 them, wouldn't have reached them and would have done them no 5 good whatsoever.       1       question it's up to the debtor, and in this case, and the 2 buyer, to decide if they want to include those sorts of relevant protections. If they don't protections for the claimants, their wouldn't have reached them and would have done them no 5 good whatsoever.         1       In Chrysler, they kind of gave that notice issue fairly short shrift. There's one they deal with it in about two sentences on page 111 of that decision, simply holding that p	.5 i	Ilness is specifically excluded from the definition of a claim	15	reasonably represent their interests in this case.	
18The problem of recognizing of how to give adequate due process to those future potential claimants, those demand holders, and how to give adequate notice, because you can't give them notice in fact, we asked Mr. Henderson one of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of the few questions I asked here, was, you gave broad notice of that GM has 650 million dollars-worth of projected asbestos goad whatsoevere.111liability going out over a period of at least ten years, and <td>.6 u</td> <td>under the Bankruptcy Code. And in fact, under 524(g) it's</td> <th>16</th> <td>But let me be clear about the impact of 524(g) here.</td> <td></td>	.6 u	under the Bankruptcy Code. And in fact, under 524(g) it's	16	But let me be clear about the impact of 524(g) here.	
19due process to those future potential claimants, those demand holders, and how to give adequate notice, because you can't give them notice in fact, we asked Mr. Henderson one of the few questions I asked here, was, you gave broad notice of 	.7 r	referred to a demand.	17	As we said, this is not an asbestos-driven case. There is no	,
<ul> <li>holders, and how to give adequate notice, because you can't</li> <li>give them notice in fact, we asked Mr. Henderson one of</li> <li>give them notice in fact, we asked Mr. Henderson one of</li> <li>the few questions I asked here, was, you gave broad notice of</li> <li>the few questions I asked here, was, you gave broad notice of</li> <li>these proceedings in order to give everyone notice of their</li> <li>these proceedings in order to give everyone notice of their</li> <li>that GM has 650 million dollars-worth of projected asbestos</li> <li>that GM has 650 million dollars-worth of projected asbestos</li> <li>that GM has 650 million dollars-worth of projected asbestos</li> <li>claimants, don't presently have a disease, don't know they have</li> <li>a claim, and that whatever publication notice was given to</li> <li>them, wouldn't have reached them and would have done them no</li> <li>good whatsoever.</li> <li>In Chrysler, they kind of gave that notice issue</li> <li>fairly short shrift. There's one they deal with it in about</li> <li>two sentences on page 111 of that decision, simply holding that</li> <li>objections are overruled, as those issues have been discussed.</li> <li>Notice of the proposed sale was published in newspapers in very</li> <li>wide circulation, and the Supreme Court has held that</li> <li>publication of notice in such newspapers provide sufficient</li> <li>notice to claimants 'whose interests or whereabouts could not</li> <li>be with due diligence, ascertained''', citing to the Supreme</li> <li>Court's decision in Mullane v. Central Hanover Bank.</li> <li>Mullane was a trust fund case. You either held funds</li> </ul>	. 8	The problem of recognizing of how to give adequate	18	requirement that the debtor use 524(g) here. However, the	
<ul> <li>give them notice in fact, we asked Mr. Henderson one of</li> <li>give them notice in fact, we asked Mr. Henderson one of</li> <li>the few questions I asked here, was, you gave broad notice of</li> <li>the few questions I asked here, was, you gave broad notice of</li> <li>these proceedings in order to give everyone notice of their</li> <li>rights were at issue and could be affected. But he recognized</li> <li>that GM has 650 million dollars-worth of projected asbestos</li> <li>that GM has 650 million dollars-worth of projected asbestos</li> <li>that GM has 650 million dollars-worth of projected asbestos</li> <li>that many of those claimants, many of those potential</li> <li>claimants, don't presently have a disease, don't know they have</li> <li>a claim, and that whatever publication notice was given to</li> <li>then, wouldn't have reached them and would have done them no</li> <li>good whatsoever.</li> <li>In Chrysler, they kind of gave that notice issue</li> <li>fairly short shrift. There's one they deal with it in about</li> <li>two sentences on page 111 of that decision, simply holding that</li> <li>wide circulation, and the Supreme Court has held that</li> <li>publication of notice in such newspapers provide sufficient</li> <li>notice to claimants 'whose interests or whereabouts could not</li> <li>be with due diligence, ascertained''', citing to the Supreme</li> <li>Court's decision in Mullane v. Central Hanover Bank.</li> <li>Mullane was a trust fund case. You either held funds</li> </ul>	.9 d	due process to those future potential claimants, those demand	19	point is, if they don't if they don't employ the processes	
22the few questions I asked here, was, you gave broad notice of22don't get the protections that that section provides. Y23these proceedings in order to give everyone notice of their23don't get the injunction that they're looking for, at lear24rights were at issue and could be affected. But he recognized24to asbestos claimants. You don't get the removal of f25that GM has 650 million dollars-worth of projected asbestos981liability going out over a period of at least ten years, and1question it's up to the debtor, and in this case, and the2buyer, to decide if they want to include those sorts of33claimants, don't presently have a disease, don't know they have1question it's up to the debtor, and in this case, and the4a claim, and that whatever publication notice was given to5buyer, to decide if they want to include those sorts of6good whatsoever.6them the same protections. If they don't protections for the7In Chrysler, they kind of gave that notice issue7the Court's general 105 equitable powers. That's all, Your8fairly short shrift. There's one they deal with it in about9THE COURT: Thank you. Mr. Mayer?10"With respect to potential future tort claimants, their10(Pause)12Notice of the proposed sale was published in newspapers in very12MR. MAYER: Excuse me, Your Honor. I need thi13wide circulation, and the Supreme Court has held that13seconds to decide to figure how much of what we talked1	20 h	holders, and how to give adequate notice, because you can't	20	that Congress designed in that section of the code to provide	le
23these proceedings in order to give everyone notice of their23don't get the injunction that they're looking for, at lear24rights were at issue and could be affected. But he recognized24to asbestos claimants. You don't get the removal of f25that GM has 650 million dollars-worth of projected asbestos981to asbestos claimants. You don't get the removal of f26that many of those claimants, many of those potential224to asbestos claimants. You don't get the removal of f3claimants, don't presently have a disease, don't know they have1question it's up to the debtor, and in this case, and the4a claim, and that whatever publication notice was given to5relevant protections. If they don't protections for the5good whatsoever.6them the same protections as that specific statute would ut7In Chrysler, they kind of gave that notice issue78fairly short shrift. There's one they deal with it in about89With respect to potential future tort claimants, their1010"With respect to potential future tort claimants, their1011objections are overruled, as those issues have been discussed.1112Notice of the proposed sale was published in newspapers in very1213wide circulation, and the Supreme Court has held that1314publication of notice in such newspapers provide sufficient1415notice to claimants 'whose interests or whereabouts could not1516be with due diligence, asce	21 g	give them notice in fact, we asked Mr. Henderson one of	21	adequate notice, adequate due process to claimants, then ye	ou
24rights were at issue and could be affected. But he recognized that GM has 650 million dollars-worth of projected asbestos 9824to asbestos claimants. You don't get the removal of f successor liability as to those asbestos claimants. It's1liability going out over a period of at least ten years, and 2 that many of those claimants, many of those potential 31question it's up to the debtor, and in this case, and the buyer, to decide if they want to include those sorts of relevant protections. If they don't protections for the claimants and future claimants. However, if they don't the point is, they take their chances, and you, Judge, can't give them the same protections as that specific statute would un the Court's general 105 equitable powers. That's all, Youn 87In Chrysler, they kind of gave that notice issue fairly short shrift. There's one they deal with it in about 919two sentences on page 111 of that decision, simply holding that ubjections are overruled, as those issues have been discussed. 10110"With respect to potential future tort claimants, their ubjection, and the Supreme Court has held that ubjection of notice in such newspapers provide sufficient notice to claimants 'whose interests or whereabouts could not to be with due diligence, ascertained''', citing to the Supreme 161116be with due diligence, ascertained''', citing to the Supreme 1716THE COURT: How much time to you need? THE COURT: How much time to you need? THE COURT: Actually, since we've been going so18Mullane was a trust fund case. You either held funds18THE COURT: Actually, since we've been going so	22 t	he few questions I asked here, was, you gave broad notice of	22	don't get the protections that that section provides. You	
25that GM has 650 million dollars-worth of projected asbestos 9825successor liability as to those asbestos claimants. It's1liability going out over a period of at least ten years, and 2 that many of those claimants, many of those potential 31question it's up to the debtor, and in this case, and the buyer, to decide if they want to include those sorts of relevant protections. If they don't protections for the claimants and future claimants. However, if they don't the point is, they take their chances, and you, Judge, can't give the muth same protections as that specific statute would up the court's general 105 equitable powers. That's all, You the Court's decision as that specific statute would up the Court's decision in Mullane vas a trust fund case. You either held funds25wide circulation, and the Supreme to wide circulation in Mullane was a trust fund case. You either held funds26the wide diligence, ascertained''', citing to the Supreme to wide claimants 'whose interests or whereabouts could not to possible to take a five26the wide diligence, ascertained''', citing to the Supreme to wide claimants 'whose interests or whereabouts could not to possible to take a five27the your's decision in Mu	23 t	hese proceedings in order to give everyone notice of their	23	don't get the injunction that they're looking for, at least as	
981liability going out over a period of at least ten years, and2that many of those claimants, many of those potential3claimants, don't presently have a disease, don't know they have4a claim, and that whatever publication notice was given to5them, wouldn't have reached them and would have done them no6good whatsoever.7In Chrysler, they kind of gave that notice issue8fairly short shrift. There's one they deal with it in about9two sentences on page 111 of that decision, simply holding that10"With respect to potential future tort claimants, their11objections are overruled, as those issues have been discussed.12Notice of the proposed sale was published in newspapers in very13wide circulation, and the Supreme Court has held that14publication of notice in such newspapers provide sufficient15notice to claimants 'whose interests or whereabouts could not16be with due diligence, ascertained'", citing to the Supreme17Court's decision in Mullane v. Central Hanover Bank.18Mullane was a trust fund case. You either held funds	24 r	rights were at issue and could be affected. But he recognized	24	to asbestos claimants. You don't get the removal of future	
1liability going out over a period of at least ten years, and1question it's up to the debtor, and in this case, and the2that many of those claimants, many of those potential2buyer, to decide if they want to include those sorts of3claimants, don't presently have a disease, don't know they have3relevant protections. If they don't protections for the4a claim, and that whatever publication notice was given to5them, wouldn't have reached them and would have done them no5them, wouldn't have reached them and would have done them no5point is, they take their chances, and you, Judge, can't give6good whatsoever.6them the same protections as that specific statute would un7In Chrysler, they kind of gave that notice issue7the Court's general 105 equitable powers. That's all, Youn8fairly short shrift. There's one they deal with it in about9THE COURT: Thank you. Mr. Mayer?9two sentences on page 111 of that decision, simply holding that9THE COURT: Thank you. Your Honor.11objections are overruled, as those issues have been discussed.11(Pause)12Notice of the proposed sale was published in newspapers in very12MR. MAYER: Excuse me, Your Honor. I need thi13wide circulation, and the Supreme Court has held that13seconds to decide to figure how much of what we talked14publication of notice in such newspapers provide sufficient14last night can be put on the public record at this moment.15notice to claimants 'whose interests	25 t	hat GM has 650 million dollars-worth of projected asbestos	25	successor liability as to those asbestos claimants. It's a	
2that many of those claimants, many of those potential2buyer, to decide if they want to include those sorts of3claimants, don't presently have a disease, don't know they have3relevant protections. If they don't protections for the4a claim, and that whatever publication notice was given to4claimants and future claimants. However, if they don't the5them, wouldn't have reached them and would have done them no5point is, they take their chances, and you, Judge, can't give6good whatsoever.6them the same protections as that specific statute would ut7In Chrysler, they kind of gave that notice issue7the Court's general 105 equitable powers. That's all, Your8fairly short shrift. There's one they deal with it in about9THE COURT: Thank you. Mr. Mayer?10"With respect to potential future tort claimants, their10MR. MAYER: Thank you, Your Honor.11objections are overruled, as those issues have been discussed.11(Pause)12Notice of the proposed sale was published in newspapers in very12MR. MAYER: Excuse me, Your Honor. I need thi13wide circulation, and the Supreme Court has held that13seconds to decide to figure how much of what we talked14publication of notice in such newspapers provide sufficient14last night can be put on the public record at this moment.15notice to claimants 'whose interests or whereabouts could not15it possible to take a five16be with due diligence, ascertained''', citing to the Supreme16 <td></td> <td>98</td> <th></th> <td>10</td> <td>0</td>		98		10	0
2that many of those claimants, many of those potential2buyer, to decide if they want to include those sorts of3claimants, don't presently have a disease, don't know they have3relevant protections. If they don't protections for the4a claim, and that whatever publication notice was given to4claimants and future claimants. However, if they don't the5them, wouldn't have reached them and would have done them no5point is, they take their chances, and you, Judge, can't give6good whatsoever.6them the same protections as that specific statute would ut7In Chrysler, they kind of gave that notice issue7the Court's general 105 equitable powers. That's all, Your8fairly short shrift. There's one they deal with it in about9THE COURT: Thank you. Mr. Mayer?10"With respect to potential future tort claimants, their10MR. MAYER: Thank you, Your Honor.11objections are overruled, as those issues have been discussed.11(Pause)12Notice of the proposed sale was published in newspapers in very12MR. MAYER: Excuse me, Your Honor. I need thi13wide circulation, and the Supreme Court has held that13seconds to decide to figure how much of what we talked14publication of notice in such newspapers provide sufficient14last night can be put on the public record at this moment.15notice to claimants 'whose interests or whereabouts could not15it possible to take a five16be with due diligence, ascertained''', citing to the Supreme16 <th></th> <th></th> <th></th> <th></th> <th></th>					
3claimants, don't presently have a disease, don't know they have 43relevant protections. If they don't protections for the claimants and future claimants. However, if they don't the claimants and future claimants. However, if they don't the point is, they take their chances, and you, Judge, can't give them, wouldn't have reached them and would have done them no good whatsoever.3relevant protections. If they don't protections for the claimants and future claimants. However, if they don't the point is, they take their chances, and you, Judge, can't give them the same protections as that specific statute would un the Court's general 105 equitable powers. That's all, Your 87In Chrysler, they kind of gave that notice issue fairly short shrift. There's one they deal with it in about 97the Court's general 105 equitable powers. That's all, Your 88fairly short shrift. There's one they deal with it in about 99THE COURT: Thank you. Mr. Mayer?9two sentences on page 111 of that decision, simply holding that 99THE COURT: Thank you, Your Honor.10objections are overruled, as those issues have been discussed.11(Pause)12Notice of the proposed sale was published in newspapers in very 1212MR. MAYER: Excuse me, Your Honor. I need thi seconds to decide to figure how much of what we talked 1414publication of notice in such newspapers provide sufficient 1514last night can be put on the public record at this moment.15notice to claimants 'whose interests or whereabouts could not 1515it possible to take a five16be with due diligence, ascertai					
4a claim, and that whatever publication notice was given to4claimants and future claimants. However, if they don't the5them, wouldn't have reached them and would have done them no5point is, they take their chances, and you, Judge, can't give6good whatsoever.6them the same protections as that specific statute would un7In Chrysler, they kind of gave that notice issue7the Court's general 105 equitable powers. That's all, Your8fairly short shrift. There's one they deal with it in about8Honor. Thank you very much.9two sentences on page 111 of that decision, simply holding that9THE COURT: Thank you. Mr. Mayer?10"With respect to potential future tort claimants, their10MR. MAYER: Thank you, Your Honor.11objections are overruled, as those issues have been discussed.11(Pause)12Notice of the proposed sale was published in newspapers in very12MR. MAYER: Excuse me, Your Honor. I need thi13wide circulation, and the Supreme Court has held that13seconds to decide to figure how much of what we talked14publication of notice in such newspapers provide sufficient14last night can be put on the public record at this moment.15notice to claimants 'whose interests or whereabouts could not15it possible to take a five16be with due diligence, ascertained''', citing to the Supreme16THE COURT: How much time to you need?17Court's decision in Mullane v. Central Hanover Bank.17MR. MAYER: take a short recess, perhaps					
5them, wouldn't have reached them and would have done them no good whatsoever.5point is, they take their chances, and you, Judge, can't give them the same protections as that specific statute would un the Court's general 105 equitable powers. That's all, Your the Court's general 105 equitable powers. That's all, Your Honor. Thank you very much.7In Chrysler, they kind of gave that notice issue fairly short shrift. There's one they deal with it in about two sentences on page 111 of that decision, simply holding that 0 "With respect to potential future tort claimants, their7Honor. Thank you very much.10"With respect to potential future tort claimants, their10MR. MAYER: Thank you, Your Honor.11objections are overruled, as those issues have been discussed.11(Pause)12Notice of the proposed sale was published in newspapers in very 1312MR. MAYER: Excuse me, Your Honor. I need thi a seconds to decide to figure how much of what we talked last night can be put on the public record at this moment.15notice to claimants 'whose interests or whereabouts could not 1515it possible to take a five16be with due diligence, ascertained''', citing to the Supreme 1616THE COURT: How much time to you need?17Court's decision in Mullane v. Central Hanover Bank.17MR. MAYER: take a short recess, perhaps?18Mullane was a trust fund case. You either held funds18THE COURT: Actually, since we've been going so					
6good whatsoever.6them the same protections as that specific statute would un7In Chrysler, they kind of gave that notice issue6them the same protections as that specific statute would un8fairly short shrift. There's one they deal with it in about7the Court's general 105 equitable powers. That's all, Youn9two sentences on page 111 of that decision, simply holding that8Honor. Thank you very much.9two sentences on page 111 of that decision, simply holding that9THE COURT: Thank you. Mr. Mayer?10"With respect to potential future tort claimants, their10MR. MAYER: Thank you, Your Honor.11objections are overruled, as those issues have been discussed.11(Pause)12Notice of the proposed sale was published in newspapers in very12MR. MAYER: Excuse me, Your Honor. I need thi13wide circulation, and the Supreme Court has held that13seconds to decide to figure how much of what we talked14publication of notice in such newspapers provide sufficient14last night can be put on the public record at this moment.15notice to claimants 'whose interests or whereabouts could not15it possible to take a five16be with due diligence, ascertained''', citing to the Supreme16THE COURT: How much time to you need?17Court's decision in Mullane v. Central Hanover Bank.17MR. MAYER: take a short recess, perhaps?18Mullane was a trust fund case. You either held funds18THE COURT: Actually, since we've been going so <td></td> <td>· · · · ·</td> <th></th> <td></td> <td></td>		· · · · ·			
7In Chrysler, they kind of gave that notice issue7the Court's general 105 equitable powers. That's all, Your8fairly short shrift. There's one they deal with it in about8Honor. Thank you very much.9two sentences on page 111 of that decision, simply holding that9THE COURT: Thank you. Mr. Mayer?10"With respect to potential future tort claimants, their10MR. MAYER: Thank you, Your Honor.11objections are overruled, as those issues have been discussed.11(Pause)12Notice of the proposed sale was published in newspapers in very12MR. MAYER: Excuse me, Your Honor. I need thi13wide circulation, and the Supreme Court has held that13seconds to decide to figure how much of what we talked14publication of notice in such newspapers provide sufficient14last night can be put on the public record at this moment.15notice to claimants 'whose interests or whereabouts could not15it possible to take a five16be with due diligence, ascertained''', citing to the Supreme16THE COURT: How much time to you need?17Court's decision in Mullane v. Central Hanover Bank.17MR. MAYER: take a short recess, perhaps?18Mullane was a trust fund case. You either held funds18THE COURT: Actually, since we've been going so					
8       fairly short shrift. There's one they deal with it in about       8       Honor. Thank you very much.         9       two sentences on page 111 of that decision, simply holding that       9       THE COURT: Thank you. Mr. Mayer?         10       "With respect to potential future tort claimants, their       10       MR. MAYER: Thank you, Your Honor.         11       objections are overruled, as those issues have been discussed.       11       (Pause)         12       Notice of the proposed sale was published in newspapers in very       12       MR. MAYER: Excuse me, Your Honor. I need thi         13       wide circulation, and the Supreme Court has held that       13       seconds to decide to figure how much of what we talked         14       publication of notice in such newspapers provide sufficient       14       last night can be put on the public record at this moment.         15       notice to claimants 'whose interests or whereabouts could not       15       it possible to take a five         16       be with due diligence, ascertained''', citing to the Supreme       16       THE COURT: How much time to you need?         17       Court's decision in Mullane v. Central Hanover Bank.       17       MR. MAYER: take a short recess, perhaps?         18       Mullane was a trust fund case. You either held funds       18       THE COURT: Actually, since we've been going son		-			
9two sentences on page 111 of that decision, simply holding that9THE COURT: Thank you. Mr. Mayer?10"With respect to potential future tort claimants, their10MR. MAYER: Thank you, Your Honor.11objections are overruled, as those issues have been discussed.11(Pause)12Notice of the proposed sale was published in newspapers in very12MR. MAYER: Excuse me, Your Honor. I need thi13wide circulation, and the Supreme Court has held that13seconds to decide to figure how much of what we talked14publication of notice in such newspapers provide sufficient14last night can be put on the public record at this moment.15notice to claimants 'whose interests or whereabouts could not15it possible to take a five16be with due diligence, ascertained''', citing to the Supreme16THE COURT: How much time to you need?17Court's decision in Mullane v. Central Hanover Bank.17MR. MAYER: take a short recess, perhaps?18Mullane was a trust fund case. You either held funds18THE COURT: Actually, since we've been going so					
10"With respect to potential future tort claimants, their10MR. MAYER: Thank you, Your Honor.11objections are overruled, as those issues have been discussed.11(Pause)12Notice of the proposed sale was published in newspapers in very12MR. MAYER: Excuse me, Your Honor. I need thi13wide circulation, and the Supreme Court has held that13seconds to decide to figure how much of what we talked14publication of notice in such newspapers provide sufficient14last night can be put on the public record at this moment.15notice to claimants 'whose interests or whereabouts could not15it possible to take a five16be with due diligence, ascertained''', citing to the Supreme16THE COURT: How much time to you need?17Court's decision in Mullane v. Central Hanover Bank.17MR. MAYER: take a short recess, perhaps?18Mullane was a trust fund case. You either held funds18THE COURT: Actually, since we've been going so					
11objections are overruled, as those issues have been discussed.11(Pause)12Notice of the proposed sale was published in newspapers in very12MR. MAYER: Excuse me, Your Honor. I need thi13wide circulation, and the Supreme Court has held that13seconds to decide to figure how much of what we talked14publication of notice in such newspapers provide sufficient14last night can be put on the public record at this moment.15notice to claimants 'whose interests or whereabouts could not15it possible to take a five16be with due diligence, ascertained''', citing to the Supreme16THE COURT: How much time to you need?17Court's decision in Mullane v. Central Hanover Bank.17MR. MAYER: take a short recess, perhaps?18Mullane was a trust fund case. You either held funds18THE COURT: Actually, since we've been going so					
12Notice of the proposed sale was published in newspapers in very wide circulation, and the Supreme Court has held that12MR. MAYER: Excuse me, Your Honor. I need thi13wide circulation, and the Supreme Court has held that13seconds to decide to figure how much of what we talked14publication of notice in such newspapers provide sufficient14last night can be put on the public record at this moment.15notice to claimants 'whose interests or whereabouts could not15it possible to take a five16be with due diligence, ascertained''', citing to the Supreme16THE COURT: How much time to you need?17Court's decision in Mullane v. Central Hanover Bank.17MR. MAYER: take a short recess, perhaps?18Mullane was a trust fund case. You either held funds18THE COURT: Actually, since we've been going so					
13wide circulation, and the Supreme Court has held that13seconds to decide to figure how much of what we talked14publication of notice in such newspapers provide sufficient13seconds to decide to figure how much of what we talked15notice to claimants 'whose interests or whereabouts could not14last night can be put on the public record at this moment.16be with due diligence, ascertained''', citing to the Supreme16THE COURT: How much time to you need?17Court's decision in Mullane v. Central Hanover Bank.17MR. MAYER: take a short recess, perhaps?18Mullane was a trust fund case. You either held funds18THE COURT: Actually, since we've been going so					
14publication of notice in such newspapers provide sufficient14last night can be put on the public record at this moment.15notice to claimants 'whose interests or whereabouts could not15it possible to take a five16be with due diligence, ascertained''', citing to the Supreme16THE COURT: How much time to you need?17Court's decision in Mullane v. Central Hanover Bank.17MR. MAYER: take a short recess, perhaps?18Mullane was a trust fund case. You either held funds18THE COURT: Actually, since we've been going so				MR. MAYER: Excuse me, Your Honor. I need thirty	
15       notice to claimants 'whose interests or whereabouts could not       15       it possible to take a five         16       be with due diligence, ascertained''', citing to the Supreme       16       THE COURT: How much time to you need?         17       Court's decision in Mullane v. Central Hanover Bank.       17       MR. MAYER: take a short recess, perhaps?         18       Mullane was a trust fund case. You either held funds       18       THE COURT: Actually, since we've been going so				0	ıt
16be with due diligence, ascertained''', citing to the Supreme16THE COURT: How much time to you need?17Court's decision in Mullane v. Central Hanover Bank.17MR. MAYER: take a short recess, perhaps?18Mullane was a trust fund case. You either held funds18THE COURT: Actually, since we've been going so	1	* * *			
17Court's decision in Mullane v. Central Hanover Bank.17MR. MAYER: take a short recess, perhaps?18Mullane was a trust fund case. You either held funds18THE COURT: Actually, since we've been going so				-	
18     Mullane was a trust fund case. You either held funds     18     THE COURT: Actually, since we've been going so				-	
1 19 in a trust or you didn't. This we're not presented here 1 19 let's take a ten-minute recess				THE COURT: Actually, since we've been going so long,	
		in a trust or you didn't. This we're not presented here	19		
20 with a question of we can't ascertain the location of folks; we 20 MR. MAYER: Okay. Thank you, Your Honor.					
21 can't, with reasonable due diligence send them a specific 21 THE COURT: See you back in ten minutes, folks.				-	
22       notice, such that the publication even becomes sufficient.       22       (Recess from 10:47 a.m. until 11:10 a.m.)					
				MR. MAYER: Thank you, Your Honor. And good morn	
				Again, Thomas Moers Mayer for Kramer Levin Naftalis & Fran	ıke
25 won't know that for years. That's why Congress, in Section 25 counsel to the official committee of unsecured creditors.	.5 V		25		-
99		99		10	T

212-267-6868

1       First, a housekceping item. I'm pleased to report       1       we talked in this proceeding, Your Honor, about a sal         2       think that may be a type. My partner at Waldorf was setually       3       period between the sale and the consummation of a C         4       with his wife at a medical facility and was able to get to us       6       plan. And then there's a period after consummation of a C         5       and tell us he had this       5       Chapter 11 plan. And we have agreements in princip         6       THE COURT: That's fine.       7       During the period from the sale until consummation of a C         7       MR. MAYER: The committee is prepared to withdraw its       7       During the period from the sale until consummation of a C         8       limited objection, and the committee's withdrawal of its       10       designee from Alix, one designee from the creditors'         11       limited objection is without projudice to any position taken by       12       but I'm not entirely sure has agreed on it, so pering         14       Second, the committee's withdrawal of its limited       14       an agreement on a person that would be acceptable to         15       objection is subject to the completion of the wind-down budget       15       us. And actually is quite a good pick.         16       and the sale order to the committee's salisfaction. And in       16       and, again, the permaent bo	
3       think that may be a typo. My partner at Waldorf was actually       3       period between the sale and the consummation of a C         4       with his wife at a medical facility and was able to get to us       and tell us he had this       5         5       and tell us he had this       5       Chapter 11 plan. And we have agreements in princip         6       THE COURT: That's fine.       6       most part on both periods. One is ready for publication         8       Ilmited objection to the sale motion subject to the following:       7       During the period from the sale until consummation of a C         9       First, individual committee members have forcefully       9       board of directors of this debtor will be composed of disegince from Alix, one designee from Alix, one des	e
4       with his wife at a medical facility and was able to get to us       and tell us he had this       plan. And then there's a period after consummation of         5       and tell us he had this       Chapter 11 plan. And we have agreements in princip         6       THE COURT: That's fine.       During the period from the side until consummation of         7       MR MAYER: The committee is prepared to withdraw its       The individual committee members have forcefully       alpan of reorganization, it is our understanding that th         9       First, individual committee members have forcefully       advocated certain of the arguments advanced in the committee's       10         10       advocated certain of the arguments advanced in the committee's       11       hour entirely sure he has agreed on it, so perhag         11       inside objection is without prejudice to any position taken by       12       but I'm not entirely sure he has agreed on it, so perhag         13       those individual committee's withdrawal of its limited       14       an agreement on a person that would be acceptable to         14       us cond, the committee's satifaction. And in       16       And, again, the permanent board - the board for         15       objection is subject to the completion of the wind-down budget       17       that connection. Your Hoor, I'm pleased to report that in         16       and tho 2 fore tows the abbox for       post-consummation,	here's a
5       and tell us he had this       5       Chapter 11 plan. And we have agreements in princip         6       THE COURT: That's fine.       6         7       MR. MAYER: The committee is prepared to withdraw its       7         8       Imited objection to the asle motion subject to the following:       7         9       First, individual committee submets advanced in the committee's       10         10       advocated certain of the arguments advanced in the committee's       11         11       limited objection is without prejudice to any position taken by       12         12       but I'm not mircle's withdrawal of its limited       13         13       those individual committee's withdrawal of its limited       14         14       Second, the committee's withdrawal of its limited       13         15       objection is subject to the completion of the wind-down budget       15         16       and the sale order to the committee's stiffaction. And in       16         17       that connection, Your Honor, I'm pleased to report that in       17         18       interally the last sixteen hours, in a meeting that went until       18         19       I think 2 in the morning and resumed at 7, and it was handled       19         21       moth bogs Schmidt. Actually, Bob is here, I apologize.       23 <td>hapter 11</td>	hapter 11
6       THE COURT: That's fine.       nost part on both periods. One is ready for publications with the sale notion subject to the following:       nost part on both periods. One is ready for publications approximate the sale notion subject to the following:         9       First, individual committee members have forcefully       9         10       advocated certain of the arguments advanced in the committee's a third individual who the parties have age in the origination is without prejudice to any position taken by       11         11       limited objection is without prejudice to any position taken by       12       but Th not entirely sure the has agreed on it, so perhap         13       those individual committee members on their own behalf.       13       should keep his name confidential for the moment. B         14       Second, the committee's suitifaction. And in       14       and the sale order to the completion of the wind-down budget       15         16       and the sale order to the committee's suitifaction. And in       17       post-consummation, GM - Old GM will be in a plan         17       that connection, Your Honor, Tm pleased to report that in       17       post-consummation, GM - Old GM will be in a plan         18       literally the last sixtee hours, in a meeting that went until       18       reconsummation, GM - Old GM will be in a plan         20       primarily for the committee suitation and insclosure statement, itself, but workers' compresation and disclosure statement, itsel	fa
7       MR.MAYER: The committee is prepared to withdraw its       7       During the period from the sale until consumm         8       limited objection to the sale motion subject to the following:       a plan of reorganization, it is our understanding that it         9       First, individual committee members have forefully       board of directors of this debtor will be composed of fit         10       advocated certain of the arguments davdanced in the committee's       10         11       those individual committee members on their own behalf.       11         12       limited objection is without prejudice to any position taken by       12         13       those individual committee members on their own behalf.       13         14       Second, the committee's withdrawal of its limited       14         15       objection is subject to the committee's a staffaction. And in       16         16       and the sale order to the committee's astisfaction. And in       17         17       that connection, Your Honor, Tim pleased to report that in       17         18       literally he last sixteen hours, in a meeting that went until       18         20       primarily for the committee by FTI's Conner and Anna Phillips       20         21       and Bob Schmidt. Actually, Bob is here, I apologize.       22         22       and Bob Schmidt. Actually, Couse the	le for the
8       limited objection to the sale motion subject to the following:       a plan of roorganization, it is our understanding that th         9       First, individual committee members have forcefully       board of directors of this debtor will be composed of         10       advocated certain of the arguments advanced in the committee's       board of directors of this debtor will be composed of         11       limited objection is without prejudice to any position taken by       but I'm not entirely sure he has agreed on it, so perhag         13       those individual committee's withdrawal of its limited       but I'm not entirely sure he has agreed on it, so perhag         14       Second, the committee's withdrawal of its limited       14         15       objection is subject to the completion of the wind-down budget       15         16       and the sale order to the committee's satifaction. And in       16         17       that connection, Your Honor, I'm pleased to report that in       17         18       literally the last sixteen hours, in a meeting that went until       18       roorganization and disclosure statement, itself, but wet         19       I think 2 in the morning and resumed at 7, and it was handled       19       the outlines of an agreement on that as well.         20       and two partners from my firm who are not here today, AppCato       20       Based on those agreements and one or twoo othe         23<	on.
9       First, individual committee members have forcefully       9       board of directors of this debtor will be composed of advocated certain of the arguments advanced in the committee's         10       advocated certain of the arguments advanced in the committee's       10         11       limited objection, and the committee's withdrawal of its       11         12       limited objection is without prejudice to any position taken by       12       but I'm not entirely sure he has agreed on it, so perhag         12       busited to committee members on their own behalf.       13       should keep his name confidential for the moment. B         14       Second, the committee's withdrawal of its limited       14       an agreement on a person that would be acceptable to         15       objection is subject to the completion of the wind-down budget       16       And actually is quite a good pick.         16       and the ade order to the committee's astifaction. And in       16       Post-consummation, GM - Old GM will be in a plan         18       literally the last sixteen hours, in a meeting that went until       18       reorganization and disclosure statement, itself, but we         19       I think 2 in the morning and resumed at 7, and it was handled       19       Based on those agreements and one or two othe         21       mintwo partners from my firm who are not here today. Amy       20         23       We wer	ation of
10       advocated certain of the arguments advanced in the committee's       10       designee from Alix, one designee from the creditor's         11       limited objection is without prejudice to any position taken by       11       And there's a third individual who the parties have ag         12       limited objection is without prejudice to any position taken by       12       but I'm not entirely sure he has agreed on it, so perhag         13       those individual committee withdrawal of its inited       13       should keep his name confidential for the moment. B         14       Second, the committee's stiffaction. And in       14       an agreement on a person that would be acceptable to         15       objection is subject to the completion of the wind-down budget       15       us. And actually is quite a good pick.         16       and the sale order to the committee with was handled       16       And, again, the permanent board the board for post-consummation, GM Old GM will be in a plan reorganization and disclosure statement, itself, but we the autilines of an agreement on that as well.         19       I thick 2 in the moming and resumed at 7, and it was handled       10       Based on those agreements and one or two othe things, there was an issue that came up yesterday, abc         22       and Bo Schmidt. Actually, Bob is here, I apologize.       22       workers' compensation claims in connection with the         23       We were able to close the substantive gap on the <td>he</td>	he
11       limited objection, and the committee's withdrawal of its       11       And there's a third individual who the parties have ag         12       limited objection is without prejudice to any position taken by       12       but I'm not entirely sure he has agreed on it, so perhag         13       those individual committee members on their own behalf.       13       should keep his name confidential for the moment. B         14       Second, the committee's withdrawal of its limited       14       an agreement on a person that would be acceptable to         15       objection is subject to the completion of the wind-down budget       15       us. And, again, the permament board the board for post-consummation, GM Old GM will be in a plan         18       literally the last sixteen hours, in a meeting that went until       18       reorganization and disclosure statement, itself, but we         19       I think 2 in the morning and resumed at 7, and it was handled       19       the outlines of an agreement on that as well.         20       primarily for the committee by FTI's Conner and Anna Philips       20       Based on those agreements and one or two othe         21       and two partners from my firm who are not here today, Amy Catoo       21       workers' compensation claims in connection with the         22       work were able to close the substantive gap on the       23       Mc were able to close the substantive gap on the       23 <t< td=""><td>one</td></t<>	one
12       limited objection is without prejudice to any position taken by       12       but I'm not entirely sure he has agreed on it, so perfurt of the second, the committee's withdrawal of its limited         13       those individual committee's withdrawal of its limited       13       should keep his name confidential for the moment. B         14       Second, the committee's withdrawal of its limited       14       an agreement on a person that would be acceptable to         15       objection is subject to the committee's satisfaction. And in       16       and the sale order to the committee's satisfaction. And in         16       and the sale order to the committee's satisfaction. And in       16       And, again, the permanent board the board for         19       I that connection, Your Honor, I'm pleased to report that in       17       post-consummation, GM Old GM will be in a plan         20       primarily for the committee by FTI's Conner and Anna Phillips       20       Based on those agreements and one or two othe         21       and Bo Schmidt. Actually, Bob is here, I apologize.       21       Michigan. Our understanding is that the order or rele         24       wind-down budget. My understanding, which I would ask the       25       government to confirm is that the total amount of the facility       25         25       government or or 1.175 billion dollars, Your Honor.       3       MR. JONES: No amplification needed, Your Ho	committee
13       those individual committee members on their own behalf.       13       should keep his name confidential for the moment. B         14       Second, the committee's withdrawal of its limited       14       an agreement on a person that would be acceptable to         15       objection is subject to the committee's satisfaction. And in       16       an dte sale order to the committee's satisfaction. And in       16         16       inthe connection, Your Honor, I'm pleased to report that in       17       17       that connection, Your Honor, I'm pleased to report that in       17         18       literally the last sixteen hours, in a meeting that went until       18       reorganization and disclosure statement, itself, but weither         20       primarily for the committee by FTI's Conner and Anna Philips       20       Based on those agreement on that as well.         21       and bo Schmidt. Actually, Bob is here, I apologize.       22       workers' compensation claims in connection with the         23       We were able to close the substantive gap on the       23       Michigan. Our understanding is that the order or rele         24       wind-down budget. My understanding, which I would ask the       25       government is going to make available financing         3       in the admount of 1.175 billion dollars, Your Hoor.       1       not bear responsibility for Michigan workers' comp claims. Oreceds which have previously been dedicated to	reed on,
14Second, the committee's withdrawal of its limited14an agreement on a person that would be acceptable to15objection is subject to the completion of the wind-down budget15and the sale order to the committee's satisfaction. And in1617that connection, Your Honor, I'm pleased to report that in17post-consummation, GM - Old GM will be in a plan18literally the last sixteen hours, in a meeting that went until18reorganization and disclosure statement, itself, but we19I think 2 in the morning and resumed at 7, and it was handled19Based on those agreements and one or two othe21and two partners from my firm who are not here today, Amy Cato21Based on those agreements and one or two othe23We were able to close the substantive gap on the23Michigan. Our understanding is that the order or rele24wind-down budget. My understanding, which I would ask the25responsibility for Michigan Workers' comp claims. Or201021not bear responsibility for Michigan workers' comp claims. Or23being provided to cover wind-down expenses has been upsized1not bear responsibility for Michigan workers' comp claims. Or24in the amount of 1.175 billion dollars, Your Honor.10MR. JONES: No amplified.3in dedition, there is an agreement that asset1not bear responsibility for Michigan workers' comp?4The dovernment's facility will be available to fund6MR. JONES: No amplified.5proceeds which have previously been dedicated to the repayment7	os I
15objection is subject to the completion of the wind-down budget15us. And actually is quite a good pick.16and the sale order to the committee's satisfaction. And in16And, again, the permanent board the board fc17that connection, Your Honor, I'm pleased to report that in17post-consummation, GM Old GM will be in a plan18literally the last sixteen hours, in a meeting that went until18reorganization and disclosure statement, itself, but we19I think 2 in the morning and resumed at 7, and it was handled19the outlines of an agreement on that as well.20primarily for the committee by FTI's Conner and Anna Phillips20Based on those agreements and one or two othe21and two partners from my firm who are not here today, Amy Caton21things, there was an issue that came up yesterday, abc22and Bob Schmidt. Actually, Bob is here, I apologize.22We were able to close the substantive gap on the2323We were able to close the substantive gap on the23Michigan. Our understanding is that the order or rele24wind-down budget. My understanding, which I would ask the24documents will be changed so as to have New GM be25government or onfirm is that the total amount of the facility25not bear responsibility for Michigan workers' comp cla3in the amount of 1.175 billion dollars, Your Honor.3MR, JONES: No amplification needed, Your Ho4In addition, there is an agreement that asset4That description is correct so far.5proceeds which have pr	ut we have
16and the sale order to the committee's satisfaction. And in that connection, Your Honor, I'm pleased to report that in that connection, Your Honor, I'm pleased to report that in that connection, Your Honor, I'm pleased to report that in that connection, Your Honor, I'm pleased to report that in that connection, Your Honor, I'm pleased to report that in that connection, Your Honor, I'm pleased to report that in that connection, Your Honor, I'm pleased to report that in think 2 in the morning and resumed at 7, and it was handled primarily for the committee by FTI's Conner and Anna Phillips and two partners from my firm who are not here today, Amy Caton and Bob Schmidt. Actually, Bob is here, I apologize. and Bob Schmidt. Actually, Bob is here, I apologize. and Bob Schmidt. Actually, Bob is here, I apologize. were able to close the substantive gap on the wind-down budget. My understanding, which I would ask the government to confirm is that the total amount of the facility such that the government is going to make available financing in the amount of 1.175 billion dollars, Your Honor. I naddition, there is an agreement that asset proceeds which have previously been dedicated to the repayment of the government's facility will be available to fund additional expenses if needed.1not bear responsibility for Michigan workers' comp cla Does that need to be amplification needed, Your Ho That description is correct so far.1being proviously dedicated to the repayment of that were previously dedicated to the repayment of that we	both of
17       that connection, Your Honor, I'm pleased to report that in       17         18       literally the last sixteen hours, in a meeting that went until       18         19       I think 2 in the morning and resumed at 7, and it was handled       19         20       primarily for the committee by FTT's Conner and Anna Phillips       20         21       and two partners from my firm who are not here today, Amy Caton       21         22       and Bob Schmidt. Actually, Bob is here, I apologize.       22         23       We were able to close the substantive gap on the       23         24       wind-down budget. My understanding, which I would ask the       24         25       government to confirm is that the total amount of the facility       25         26       not bear responsibility for Michigan workers' comp claims. Or         27       not bear responsibility for Michigan workers' comp claims. Or         28       und addition, there is an agreement that asset       1         30       in the amount of 1.175 billion dollars, Your Honor.       3         41       In addition, there is an agreed that asset sale proceeds       1         52       proceeds which have previously been dedicated to the repayment of the government's facility will be available for fund       6         6       of the government has agreed that asset sale proceeds <td></td>	
18Iterally the last sixteen hours, in a meeting that went until18reorganization and disclosure statement, itself, but wet19I think 2 in the morning and resumed at 7, and it was handled19reorganization and disclosure statement, itself, but wet20primarily for the committee by FTI's Conner and Anna Phillips20Based on those agreements and one or two othe21and two partners from my firm who are not here today, Amy Cato21Based on those agreements and one or two othe22and Bob Schmidt. Actually, Bob is here, I apologize.22workers' compensation claims in connection with the23We were able to close the substantive gap on the23Michigan. Our understanding is that the order or rele24wind-down budget. My understanding, which I would ask the24documents will be changed so as to have New GM be25government to confirm is that the total amount of the facility25Tool bear responsibility for Michigan workers' comp claims. Or21being provided to cover wind-down expenses has been upsized1not bear responsibility for Michigan workers' comp cla3in the amount of 1.175 billion dollars, Your Honor.3MR. JONES: No amplification needed, Your Ho4In addition, there is an agreement that asset4That description is correct so far.5proceeds which have previously been dedicated to the repayment6Finally, the committe reserves its rights with6of the government's facility will be available for the9MR. MAYER: Mr. Henderson is nodding yes.7additional ex	or the
19I think 2 in the morning and resumed at 7, and it was handled1920primarily for the committee by FTI's Conner and Anna Phillips1921and two partners from my firm who are not here today, Amy Cato2122and Bob Schmidt. Actually, Bob is here, I apologize.2223We were able to close the substantive gap on the2324wind-down budget. My understanding, which I would ask the2425government to confirm is that the total amount of the facility20102102	of
20primarily for the committee by FTI's Conner and Anna Phillips20Based on those agreements and one or two othe things, there was an issue that came up yesterday, abd workers' compensation claims in connection with the User and Bob Schmidt. Actually, Bob is here, I apologize.2021We were able to close the substantive gap on the government to confirm is that the total amount of the facility user to confirm is that the total amount of the facility 1002211being provided to cover wind-down expenses has been upsized such that the government is going to make available financing in the amount of 1.175 billion dollars, Your Honor.13in the amount of 1.175 billion dollars, Your Honor.34In addition, there is an agreement that asset proceeds which have previously been dedicated to the repayment of the government's facility will be available for fund of the government has agreed that asset sale proceeds that were previously dedicated to the repayment of the government's wind-down facility will now be available for	have
21and two partners from my firm who are not here today, Amy Cator2122and Bob Schmidt. Actually, Bob is here, I apologize.2223We were able to close the substantive gap on the2324wind-down budget. My understanding, which I would ask the2425government to confirm is that the total amount of the facility251being provided to cover wind-down expenses has been upsized12not bear responsibility for Michigan Workers' comp claims. C21021being provided to cover wind-down expenses has been upsized13in the amount of 1.175 billion dollars, Your Honor.34In addition, there is an agreement that asset15proceeds which have previously been dedicated to the repayment56of the government has agreed that asset sale proceeds87additional expenses if needed.78The government has agreed that asset sale proceeds89that were previously dedicated to the repayment of wind down expenses if needed.710government's wind-down facility will now be available for the99that were previously dedicated to the repayment of the99respect to the master sale and purchase agreement and10government's wind-down facility will now be available for the9that were previously dedicated to the repayment of wind down expenses if needed.11payment of wind down expenses if needed.12MR. JONES: Also correct, Your Honor. And I shou	
22and Bob Schmidt. Actually, Bob is here, I apologize.22workers' compensation claims in connection with the23We were able to close the substantive gap on the23Michigan. Our understanding is that the order or reled24wind-down budget. My understanding, which I would ask the24documents will be changed so as to have New GM be25government to confirm is that the total amount of the facility25responsibility for Michigan Workers' Comp claims. Or1being provided to cover wind-down expenses has been upsized1not bear responsibility for Michigan workers' comp cla2such that the government is going to make available financing2Does that need to be amplified.3in the amount of 1.175 billion dollars, Your Honor.3MR. JONES: No amplification needed, Your Hot4In addition, there is an agreement that asset4That description is correct so far.5proceeds which have previously been dedicated to the repaymen5THE COURT: Am I right in assuming Michigan6of the government's facility will be available to fund6most workers and potentially the most workers' comp?7additional expenses if needed.7MR. MAYER: Mr. Henderson is nodding yes.9that were previously dedicated to the repayment of the99that were previously dedicated to the repayment of the99that were previously dedicated to the repayment of the109ogvernment's wind-down facility will now be available for the1010government's wind-down facility w	r
23We were able to close the substantive gap on the23Michigan. Our understanding is that the order or refe24wind-down budget. My understanding, which I would ask the24documents will be changed so as to have New GM be25government to confirm is that the total amount of the facility 102102251being provided to cover wind-down expenses has been upsized1not bear responsibility for Michigan Workers' Comp claims. Or 1023in the amount of 1.175 billion dollars, Your Honor.3MR. JONES: No amplification needed, Your Hot 44In addition, there is an agreement that asset4That description is correct so far.5proceeds which have previously been dedicated to the repayment5THE COURT: Am I right in assuming Michigan most workers and potentially the most workers' comp?7additional expenses if needed.7MR. MAYER: Mr. Henderson is nodding yes.9that were previously dedicated to the repayment of the payment of wind down expenses if needed.911payment of wind down expenses if needed.1012MR. JONES: Also correct, Your Honor. And I should 131213make clear that the funding facility is on a non-recourse13	out
24wind-down budget. My understanding, which I would ask the goverment to confirm is that the total amount of the facility 10224documents will be changed so as to have New GM be responsibility for Michigan Workers' Comp claims. Or responsibility for Michigan Workers' Comp claims. Or 1021being provided to cover wind-down expenses has been upsized such that the government is going to make available financing in the amount of 1.175 billion dollars, Your Honor.1not bear responsibility for Michigan workers' comp claims. Or Does that need to be amplified.3in the amount of 1.175 billion dollars, Your Honor.3MR. JONES: No amplification needed, Your Hond4In addition, there is an agreement that asset4That description is correct so far.5proceeds which have previously been dedicated to the repayment5THE COURT: Am I right in assuming Michigan most workers and potentially the most workers' comp?7additional expenses if needed.7MR. MAYER: Mr. Henderson is nodding yes.8The government has agreed that asset sale proceeds8Finally, the committee reserves its rights with9that were previously dedicated to the repayment of the payment of wind down expenses if needed.10documents. As indicated by the narrative as to how lat went last night, these things are still being machine, as not uncommon. And we intend to continue to work wi and the debtors. They fully involved us last night, we	State of
25government to confirm is that the total amount of the facility 10225responsibility for Michigan Workers' Comp claims. Or1being provided to cover wind-down expenses has been upsized such that the government is going to make available financing in the amount of 1.175 billion dollars, Your Honor.1not bear responsibility for Michigan workers' comp claims.3in the amount of 1.175 billion dollars, Your Honor.3MR. JONES: No amplification needed, Your Honed4In addition, there is an agreement that asset4That description is correct so far.5proceeds which have previously been dedicated to the repayment5THE COURT: Am I right in assuming Michigan most workers and potentially the most workers' comp?7additional expenses if needed.7MR. MAYER: Mr. Henderson is nodding yes.8The government has agreed that asset sale proceeds8Finally, the committee reserves its rights with9that were previously dedicated to the repayment of the9respect to the master sale and purchase agreement and documents. As indicated by the narrative as to how lat10government's wind-down facility will now be available for the payment of wind down expenses if needed.1111payment of wind down expenses if needed.1112MR. JONES: Also correct, Your Honor. And I should1213make clear that the funding facility is on a non-recourse1313make clear that the funding facility is on a non-recourse13	vant
1021being provided to cover wind-down expenses has been upsized2such that the government is going to make available financing3in the amount of 1.175 billion dollars, Your Honor.4In addition, there is an agreement that asset5proceeds which have previously been dedicated to the repayment67additional expenses if needed.897addition down expenses if needed.91091010101010101010101010101010101010101010101010101010101010101010101010101010101010101010101010101010101010101010101010101010101112 </td <td>ar</td>	ar
1being provided to cover wind-down expenses has been upsized such that the government is going to make available financing in the amount of 1.175 billion dollars, Your Honor.1not bear responsibility for Michigan workers' comp cla Does that need to be amplified.3in the amount of 1.175 billion dollars, Your Honor.3MR. JONES: No amplification needed, Your Honed That description is correct so far.5proceeds which have previously been dedicated to the repayment of the government's facility will be available to fund additional expenses if needed.68The government has agreed that asset sale proceeds that were previously dedicated to the repayment of the government's wind-down facility will now be available for the payment of wind down expenses if needed.710government's wind-down facility will now be available for the payment of wind down expenses if needed.1011payment of wind down expenses if needed.1112MR. JONES: Also correct, Your Honor. And I should 131213make clear that the funding facility is on a non-recourse13	Old GM w
2such that the government is going to make available financing2Does that need to be amplified.3in the amount of 1.175 billion dollars, Your Honor.3MR. JONES: No amplification needed, Your Ho4In addition, there is an agreement that asset4That description is correct so far.5proceeds which have previously been dedicated to the repayment5THE COURT: Am I right in assuming Michigan6of the government's facility will be available to fund6most workers and potentially the most workers' comp?7additional expenses if needed.7MR. MAYER: Mr. Henderson is nodding yes.8The government has agreed that asset sale proceeds8Finally, the committee reserves its rights with9that were previously dedicated to the repayment of the9respect to the master sale and purchase agreement and10government's wind-down facility will now be available for the10documents. As indicated by the narrative as to how lat11payment of wind down expenses if needed.11went last night, these things are still being machine, as12MR. JONES: Also correct, Your Honor. And I should12not uncommon. And we intend to continue to work wi13make clear that the funding facility is on a non-recourse13and the debtors. They fully involved us last night, we	104
2such that the government is going to make available financing2Does that need to be amplified.3in the amount of 1.175 billion dollars, Your Honor.3MR. JONES: No amplification needed, Your Ho4In addition, there is an agreement that asset4That description is correct so far.5proceeds which have previously been dedicated to the repayment5THE COURT: Am I right in assuming Michigan6of the government's facility will be available to fund6most workers and potentially the most workers' comp?7additional expenses if needed.7MR. MAYER: Mr. Henderson is nodding yes.8The government has agreed that asset sale proceeds8Finally, the committee reserves its rights with9that were previously dedicated to the repayment of the9respect to the master sale and purchase agreement and10government's wind-down facility will now be available for the10documents. As indicated by the narrative as to how lat11payment of wind down expenses if needed.11went last night, these things are still being machine, as12MR. JONES: Also correct, Your Honor. And I should12not uncommon. And we intend to continue to work wi13make clear that the funding facility is on a non-recourse13and the debtors. They fully involved us last night, we	
3in the amount of 1.175 billion dollars, Your Honor.3MR. JONES: No amplification needed, Your Ho4In addition, there is an agreement that asset4That description is correct so far.5proceeds which have previously been dedicated to the repayment5THE COURT: Am I right in assuming Michigan6of the government's facility will be available to fund6most workers and potentially the most workers' comp?7additional expenses if needed.7MR. MAYER: Mr. Henderson is nodding yes.8The government has agreed that asset sale proceeds8Finally, the committee reserves its rights with9that were previously dedicated to the repayment of the9respect to the master sale and purchase agreement and10government's wind-down facility will now be available for the10documents. As indicated by the narrative as to how lat11payment of wind down expenses if needed.11went last night, these things are still being machine, as12MR. JONES: Also correct, Your Honor. And I should12not uncommon. And we intend to continue to work wi13make clear that the funding facility is on a non-recourse13and the debtors. They fully involved us last night, we	ims.
4In addition, there is an agreement that asset4That description is correct so far.5proceeds which have previously been dedicated to the repaymen5THE COURT: Am I right in assuming Michigan6of the government's facility will be available to fund6most workers and potentially the most workers' comp?7additional expenses if needed.7MR. MAYER: Mr. Henderson is nodding yes.8The government has agreed that asset sale proceeds8Finally, the committee reserves its rights with9that were previously dedicated to the repayment of the9respect to the master sale and purchase agreement and10government's wind-down facility will now be available for the10documents. As indicated by the narrative as to how lat11payment of wind down expenses if needed.11went last night, these things are still being machine, as12MR. JONES: Also correct, Your Honor. And I should12not uncommon. And we intend to continue to work wi13make clear that the funding facility is on a non-recourse13and the debtors. They fully involved us last night, we	
5proceeds which have previously been dedicated to the repayment5THE COURT: Am I right in assuming Michigan6of the government's facility will be available to fund6most workers and potentially the most workers' comp?7additional expenses if needed.7MR. MAYER: Mr. Henderson is nodding yes.8The government has agreed that asset sale proceeds8Finally, the committee reserves its rights with9that were previously dedicated to the repayment of the9respect to the master sale and purchase agreement and10government's wind-down facility will now be available for the10documents. As indicated by the narrative as to how lat11payment of wind down expenses if needed.11went last night, these things are still being machine, as12MR. JONES: Also correct, Your Honor. And I should12not uncommon. And we intend to continue to work wi13make clear that the funding facility is on a non-recourse13and the debtors. They fully involved us last night, we	JHOF.
6of the government's facility will be available to fund additional expenses if needed.6most workers and potentially the most workers' comp?7additional expenses if needed.7MR. MAYER: Mr. Henderson is nodding yes.8The government has agreed that asset sale proceeds8Finally, the committee reserves its rights with9that were previously dedicated to the repayment of the9respect to the master sale and purchase agreement and10government's wind-down facility will now be available for the10documents. As indicated by the narrative as to how lat11payment of wind down expenses if needed.11went last night, these things are still being machine, as12MR. JONES: Also correct, Your Honor. And I should12not uncommon. And we intend to continue to work wi13make clear that the funding facility is on a non-recourse13and the debtors. They fully involved us last night, we	n has tha
7additional expenses if needed.7MR. MAYER: Mr. Henderson is nodding yes.8The government has agreed that asset sale proceeds8Finally, the committee reserves its rights with9that were previously dedicated to the repayment of the9respect to the master sale and purchase agreement and10government's wind-down facility will now be available for the10documents. As indicated by the narrative as to how lat11payment of wind down expenses if needed.11went last night, these things are still being machine, as12MR. JONES: Also correct, Your Honor. And I should12not uncommon. And we intend to continue to work wi13make clear that the funding facility is on a non-recourse13and the debtors. They fully involved us last night, we	
8       The government has agreed that asset sale proceeds       8       Finally, the committee reserves its rights with         9       that were previously dedicated to the repayment of the       9       respect to the master sale and purchase agreement and         10       government's wind-down facility will now be available for the       10       documents. As indicated by the narrative as to how lat         11       payment of wind down expenses if needed.       11       went last night, these things are still being machine, as         12       MR. JONES: Also correct, Your Honor. And I should       12       not uncommon. And we intend to continue to work wi         13       make clear that the funding facility is on a non-recourse       13       and the debtors. They fully involved us last night, we	
9that were previously dedicated to the repayment of the government's wind-down facility will now be available for the payment of wind down expenses if needed.9respect to the master sale and purchase agreement and documents. As indicated by the narrative as to how lat went last night, these things are still being machine, as not uncommon. And we intend to continue to work wi and the debtors. They fully involved us last night, we	
10government's wind-down facility will now be available for the10documents. As indicated by the narrative as to how lat11payment of wind down expenses if needed.11went last night, these things are still being machine, as12MR. JONES: Also correct, Your Honor. And I should12not uncommon. And we intend to continue to work wi13make clear that the funding facility is on a non-recourse13and the debtors. They fully involved us last night, we	ralatad
11payment of wind down expenses if needed.11went last night, these things are still being machine, as12MR. JONES: Also correct, Your Honor. And I should12not uncommon. And we intend to continue to work wi13make clear that the funding facility is on a non-recourse13and the debtors. They fully involved us last night, we	
12MR. JONES: Also correct, Your Honor. And I should12not uncommon. And we intend to continue to work wi13make clear that the funding facility is on a non-recourse13and the debtors. They fully involved us last night, we	
13 make clear that the funding facility is on a non-recourse 13 and the debtors. They fully involved us last night, we	
	ui measui
14 basis, as has been the case throughout these discussions. 14 appreciate that. We look forward to working with them	n to reach
14 basis, as has been the case throughout these discussions. 15 MR. MAYER: The details are still being fine tuned, 15 a consensual resolution on these documents and we exp	
16 but those are the highlights. We also had useful discussions 16 we will reach some if for some unforeseen reason there	-
10 but those are the highlights. We also had useful discussions 10 we will reach some in for some unforeseen reason there 17 with AlixPartners on its administration of the wind-down, 17 issue of such moment that compels us to come back to	
<ul> <li>17 with AltzPartners on its administration of the wind-down,</li> <li>18 again, details will be forthcoming. But we believe we have an</li> <li>18 we will let Your Honor know. But this is in the nature</li> </ul>	
19 agreement in principal on certain elements on that that are 19 negotiating documents that we expect to reach an agree	
<ul> <li>important to us and will be disclosed at a later time when Alix</li> <li>and one that does not affect what I have said previously</li> </ul>	
<ul> <li>20 Important to us and will be disclosed at a later time when Aix</li> <li>21 is prepared to come forward with its application.</li> <li>21 And if the Court has any questions, I'm happy to</li> </ul>	
	at the
25 between consummation and final distribution. And to be precise 103 25 it is no longer taking the position one way or the other	on the 105
103	103

212-267-6868

1	tort and asbestos issues that at one time the creditors'	1	major financial institutions. GM bondholding are widely
2	committee as a whole were taking. As of now you're just	2	distributed among thousands of mainstream Americans as well a
3	leaving that to the individual advocates on both sides.	3	those financial institutions. So it was with in
4	MR. MAYER: That's correct, Your Honor.	4	consideration of our entire constituency. Some subset of our
5	THE COURT: I sense that you folks are working very	5	constituency is represented by separate counsel. Paul Weiss
6	hard to further narrow issues. But this is an ongoing process.	6	represents as stated in their 2019, approximate twenty percent
7	Is it possible for you, in consultation with other parties, to	7	of the bondholding class. Mr. Richman according to his 2019
8	figure out a mechanism to keep me informed over the next	8	represents three bondholders I think three bondholders
9	several days, even though it's a holiday weekend, so that I can	9	aggregating, about two million of the twenty-eight billion
10	keep my arms around where you are in that. Obviously, I don't	10	bondholders. And Mr. Parker has indicated that he is in his
11	want to be ex parte. You have to figure out a mechanic to	11	individual capacity a bondholder.
12	notify me. Not on what's going on but when issues are buttoned	12	We stand up here and we filed our papers on behalf of
13	up, just like you reported to me now.	13	those without a voice in the case. Wilmington Trust as an
14	MR. MAYER: Yes, Your Honor. I think together with	14	indentured trustee believes it's his job to preserve and
15	the debtors and Treasury we can definitely do that.	15	protect the claims of the bondholder community that it
16	THE COURT: Okay. Anything else at this point, Mr.	16	represents. And it is with that fiduciary duty in mind that we
17	Mayer?	17	carefully considered the transaction that was presented.
18	MR. MAYER: Well, we are withdrawing our objection so	18	Wilmington Trust was not part of the team negotiating the
19	we are no longer opposed to this transaction going forward.	19	transaction. We came to this party and we got a chair at the
20	THE COURT: Okay.	20	table, frankly, after the deal had been cut. And we were
21	MR. MAYER: Thank you.	21	presented with a binary choice, which is to support the sale or
22	THE COURT: Thank you very much.	22	to seek to object to the sale. And effectively as has been
23	MR. MAYER: I don't want to leave any confusions.	23	dictated earlier, to potentially role the dice and hope upon an
24	The committee's papers were originally not in opposition to the	24	objection to the sale that a debtor recovery for bondholders
25	transaction going forward. The committee remains in support of	25	was forthcoming. We took that obligation and that concern very
	106		108
1	the transaction going forward. The particular objections that	1	seriously. We had extensive discussions with the debtors'
2	we had to features of the order, those are withdrawn, and so	2	advisors, with the committee's advisors, with the committee
3	you can view the papers that we have filed the withdrawal of	3	members themselves, and with the ad hoc bondholder advisors.
4	those objections as being in support of the transaction.	4	And when I say the ad hoc bondholders I'm talking about Paul
5	THE COURT: Okay.	5	Weiss and Houlihan. We reviewed the papers of substantially
6	MR. MAYER: Have I neglected to about members in	6	all the parties in this case, with particular attention to the
7	the audience, people we negotiated with, if I misstated or	7	papers filed on behalf of bondholders which are within our
8	omitted anything. Thank you, Your Honor.	8	constituency. And based on all of that information available
9	THE COURT: Thank you. Forgive me, which indentured	9	to us, we were of the view, and as our joinder indicates, that
10	trustee do you represent, Mr. Feldman.	10	based on all the facts available we felt that under the current
11	MR. FELDMAN: I represent Wilmington Trust Company,	11	facts and circumstances that the sale appeared to be in the
12	the indentured trustee under the 1995 indenture and 1990	12	best interest of the bondholders.
13	indentures, with bondholdings in the aggregate of more than	13	We did, however, have some particular concerns with
14	twenty-three billion. So we are the principal indentured	14	the transaction, not seeking to, frankly, to derail the sale
15	trustee in the case, with it's clear to say the largest	15	from going forward. But to ensure as Mr. Miller indicated in
16	unsecured creditor constituency that will remain with Old GM in	16	his comments, that the sale creates a pie and it creates a
17	this case.	17	universe of people who are going to fight over that pie. We
18	Wilmington Trust Company also serves as the chairman	18	understood that was the game when this case filed. What's
19	of the creditors committee. I will note there's been much said	19	going to happen post-closing was there was going to be a
20	about the equities of this case and the various parties	20	numerator and that is stock and warrants that the bondholders
21	involved in the case, and about the importance of employees,	21	and the other unsecured creditors are going to have discussion
22	the importance of customers, the importance of dealers, the	22	and potential litigations over, how big the denominator was.
23	importance of tort victims.	23	What we were fundamentally concerned with at the outset, was
		24	that the size of the pie was set. We have heard today that the
24	GM is an interesting case. Typically, when I stand		that the blie of the pre-state bear set in the have heard to day that the
24 25	GM is an interesting case. Typically, when I stand up here on behalf of bondholders, I'm standing up on behalf of	25	wind-down budget issue, we had heard on the eve of this
			* · · ·

212-267-6868

1	hearing, that the wind-down budget was insufficient. And we	1	subject to the conditions that have been outlined and with eh
2	were concerned if the wind-down budget was insufficient that it		full reservation of our rights. Thank you.
3	would eat into the stock and the warrants that had been set	3	THE COURT: Okay. We up to
4	aside as testified by various witnesses, was designed to be set	4	MR. FRANKEL: Good morning, Your Honor. It's Roger
5	aside for unsecured creditors. We were concerned that that	5	Frankel from Orrick Hamilton. I represent the GM National
6	wind-down budget would gain access to that stock and warrants		Dealer Counsel and the committee that is formed. We also
7	And we've been told based on the representations today in Cour		represent Paddock Chevrolet that's a member of the official
8	that that wind-down budget has been increased by 225 million	8	committee.
9	dollars. Plus the proceeds of any asset sales. And we are	9	I wanted just to state for the record we had filed a
10	comforted by that fact.	10	limited objection, reservation of rights. We had been working
11	We reserve our rights to review the definitive	11	with the debtors and have been satisfied since we filed that
12	documentation in connection with that issue, and we will work	12	and even before we filed that that certain concerns that we had
13	alongside the committee, as we have throughout this process to	13	have now been resolved.
14	streamline the process.	14	This committee is comprised of dealers that were
15	But with that in mind, Your Honor, and in closing	15	elected by the entire dealer body as well as three members of
16	and I think that Mr. Richman on behalf of his three individual	16	the National Automobile Dealers Association. The National
17	creditors and Mr. Parker on behalf of himself, they have the	17	Automobile Dealers Association is also an ex officio member of
18	ability to make informed decisions by themselves as to whether	18	the committee. And we think it's important for the dealer
19	or not they would like to roll the dice and potentially seek	19	voice to be heard here and we are supportive that his
20	alternative outcome. Unfortunately, we as fortunately	20	transaction move forward and move forward as quickly as
21	unfortunately, as a fiduciary for all these bondholders, our	21	possible.
22	job is to preserve and protect the value that is available to	22	The one thing that I would add, Your Honor, I just
23	bondholders under the deal. What we don't see and	23	heard yesterday for the first time, the recommendation of the
24	notwithstanding Mr. Richman's very eloquent presentation, wha	t 24	privacy ombudsman, briefly looked at the report this morning,
25	I haven't seen yet is a clear articulation of what happens if	25	and I would hope that GM would incorporate and Treasury would
	110		112
1	this sale doesn't go forward, and, in fact, we got to planned	1	incorporate the recommendations of the privacy ombudsman in th
2	process. I think on behalf of Wilmington Trust I would say	2	sale order. Thank you, Your Honor.
3	it's not at all clear to me that on behalf of all the	3	THE COURT: Okay, thank you.
4	bondholders that we represent that a plan process and the delay	4	MS. TAYLOR: Good morning, Judge. I'm Susan Taylor,
5	attended to that plan process, would be designed to enhance the	5	I'm an assistant attorney general for the State of New York and
6	recovery. Or would, in fact, enhance the recovery to	6	I represent the interest of the Department of Environmental
7	bondholders under this case. Frankly, it made the delay. And	7	Conservation here today.
8	the other issues that may be attended to a plan process could	8	We filed an objection separate and apart from that as
9	very well diminish the recovery to bondholders. It's a risk on	9	to which Ms. Cordry has been speaking. And I am here to tell
10	behalf of our twenty-three plus billion dollars worth of	10	the Court that we are not in the same category as many of the
11	constituents we're not willing to take. And with that, Your	11	objectors. Mr. Miller very nicely articulated the difference
12	Honor, we withdraw our joinder subject to the reservations I've	12	between the State of New York and many of the objectors here.
13	indicated.	13	We are not here about money. We are here because we are
14	THE COURT: Thank you. Ms. Christian, you're the	14	concerned that there appears to be an attempt in the proposed
15	other indentured trustee?	15	order to impair the police and regulatory powers of the State
16	MS. CHRISTIAN: Yes, Your Honor.	16	of New York. And we are here to ask you not to let that
17	THE COURT: Come on up, please. Is Law Debenture	17	happen.
18	Trust your client?	18	The department has an interest in being able to
	Trust your enent:		enforce the state's environmental laws in order to protect the
19	MS. CHRISTIAN: That's correct, Your Honor. Jennifer	19	enforce the state's environmental laws in order to protect the
19 20	-	19 20	public health and safety. That interest is not an interest in
	MS. CHRISTIAN: That's correct, Your Honor. Jennifer	20	-
20	MS. CHRISTIAN: That's correct, Your Honor. Jennifer Christian of Kelley Drye & Warren for Law Debenture Trust	20	public health and safety. That interest is not an interest in
20 21	MS. CHRISTIAN: That's correct, Your Honor. Jennifer Christian of Kelley Drye & Warren for Law Debenture Trust Company of New York as proposed successor indentured truste	20 21	public health and safety. That interest is not an interest in property within the meaning of Section 363. And it cannot be
20 21 22	MS. CHRISTIAN: That's correct, Your Honor. Jennifer Christian of Kelley Drye & Warren for Law Debenture Trust Company of New York as proposed successor indentured truster for the holders of eight series of GM's bonds.	20 21 22	public health and safety. That interest is not an interest in property within the meaning of Section 363. And it cannot be extinguished or impaired through the means of a 363 sale. The
20 21 22 23	MS. CHRISTIAN: That's correct, Your Honor. Jennifer Christian of Kelley Drye & Warren for Law Debenture Trust Company of New York as proposed successor indentured truster for the holders of eight series of GM's bonds. Your Honor, Law Debenture fully confers with the	20 21 22 23	public health and safety. That interest is not an interest in property within the meaning of Section 363. And it cannot be extinguished or impaired through the means of a 363 sale. The whole statutory scheme and many cases make clear that
20 21 22 23 24	MS. CHRISTIAN: That's correct, Your Honor. Jennifer Christian of Kelley Drye & Warren for Law Debenture Trust Company of New York as proposed successor indentured trusted for the holders of eight series of GM's bonds. Your Honor, Law Debenture fully confers with the committee and with Wilmington Trust, and is prepared to	20 21 22 23 24	public health and safety. That interest is not an interest in property within the meaning of Section 363. And it cannot be extinguished or impaired through the means of a 363 sale. The whole statutory scheme and many cases make clear that regulatory and police powers do not give way to the important

212-267-6868

1       are provisions in the order that are still overly broad, and       1       THE COURT: Thank you.         2       one of those is still, in for instance, paragraph T, although I       2       MS. TAYLOR: Thank you.         3       confess that I have not this morning seen what may be an order       3       THE COURT: Okay. Mr. Roy, you're coming u         4       that has changed. But to the extent that there is still       4       MR. ROY: 'I'm coming up in thirty seconds, Yo         5       language in there that appears to extinguish or impair the       6       THE COURT: Okay.         6       reached an agreement with the debtors, subject to entry       6       THE COURT: Okay.         7       we ask the Court not to let that happen.       10       Texas.         10       GM, which is a national priorities list superfund cite in the       10       Texas.         11       northern part of the state. It is adjacent to tribal land. It       11       11       We'led a limited standalone objection. We've         12       here appears to be another site that has contamination that       12       reached an agreement with the debtors, subject to entry         14       Conservation. It came to our attention only on Friday that       14       THE COURT: Okay.         14       The court is a bit of the state's not being transferred. And we are very concerned       16 <td< th=""><th>oy from ate of of that</th></td<>	oy from ate of of that
confess that I have not this morning seem what may be an order       image in there that appears to extinguish or impair the       image in there that appears to extinguish or impair the       image in there that appears to extinguish or impair the       image in there that appears to extinguish or impair the       image in there that appears to extinguish or impair the       image in there that appears to extinguish or impair the       image in there that appears to extinguish or impair the       image in there that appears to extinguish or impair the       image in there that appears to extinguish or impair the       image in there that appears to extinguish or impair the       image in there that appears to extinguish or impair the       image in there that appears to extinguish or impair the       image in there that appears to extinguish or impair the       image in there that appears to extinguish or impair the       image in there that appears to extinguish or impair the       image in there that appears to extinguish or impair the       image in there that appears to extinguish or impair the       image in the state is intrest in the impair the       image in the state is interest in the appears to extinguish or impair the       image in the state is interest in the impair the is adjacent to tribal land. It       image in the extent that the debir or extinguish or impair that       image in the debirs, subject to entry         is, in fact, not being transferred. And we are very concerned       image in the extent is the state's interests       image in the extent that the state's interests       image in the state is interests       image in the state is interests       image in the emage ind image in the sta	oy from ate of of that
4       that has changed. But to the extent that there is still       4       MR. ROY: I'm coming up in thirty seconds, Yo         5       language in there that appears to extinguish or impair the       fight of the state, to enforce its regulatory and police order,       6       THE COURT: Okay.         7       we ask the Court not to let that happen.       6       THE COURT: Okay.       7         8       In the State of New York two sites are not being       7       7       Wass Atomey General's Office on behalf of the Si         9       the transferred, are not going with New GM. One of them is Messin       10       Texas.       11         10       GM, which is a national priorities list superfund cite in the       10       Texas.       11         11       northern part of the state. It is adjacent to tribal land. It       11       We filed a limited standalone objection. We've         12       has serious contamination and has in place consent and       12       reached an agreement with the debtors, subject to entry         13       administrative orders of the Department of Environmental       14       14       THE COURT: Okay.         14       there appears to be another site that as contamination that       16       THE COURT: I was an inuite. Is there - I annou         16       ingurentic adjustices to continue to protect the       heealth and safety of the people of New York thro	oy from ate of of that
5       language in there that appears to extinguish or impair the       5       Honor.         6       right of the state, to enforce its regulatory and police order,       6       THE COURT: Okay.         7       we ask the Court not to let that happen.       6       MR. ROY: Your Honor, for the record, Casey R         8       In the State of New York two sites are not being       9       the Texas Attorney General's Office on behalf of the Si         9       to RM, which is a national priorities list superfund cite in the       10       Texas.         11       northern part of the state. It is adjacent to tribal land. It       11       We filed a limited standalone objection. We've         12       hass serious contamination and has in place consent and       12       reached an agreement with the debtors, subject to entry         13       administrative orders of the Department of Environmental       13       agreement on the record, we will be prepared to withdr         14       Conservation. It came to our attention only on Friday that       15       MR. ROY: Thank you, Your Honor.         16       may also be excluded. It's a little unclear from the schedule,       16       THE COURT: Usat a minute. Is there I annou         16       inf fact, not being transferred. And we are very concerned       17       MR. MOTIF: My name is Normaji, last name is         23       If you would like to argu	oy from ate of of that
ight of the state, to enforce its regulatory and police order,       6       THE COURT: Okay.         7       we ask the Court not to let that happen.       6       THE COURT: Okay.         8       In the State of New York two sites are not being       7       7         9       transferred, are not going with New GM. One of them is Messin       9       7         10       GM, which is a national priorities list superfund cite in the       10         11       northern part of the state. It is adjacent to tribal land. It       11         12       has serious contamination and has in place consent and       12       reached an agreement with the debtors, subject to entry         13       administrative orders of the Department of Environmental       13       14       THE COURT: Okay.         14       Conservation. It came to our attention only on Friday that       14       THE COURT: Thank you, Your Honor.         15       ing, indact, not being transferred. And we are very concerned       18       iyou         16       may also be excluded. It's a little unclear from the schedule,       16       THE COURT: Thank you.         16       ing, indact, not being transferred. And we are very concerned       18       you         12       ared, not being transferred. And we are very concerned       18       you         12 <td>ate of of that</td>	ate of of that
7       we ask the Court not to let that happen.       7       (Pause)         8       In the State of New York two sites are not being       8       MR. ROY: Your Honor, for the record, Casey R         9       transferred, are not going with New GM. One of them is Messim       9       the Texas Attorney General's Office on behalf of the SI         10       GM, which is a national priorities list superfund cite in the       10       Texas.         11       northern part of the state. It is adjacent to tribal land. It       11       We filed a limited standalone objection. We've         12       has serious contamination and has in place consent and       12       reached an agreement with the debtors, subject to entry agreement on the record, we will be prepared to withdr         14       Conservation. It came to our attention only on Friday that       14       THE COURT: Okay.         15       there appears to be another site that has contamination that       15       MR. MOTIF: I'm not an attorney. I'm coming to         16       may also be excluded. It's a little unclear from the schedule,       16       THE COURT: Thank you.       17         17       we've been unable to get clarification as to whether that site       18       19       THE COURT: Thank you.       10         20       health and safety of the people of New York through consent       19       THE COURT: Just a minute. Is there - I annou <td>ate of of that</td>	ate of of that
8       In the State of New York two sites are not being transferred, are not going with New GM. One of them is Messim GM, which is a national priorities list superfund cite in the northern part of the state. It is adjacent to tribal land. It       MR. ROY: Your Honor, for the record, Casey R the Texas Attorney General's Office on behalf of the SI Texas.         11       northern part of the state. It is adjacent to tribal land. It       10         12       has serious contamination and has in place consent and administrative orders of the Department of Environmental       11         13       administrative orders of the Department of Environmental       12         14       Conservation. It came to our attention only on Friday that       14         15       there appears to be another site that has contamination that       15         16       may also be excluded. It's a little unclear from the schedule, may also be excluded. It's a little unclear from the schedule, about the department's abilities to continue to protect the       16         10       health and safety of the people of New York through consent       17         20       health and safety of the people of New York through consent       20         21       inf you would like to argue that the state's interests       21         22       ingreent, white the atthe state's interests       22         23       If you would like to argue that the state's interests       23         24       re not i	ate of of that
9       transferred, are not going with New GM. One of them is Messina       9       the Texas Attorney General's Office on behalf of the Si         10       GM, which is a national priorities list superfund cite in the       10       Texas.         11       northern part of the state. It is adjacent to tribal land. It       10       Texas.         11       has serious contamination and has in place consent and       10       Texas.         12       has serious contamination and has in place consent and       11       12         13       administrative orders of the Department of Environmental       13       agreement with the debtors, subject to entry         14       Conservation. It came to our attention only on Friday that       14       THE COURT: Okay.         15       there appears to be another site that has contamination that       15       MR. ROY: Thank you, Your Honor.         16       may also be excluded. It's a little unclear from the schedule,       16       THE COURT: Thank you.       10         17       we've been unable to get clarification as to whether that site       16       THE COURT: Just a minute. Is there - 1 annou         10       health and safety of the people of New York through consent       17       MR. MOTIF: My name is Normaji, last name is         23       If you would like to argue that the state's interests       23       MR. MOTIF: My	ate of of that
10GM, which is a national priorities list superfund cite in the northern part of the state. It is adjacent to tribal land. It has serious contamination and has in place consent and administrative orders of the Department of Environmental Conservation. It came to our attention only on Friday that there appears to be another site that has contamination that may also be excluded. It's a little unclear from the schedule, we've been unable to get clarification as to whether that site is, in fact, not being transferred. And we are very concerned about the department's abilities to continue to protect the about the department's abilities to continue to protect the rinjunctive relief, with respect to those and other sites. If you would like to argue that the state's interests are not interest in them I would be happy to do that. I think that is clear. But to the extent that the Court?10Texas.1THE COURT: You have a brief on file, don't you? L1THE COURT: Sir, you're a bondholder?1THE COURT: You have a brief on file and I would arefer to the cases cited in the brief on that. If you disagree, however, we would ask you to condition a sale pursuant to 363(e) in order to protect the state's ability to enforce its police and regulatory powers. And we have language1And I C1THE COURT: You have a brief on file, and I would arefer to the cases cited in the brief on that. If you enforce its police and regulatory powers. And we have language1And I C2MS. TAYLOR:We do have a brief on file and I would arefer to the cases cited in the brief on that. If you enforce its police and regulatory powers. And we have language1And I C3THE COURT: Sir, you're a bondholder? THE C	of that
11       northern part of the state. It is adjacent to tribal land. It       11       We filed a limited standalone objection. We've         12       has serious contamination and has in place consent and       12       reached an agreement with the debtors, subject to entry         13       administrative orders of the Department of Environmental       13       agreement on the record, we will be prepared to withdr         14       Conservation. It came to our attention only on Friday that       14       THE COURT: Okay.         15       there appears to be another site that has contamination that       15       MR. ROY: Thank you, Your Honor.         16       may also be excluded. It's a little unclear from the schedule,       16       THE COURT: Thank you.         17       we've been unable to get clarification as to whether that site       17       MR. MOTIF: I'm not an attorney. I'm coming to         18       is, in fact, not being transferred. And we are very concerned       18       you         19       beatth and safety of the people of New York through consent       20       earlier in the hearing that I wasn't going to hear oral         21       orders, administrative orders, and the ability to impose       23       If you would like to argue that the state's interests       23       your -         24       are not interest in them I would be happy to do that. I think       24       MR. MOTIF: My name is	
12       has serious contamination and has in place consent and       12       reached an agreement with the debtors, subject to entry         13       administrative orders of the Department of Environmental       13       agreement on the record, we will be prepared to withdr         14       Conservation. It came to our attention only on Friday that       14       THE COURT: Okay.         15       there appears to be another site that has contamination that       15       MR. ROY: Thank you, Your Honor.         16       may also be excluded. It's a little unclear from the schedule,       16       THE COURT: Thank you.         17       we've been unable to get clarification as to whether that site       17       MR. MOTIF: I'm not an attorney. I'm coming to         18       is, in fact, not being transferred. And we are very concerned       18       vou       18         20       health and safety of the people of New York through consent       20       earlier in the hearing that I wasn't going to hear oral       argument on all the objections. Come up, tell me your         22       injunctive relief, with respect to those and other sites.       23       If you would like to argue that the state's interests       23       orders, administrative orders, and the ability to impose       23       is of can make a judgment as to whether you should be your papers.         24       are not interest in them I would be happy to do that. I think	
13administrative orders of the Department of Environmental13agreement on the record, we will be prepared to withdr14Conservation. It came to our attention only on Friday that14THE COURT: Okay.15there appears to be another site that has contamination that14THE COURT: Okay.16may also be excluded. It's a little unclear from the schedule,16THE COURT: Thank you, Your Honor.17we've been unable to get clarification as to whether that site17MR. ROY: Thank you.18is, in fact, not being transferred. And we are very concerned18you19about the department's abilities to continue to protect the19THE COURT: Just a minute. Is there I annou20health and safety of the people of New York through consent20earlier in the hearing that I wasn't going to hear oral21orders, administrative orders, and the ability to impose22so I can make a judgment as to whether you should be23If you would like to argue that the state's interests23So I can make a judgment as to whether you should be24are not interest in them I would be happy to do that. I think24MR. MOTIF: My name is Normaji, last name is25MS. TAYLOR: We do have a brief on file, don't you?1And I2MS. TAYLOR: We do have a brief on file, don't you?1And I3refer to the cases cited in the brief on that. If you3MR. MOTIF: Yes, sir. Unsecured.4disagree, however, we would ask you to condition a sale4THE COURT: Unsecured bondho	
14       Conservation. It came to our attention only on Friday that       14       THE COURT: Okay.         15       there appears to be another site that has contamination that       15       MR. ROY: Thank you, Your Honor.         16       may also be excluded. It's a little unclear from the schedule,       16       THE COURT: Thank you.         17       we've been unable to get clarification as to whether that site       17       MR. MOTIF: I'm not an attorney. I'm coming to         18       is, in fact, not being transferred. And we are very concerned       18       you         19       about the department's abilities to continue to protect the       19       THE COURT: Just a minute. Is there I annou         20       health and safety of the people of New York through consent       20       earlier in the hearing that I wasn't going to hear oral         21       orders, administrative orders, and the ability to impose       21       argument on all the objections. Come up, tell me your         22       If you would like to argue that the state's interests       23       If you would be happy to do that. I think       24         25       that is clear. But to the extent that the Court?       14       And I         21       THE COURT: You have a brief on file, don't you?       1       And I         2       MS. TAYLOR: We do have a brief on file and I would       3 <td>ıw.</td>	ıw.
15there appears to be another site that has contamination that15MR. ROY: Thank you, Your Honor.16may also be excluded. It's a little unclear from the schedule,16THE COURT: Thank you.17we've been unable to get clarification as to whether that site16THE COURT: Thank you.18is, in fact, not being transferred. And we are very concerned18you19about the department's abilities to continue to protect the19THE COURT: Just a minute. Is there I annou20health and safety of the people of New York through consent20earlier in the hearing that I wasn't going to hear oral21orders, administrative orders, and the ability to impose21argument on all the objections. Come up, tell me your22injunctive relief, with respect to those and other sites.22so I can make a judgment as to whether you should be23If you would like to argue that the state's interests23Orders, administrative orders, and the ability to impose24are not interest in them I would be happy to do that. I think24MR. MOTIF: My name is Normaji, last name is25that is clear. But to the extent that the Court?1And I2MS. TAYLOR: We do have a brief on file, don't you?1And I3refer to the cases cited in the brief on that. If you3MR. MOTIF: Yes, sir. Unsecured.4disagree, however, we would ask you to condition a sale4THE COURT: Sir, you're a bondholder. Do you h5pursuant to 363(e) in order to protect the state's ability to	
16may also be excluded. It's a little unclear from the schedule, 1716THE COURT: Thank you.17we've been unable to get clarification as to whether that site is, in fact, not being transferred. And we are very concerned about the department's abilities to continue to protect the 1916THE COURT: Thank you.19about the department's abilities to continue to protect the 1919THE COURT: Just a minute. Is there I annou 2020health and safety of the people of New York through consent 2120earlier in the hearing that I wasn't going to hear oral argument on all the objections. Come up, tell me your so I can make a judgment as to whether you should be 2324are not interest in them I would be happy to do that. I think 252425that is clear. But to the extent that the Court?2524THE COURT: You have a brief on file, don't you? 2125MS. TAYLOR: We do have a brief on file and I would 313refer to the cases cited in the brief on that. If you 43MR. MOTIF: Yes, sir. Unsecured.4disagree, however, we would ask you to condition a sale 54THE COURT: Unsecured bondholder. Do you h points that weren't made by either Mr. Richman, Mr. Pa 65pursuant to 363(e) in order to protect the state's ability to 665	
17we've been unable to get clarification as to whether that site17MR. MOTIF: I'm not an attorney. I'm coming to18is, in fact, not being transferred. And we are very concerned18you19about the department's abilities to continue to protect the19THE COURT: Just a minute. Is there I annou20health and safety of the people of New York through consent19THE COURT: Just a minute. Is there I annou21orders, administrative orders, and the ability to impose20earlier in the hearing that I wasn't going to hear oral22injunctive relief, with respect to those and other sites.22so I can make a judgment as to whether you should be23If you would like to argue that the state's interests23you rapers.24are not interest in them I would be happy to do that. I think24MR. MOTIF: My name is Normaji, last name is25that is clear. But to the extent that the Court?1114And I1THE COURT: You have a brief on file, don't you?1And I2MS. TAYLOR: We do have a brief on file and I would3refer to the cases cited in the brief on that. If you13refer to addignee, however, we would ask you to condition a sale4THE COURT: Unsecured bondholder. Do you th4disagree, however, we would ask you to condition a sale5points that weren't made by either Mr. Richman, Mr. Pa6enforce its police and regulatory powers. And we have language6the two indentured trustee?	
18       is, in fact, not being transferred. And we are very concerned       18       you         19       about the department's abilities to continue to protect the       19       THE COURT: Just a minute. Is there I annou         20       health and safety of the people of New York through consent       19       THE COURT: Just a minute. Is there I annou         21       orders, administrative orders, and the ability to impose       20       earlier in the hearing that I wasn't going to hear oral         22       injunctive relief, with respect to those and other sites.       22       so I can make a judgment as to whether you should be         23       If you would like to argue that the state's interests       23       you repares.         24       are not interest in them I would be happy to do that. I think       24       MR. MOTIF: My name is Normaji, last name is         25       that is clear. But to the extent that the Court?       114       And I         1       THE COURT: You have a brief on file, don't you?       1       And I         2       MS. TAYLOR: We do have a brief on file and I would       3       MR. MOTIF: Yes, sir. Unsecured.         3       refer to the cases cited in the brief on that. If you       3       MR. MOTIF: Yes, sir. Unsecured.         4       disagree, however, we would ask you to condition a sale       4       THE COURT: Unsecur	
19about the department's abilities to continue to protect the health and safety of the people of New York through consent orders, administrative orders, and the ability to impose injunctive relief, with respect to those and other sites.19THE COURT: Just a minute. Is there I annou earlier in the hearing that I wasn't going to hear oral argument on all the objections. Come up, tell me your so I can make a judgment as to whether you should be your papers.24are not interest in them I would be happy to do that. I think 2524are not interest in them I would be happy to do that. I think 11424MR. MOTIF: My name is Normaji, last name is 251THE COURT: You have a brief on file, don't you? 21And I2MS. TAYLOR: We do have a brief on file and I would 31And I3refer to the cases cited in the brief on that. If you 41MR. MOTIF: Yes, sir. Unsecured.4disagree, however, we would ask you to condition a sale 54THE COURT: Unsecured bondholder. Do you h points that weren't made by either Mr. Richman, Mr. Pa the two indentured trustee?	
19about the department's abilities to continue to protect the health and safety of the people of New York through consent orders, administrative orders, and the ability to impose injunctive relief, with respect to those and other sites.19THE COURT: Just a minute. Is there I annou earlier in the hearing that I wasn't going to hear oral argument on all the objections. Come up, tell me your so I can make a judgment as to whether you should be your papers.24are not interest in them I would be happy to do that. I think 2524are not interest in them I would be happy to do that. I think 11424MR. MOTIF: My name is Normaji, last name is 251THE COURT: You have a brief on file, don't you? 21And I2MS. TAYLOR: We do have a brief on file and I would 31And I3refer to the cases cited in the brief on that. If you 41MR. MOTIF: Yes, sir. Unsecured.4disagree, however, we would ask you to condition a sale 54THE COURT: Unsecured bondholder. Do you h points that weren't made by either Mr. Richman, Mr. Pa the two indentured trustee?	
<ul> <li>health and safety of the people of New York through consent</li> <li>orders, administrative orders, and the ability to impose</li> <li>injunctive relief, with respect to those and other sites.</li> <li>injunctive relief, with respect to those and other sites.</li> <li>If you would like to argue that the state's interests</li> <li>are not interest in them I would be happy to do that. I think</li> <li>that is clear. But to the extent that the Court?</li> <li>1</li> <li>THE COURT: You have a brief on file, don't you?</li> <li>MS. TAYLOR: We do have a brief on file and I would</li> <li>refer to the cases cited in the brief on that. If you</li> <li>disagree, however, we would ask you to condition a sale</li> <li>pursuant to 363(e) in order to protect the state's ability to</li> <li>enforce its police and regulatory powers. And we have language</li> <li>and I</li> <li>And I</li> <li>THE COURT: Unsecured bondholder. Do you have a brief on file and I would</li> <li>that is clear. But to the extent we have language</li> <li>the two indentured trustee?</li> </ul>	nced
21       orders, administrative orders, and the ability to impose       21       argument on all the objections. Come up, tell me your         22       injunctive relief, with respect to those and other sites.       22       so I can make a judgment as to whether you should be         23       If you would like to argue that the state's interests       23       are not interest in them I would be happy to do that. I think       24         25       that is clear. But to the extent that the Court?       24       MR. MOTIF: My name is Normaji, last name is         1       THE COURT: You have a brief on file, don't you?       1       And I         2       MS. TAYLOR: We do have a brief on file and I would       3       refer to the cases cited in the brief on that. If you         4       disagree, however, we would ask you to condition a sale       5       pursuant to 363(e) in order to protect the state's ability to         6       enforce its police and regulatory powers. And we have language       6       the two indentured trustee?	
<ul> <li>injunctive relief, with respect to those and other sites.</li> <li>If you would like to argue that the state's interests</li> <li>are not interest in them I would be happy to do that. I think</li> <li>that is clear. But to the extent that the Court?</li> <li>MR. MOTIF: My name is Normaji, last name is</li> <li>We bought GM's bonds, 400,000 paying the sam</li> <li>THE COURT: You have a brief on file, don't you?</li> <li>MS. TAYLOR: We do have a brief on file and I would</li> <li>refer to the cases cited in the brief on that. If you</li> <li>refer to the cases cited in the brief on that. If you</li> <li>disagree, however, we would ask you to condition a sale</li> <li>pursuant to 363(e) in order to protect the state's ability to</li> <li>enforce its police and regulatory powers. And we have language</li> <li>and I</li> <li>THE COURT: Unsecured bondholder. Do you have a brief on file state's ability to</li> <li>the two indentured trustee?</li> </ul>	status
23       If you would like to argue that the state's interests       23       your papers.         24       are not interest in them I would be happy to do that. I think       24       MR. MOTIF: My name is Normaji, last name is         25       that is clear. But to the extent that the Court?       24       MR. MOTIF: My name is Normaji, last name is         1       THE COURT: You have a brief on file, don't you?       1       And I         2       MS. TAYLOR: We do have a brief on file and I would       3       THE COURT: Sir, you're a bondholder?         3       refer to the cases cited in the brief on that. If you       4       MR. MOTIF: Yes, sir. Unsecured.         4       disagree, however, we would ask you to condition a sale       4       THE COURT: Unsecured bondholder. Do you her points that weren't made by either Mr. Richman, Mr. Pa         6       enforce its police and regulatory powers. And we have language       6       the two indentured trustee?	
24       are not interest in them I would be happy to do that. I think       24       MR. MOTIF: My name is Normaji, last name is         25       that is clear. But to the extent that the Court?       114       MR. MOTIF: My name is Normaji, last name is         1       THE COURT: You have a brief on file, don't you?       1       And I         2       MS. TAYLOR: We do have a brief on file and I would       2       THE COURT: Sir, you're a bondholder?         3       refer to the cases cited in the brief on that. If you       3       MR. MOTIF: Yes, sir. Unsecured.         4       disagree, however, we would ask you to condition a sale       4       THE COURT: Unsecured bondholder. Do you h         5       pursuant to 363(e) in order to protect the state's ability to       5       points that weren't made by either Mr. Richman, Mr. Pa         6       enforce its police and regulatory powers. And we have language       6       the two indentured trustee?	8
25       that is clear. But to the extent that the Court?       25       We bought GM's bonds, 400,000 paying the sam         1       THE COURT: You have a brief on file, don't you?       1       And I         2       MS. TAYLOR: We do have a brief on file and I would       1       THE COURT: Sir, you're a bondholder?         3       refer to the cases cited in the brief on that. If you       3       MR. MOTIF: Yes, sir. Unsecured.         4       disagree, however, we would ask you to condition a sale       4       THE COURT: Unsecured bondholder. Do you here of the state's ability to         6       enforce its police and regulatory powers. And we have language       6       the two indentured trustee?	Motif
1       THE COURT: You have a brief on file, don't you?       1       And I         2       MS. TAYLOR: We do have a brief on file and I would       1       THE COURT: Sir, you're a bondholder?         3       refer to the cases cited in the brief on that. If you       3       MR. MOTIF: Yes, sir. Unsecured.         4       disagree, however, we would ask you to condition a sale       4       THE COURT: Unsecured bondholder. Do you h         5       pursuant to 363(e) in order to protect the state's ability to       5       points that weren't made by either Mr. Richman, Mr. Pa         6       enforce its police and regulatory powers. And we have language       6       the two indentured trustee?	
1       THE COURT: You have a brief on file, don't you?       1       And I         2       MS. TAYLOR: We do have a brief on file and I would       2       THE COURT: Sir, you're a bondholder?         3       refer to the cases cited in the brief on that. If you       3       MR. MOTIF: Yes, sir. Unsecured.         4       disagree, however, we would ask you to condition a sale       4       THE COURT: Unsecured bondholder. Do you h         5       pursuant to 363(e) in order to protect the state's ability to       5       points that weren't made by either Mr. Richman, Mr. Pa         6       enforce its police and regulatory powers. And we have language       6       the two indentured trustee?	116
2       MS. TAYLOR: We do have a brief on file and I would       2       THE COURT: Sir, you're a bondholder?         3       refer to the cases cited in the brief on that. If you       3       MR. MOTIF: Yes, sir. Unsecured.         4       disagree, however, we would ask you to condition a sale       4       THE COURT: Unsecured bondholder. Do you h         5       pursuant to 363(e) in order to protect the state's ability to       5       points that weren't made by either Mr. Richman, Mr. Pa         6       enforce its police and regulatory powers. And we have language       6       the two indentured trustee?	
3       refer to the cases cited in the brief on that. If you       3       MR. MOTIF: Yes, sir. Unsecured.         4       disagree, however, we would ask you to condition a sale       4       THE COURT: Unsecured bondholder. Do you h         5       pursuant to 363(e) in order to protect the state's ability to       5       points that weren't made by either Mr. Richman, Mr. Pa         6       enforce its police and regulatory powers. And we have language       6       the two indentured trustee?	
4disagree, however, we would ask you to condition a sale4THE COURT: Unsecured bondholder. Do you h5pursuant to 363(e) in order to protect the state's ability to5points that weren't made by either Mr. Richman, Mr. Pa6enforce its police and regulatory powers. And we have language6the two indentured trustee?	
5 pursuant to 363(e) in order to protect the state's ability to 6 enforce its police and regulatory powers. And we have language 6 the two indentured trustee?	
6 enforce its police and regulatory powers. And we have language 6 the two indentured trustee?	ave any
	ker or
7 that we have circulated to GM and its counsel over the past few 7 MR. MOTIF: That's correct.	
8 days that we would like to see added to the order. I would be 8 THE COURT: And you filed a written objection.	
9 happy to submit that to the Court anytime today if you would 9 MR. MOTIF: I did, but I want to make this.	
10   like that.     10   In the master purchase and sales agreement they not sales agreement t	ever
11 Essentially, it would provide "that nothing in the 11 really splintered the phrase going concern. As a grave of	
12 order would release, nullify, enjoin, or otherwise affect the 12 this needs to be sorted fast enough so that the value doe	
13 police and regulatory authority of any governmental unit or its 13 go down. I'm not sure whether they're talking about the	
14 ability to enforce." And, of course, being lawyers it goes on, 14 term of grave concern or the accounting term of grave c	-
15 but that is its essence. 15 No matter whether we go on the legal term or the account	
16 THE COURT: If it's consensual by all means. If I 16 term, that phrase cannot be used. GM operations like the	-
17 have differing proposal on that, I need to get yours in writing 17 (indiscernible) cooperation which I read the (indiscernible)	
17 nave differing proposal on that, Theed to get yours in writing 18 and the debtors' perspective and argument. The debtors' 18 very frequently they use of the word grave concern. Th	)
19 perspective as to the language they think makes the most sense 19 operations and cooperated in Delaware. And Delaware'	w tool
20 in writing if it's different than what I have now. And if 20 (indiscernible) law with regard to the cooperation applie	-
	5
	s.
22 both. 22 Court to take analyze that usage of the going concern as	s. the
23 MS. TAYLOR: Happy to do that, Judge. At this point 23 property of (indiscernible). I can understand that it's an	s. the
24 I cannot represent that it is consensual. If you don't have 25 be a sense of the	s. the a
25 any questions, I will rest on our papers. 25 business. But definitely it is not a grave concern wheth	s s. the a nning the
115	s s. the a nning the

212-267-6868

1       is a legal usage or accounting usage.       1       THE COURT: Five more minutes.         2       The (indiscernible) cooperation – I mean, the GM       2       and need to explain that clearly. May I proceed?         4       the general acts of accounting principals, or you want to use       4       and need to explain that clearly. May I proceed?         5       the fair market values of some of the methodology that you use.       5       MR, MOTIF: New, I raised an issue that as an unscured bondholder there is a breach of contract by the or-         8       it seems that even though they have created documents stating       8       THE COURT: Elkow, I know. But Proceed?         9       that this is the loan agreement, actually nobody, if       9       of its twenty-eight -         0       expectation was a situation created and not a reality. And you       12       there were unsecured bondholders, you've got two cast         13       have seen what Mr. Henderson and Mr. Wilson and others saying       13       before September 31 of 2008. I do not know that the somholders are fully secured, or partially secured, or partially secured on an oidea as to what properties are fully secured or partially secured on an oidea as to what properties are fully secured bondholders for the treast singet and or out at the somholders for the treast singet and occ         16       New, there are arules in the corporation's law of       16       secured by the secured bondholders. Now, when they         17 <td< th=""><th></th></td<>	
3       cooperation whether you want to use the title GAAP. GAAP means       3       and I need to explain that clearly. May I proceed?         4       the general acts of accounting principals, or you want to use       4       THE COURT: Yes.         5       the fair market values of some of the methodology that you use.       5       MR. MOTIF: Now, I raised an issue that as an unsecured bondholder there is a breach of contract by they -         7       then especially with the loan agreement signed by the Treasury       7       THE COURT: GM has breached its contract to of its twenty-eight         9       of its twenty-eight       MR. MOTIF: I know, I know. But I'm coming         10       commercial businessman would never lend money. So the       11       final points, Your Honor. There were secured bondholders, you've got two catt         11       have seen what Mr. Henderson and Mr. Wilson and others saying       16       secured bondholders. Now, when they         12       theu seen what Mr. Henderson and Mr. Wilson and others saying       16       secured bondholders. Now, when they         13       lent not as a businessman but for other reasons, and especially       17       18.4 billon dollars from the Treasury they put at first Ii         14       then therefore, the loans must be subordinated to the equity and to the reason in the roor oth reasons, and especially       18         15       no idea as creditor, but would be treated as insider, and so, </td <td></td>	
4       the general acts of accounting principals, or you want to use the fair market values of some of the methodology that you use.       4       THE COURT: Yes.         5       the fair market values of some of the methodology that you use.       5       MR. MOTIF: Now, I raised an issue that as an unsecured bondholder there is a breach of contract by the they         6       the especially with the loan agreement, actually nobody, if       9         7       that this is the loan agreement, actually nobody, if       9         8       especially, if the government is going to be approving       10         12       expectation was a situation created and not a reality. And you       11         13       have seen what Mr. Henderson and Mr. Wilson and others saving       16         14       that if he loan never came through then GM could not have       17         16       Now, there are rules in the corporation's law of       16         17       Delaware saying that at a particular stage if the money was       17         18       lent not as a businessman but for other reasons, and especially       18         19       if control of the corporation.       a loan as a creditor, but would be treated as insider, and so,       13         21       therefore, the loans must be subordinated to the equipy and to       14       16         14       the made one point, but he did not	ial case
b         b         Fill market values of some of the methodology that you use.         5         MR. MOTIF: Now, I raised an issue that as an           6         The corporation became insolvent three year ago. And since         6         unsecured bondholder there is a breach of contract by           7         the especially with the loan agreement, signed by the Treasury         7         they         THE COURT: GM has breached its contract to           9         that this is the loan agreement, actually nobody, if         9         6         THE COURT: GM has breached its contract to           10         especially, if the government is going to be approving         10         6         11         final points, Your Honro. There were secured bondholders, orly wey to two catter           11         commercial businessman would never lend money. So the         11         final points, Your Honro. There were secured bondholders, sou've got two catter         12           12         that if the loan never came through then GM could not have         14         bondholders are fully secured. An           13         functioned, like what happened in the case of Chrysler.         15         no idea as to what properties are fully secured. An           14         that fif the loan never came through then GM could not have         16         how sub ensumestand by for other reasons, and especially           15         functionet, like what happened in the case o	
6       The corporation became insolvent three year ago. And since       in secured bondholder there is a breach of contract by the reasury         7       then especially with the loan agreement signed by the Treasury       THE COURT: GM has breached its contract to of its twenty-eight         8       that this is the loan agreement, actually nobody, if       9         9       especially, if the government is going to be approving       9         10       MR. MOTTF: Iknow, Iknow, But I'm coming         11       commercial businessman would never lend money. So the       10         12       expectation was a situation created and not a reality. And you       11         13       have seen what Mr. Henderson and Mr. Wilson and others saying       11         14       that if the loan never came through then GM could not have       11         15       functioned, like what happened in the case of Chrysler.       15         16       Now, there are rules in the corporation's law of       12         17       Delaware saying that at a particular stage if the money was       13         18       lent not as a businessman but for other reasons, and especially       13         19       if control of the corporation has been taken over indefinitely,       14         10       therefore, the loans must be subordinated to the equity and to       28 <t< td=""><td></td></t<>	
7       then especially with the loan agreement signed by the Treasury       7       they         8       THE COURT: GM has breached its contract to         9       that this is the loan agreement, actually nobody, if       9         10       especially, if the government is going to be approving       10         11       commercial businessman would never lead money. So the       11         12       expectation was a situation created and not a reality. And you       12         13       have seen what Mr. Henderson and Mr. Wilson and others saying       13         14       that if the loan never came through then GM could not have       14         15       functioned, like what happened in the case of Chrysler.       15         16       Now, there are rules in the corporation's law of       13         17       Delaware saying that at a particular stage if the money was       11         18       lent not as a businessman but for other reasons, and especially       14         19       if control of the corporation has been taken over indefinitely,       13         21       therefore, the loans must be subordinated to the equity and to       21         22       the unsecured bondholders. Because it would not be treated as       22         23       a loan as a creditor, but would be treated as insider, and so	
8       it seems that even though they have created documents stating       9         9       that this is the loan agreement, actually nobody, if       9         10       especially, if the government is going to be approving       10         11       commercial businessman would never lead more x are attrice. The important reason and Mr. Wilson and others saying       11         11       final points, Your Honor. There were secured bondholders, you've got two cate         12       that if the loan never came through then GM could not have         13       bardseen what Mr. Henderson and Mr. Wilson and others saying         14       that if the loan never came through then GM could not have         15       functioned, like what happened in the case of Chrysler.         16       Now, there are rules in the corporation's law of         17       Delaware saying that at a particular stage if the money was         18       lent not as a businessman but for other reasons, and especially         19       if control of the corporation has been taken over indefinitely,         20       therefore, the loans must be subordinated to the equity and to         21       therefore it is a capital contribution.         22       therefore it is a capital contribution.         23       a loan as a creditor, but would be treated as insider, and so         24       theref	GM when
<ul> <li>that this is the loan agreement, actually nobody, if</li> <li>especially, if the government is going to be approving</li> <li>commercial businessman would never lead money. So the</li> <li>expectation was a situation created and not a reality. And you</li> <li>have seen what Mr. Henderson and Mr. Wilson and others saying</li> <li>that if the loan never came through then GM could not have</li> <li>functioned, like what happened in the case of Chrysler.</li> <li>Now, there are rules in the corporation's law of</li> <li>Delaware saying that at a particular stage if the money was</li> <li>lent not as a businessman but for other reasons, and especially</li> <li>if control of the corporation has been taken over indefinitely,</li> <li>therefore, the loans must be subordinated to the equity and to</li> <li>therefore, the loans must be subordinated to the equity and to</li> <li>therefore, it is a capital contribution.</li> <li>The important reason for that is if that is the</li> <li>capital contribution and not a law then</li> <li>THE COURT: The recharacterization subordination</li> <li>point.</li> <li>furth Court determines that it is a capital</li> <li>furth Court I: If an and not a law then</li> <li>THE COURT: The recharacterization subordination</li> <li>point.</li> <li>furth Court determines that it is a capital</li> <li>furth Court at law adversement at it is a capital</li> <li>furth Court at law adversement.</li> <li>furth court determines that it is a capital</li> <li>furth court determines that it is a capital</li> <li>furth court at lean adversement.</li> <li>furth court determines that it is a capital</li> <li>furth court at lean adversement.</li></ul>	
10       especially, if the government is going to be approving         11       especially, if the government is going to be approving         12       commercial businessman would never lend money. So the         12       expectation was a situation created and not a reality. And you         13       have seen what Mr. Henderson and Mr. Wilson and others saying         14       tif the loan never came through then GM could not have         16       Now, there are rules in the corporation's law of         17       Delaware saying that at a particular stage if the money was         18       lent not as a businessman but for other reasons, and especially         16       Now, there are rules in the corporation has been taken over indefinitely,         10       therefore, the loans must be subordinated to the equity and to         11       therefore, the loans must be subordinated to the equity and to         12       therefore, the is a a creditor, but would be treated as insider, and so,         11       capital contribution.         125       The important reason for that is if that is the         12       capital contribution and not a law then         12       THE COURT: The recharacterization subordination         16       now the age anglial         17       therefore it is a capital         18       therefore,	everyone
11       commercial businessman would never lend money. So the       11       final points, Your Honor. There were secured bondholders, you've got two catters are saying that Mr. Henderson and Mr. Wilson and others saying         12       have seen what Mr. Henderson and Mr. Wilson and others saying       13       before September 31 of 2008. I do not know that the secured bondholders, you've got two catters are fully secured or partially secured. An no idea as to what properties are fully secured. An no idea as to what properties are fully secured. An no idea as to what properties are fully secured. An no idea as to what properties are fully secured. An no idea as to what properties are fully secured. An no idea as to what properties are fully secured. An no idea as to what properties are fully secured. An no idea as to what properties are fully secured. An no idea as to what properties are fully secured. An no idea as to what properties are fully secured. An no idea as to what properties are fully secured. An no idea as to what properties are fully secured. An no idea as to what properties are fully secured. An no idea as to what properties are fully secured. An no idea as to what properties are fully secured. An no idea as to what properties are fully secured or partial the secured bondholders. New, when they         13       before September 31 of 2008. I do not know that the secured bondholders. New, when they         14       then tot as a businessman but for other reasons, and especially         15       if control of the corporation has been taken over indefinitely,         20       then that entity should be treated as insider, and so,         21       therefore it is a capital contribution and not a law then	
12       expectation was a situation created and not a reality. And you       12       there were unsecured bondholders, you've got two catters are fully secured. The property is a particular stage if the money was         14       that if the loan never came through then GM could not have       13       before September 31 of 2008. I do not know that the set bondholders, you've got two catters are fully secured, or partially secured presented bondholders. Now, when they         17       Delaware saying that a particular stage if the morey was       16         18       tent not as a businessman but for other reasons, and especially       17         19       if control of the corporation has been taken over indefinitely,       18         20       therefore, the loans must be subordinated to the equity and to       18         21       therefore it is a capital contribution.       22         22       The important reason for that is if that is the       24         11       capital contribution and not a law then       1         23       a loan as a creditor, but would be treated as insider, and so       11         11       capital contribution and not a law then       11         24       therefore it is a capital contribution and not a law then       1	to the
13       have seen what Mr. Henderson and Mr. Wilson and others saying       13       before September 31 of 2008. I do not know that the set functioned, like what happened in the case of Chrysler.         14       that if the loan never came through then GM could not have       14       before September 31 of 2008. I do not know that the set bondholders are fully secured, or partially secured or partially secured or partially secured or partially secured or partially secured, or partially secured or partially and with secured by the secured bondholders. Now, when they secured bondholders property to second lien. The document indenture of 1995 is clear moment a lien is put then the unsecured bondholders. Because it would not be treated as a a cardial contribution and not a law then -         21       therefore	olders and
13       have seen what Mr. Henderson and Mr. Wilson and others saying       13       before September 31 of 2008. I do not know that the set functioned, like what happened in the case of Chrysler.         14       that if the loan never came through then GM could not have       14       before September 31 of 2008. I do not know that the set bondholders are fully secured, or partially secured or partially secured or partially secured or partially secured or partially secured, or partially secured or partially and with secured by the secured bondholders. Now, when they secured bondholders property to second lien. The document indenture of 1995 is clear moment a lien is put then the unsecured bondholders. Because it would not be treated as a a cardial contribution and not a law then -         21       therefore	egories
14       that if the loan never came through then GM could not have       14       that if the loan never came through then GM could not have         15       functioned, like what happened in the case of Chrysler.       16       no idea as to what properties are fully secured, or partial         16       Now, there are rules in the corporation's law of       16       secured by the secured bondholders. Now, when they         17       Delaware saying that at a particular stage if the money was       16       is out of the corporation has been taken over indefinitely,         19       if control of the corporation has been taken over indefinitely,       10       And with regard to the secured bondholders property to         20       then that entity should be treated as insider. And so,       10       aloan as a creditor, but would not be treated as         21       therefore, the loans must be subordinated to the equity and to       22       moment a lien is put then the unsecured bondholders property to         24       therefore it is a capital contribution.       23       THE COURT: Is that the exact point Mr. Parke         11       capital contribution and not a law then       1       Accurately, he admitted in his brief that they         2       THE COURT: The recharacterization subordination       2       moment a lien problem. So if you read the brief he         3       contribution and not a law then       1       Accura	-
15       functioned, like what happened in the case of Chrysler.       15       no idea as to what properties are fully secured, or parties are fully secured property fully ful	
16       Now, there are rules in the corporation's law of       16       secured by the secured bondholders. Now, when they         17       Delaware saying that at a particular stage if the money was       17       13.4 billion dollars from the Treasury they put a first li         18       lent not as a businessman but for other reasons, and especially       18       the property, which is not covered by the secured bondholders property t         19       if control of the corporation has been taken over indefinitely,       19       And with regard to the secured bondholders property t         20       then that entity should be treated as insiders. And so,       20       and with regard to the secured bondholders property t         21       therefore, the loans must be subordinated to the equity and to       21       moment a lien is put then the unsecured bondholders. Now, when they         22       the unsecured bondholders. Because it would not be treated as       22       repeated on par with the         23       a loan as a creditor, but would be treated as insider, and so       23       THE COURT: Is that the exact point Mr. Parke         24       therefore it is a capital contribution.       21       MR. MOTIF: No, I'm going to go further, Your         25       THE COURT: The recharacterization subordination       3       acknowledges my brief         3       point.       1       Accurately, he admitted in his brief tha	
17       Delaware saying that at a particular stage if the money was       17       13.4 billion dollars from the Treasury they put a first if         18       lent not as a businessman but for other reasons, and especially       18       the property, which is not covered by the secured bond         19       if control of the corporation has been taken over indefinitely,       19       And with regard to the secured bondholders property to         20       then that entity should be treated as insiders. And so,       20       Second lien. The document indenture of 1995 is clear         21       therefore, the loans must be subordinated to the equity and to       21       moment a lien is put then the unsecured bondholders nore.         23       a loan as a creditor, but would be treated as insider, and so       23       THE COURT: Is that the exact point Mr. Parke         24       therefore it is a capital contribution.       24       MR. MOTIF: No, I'm going to go further, Your         25       The important reason for that is if that is the       11       Accurately, he admitted in his brief that they         2       THE COURT: The recharacterization subordination       2       realized this lien problem. So if you read the brief he         3       point.       1       Accurately, he admitted in his brief.       5         4       MR. MOTIF: The recharacterization subordination       2       realized this lien problem. So i	-
18       lent not as a businessman but for other reasons, and especially       18       the property, which is not covered by the secured bond         19       if control of the corporation has been taken over indefinitely,       19       And with regard to the secured bondholders property t         20       then that entity should be treated as insiders. And so,       20       second lien. The document indenture of 1995 is clear         21       therefore, the loans must be subordinated to the equity and to       21       moment a lien is put then the unsecured bondholders property t         23       a loan as a creditor, but would be treated as insider, and so       23       THE COURT: Is that the exact point Mr. Parke         24       therefore it is a capital contribution.       24       MR. MOTIF: No, I'm going to go further, Your         25       The important reason for that is if that is the       11       Accurately, he admitted in his brief that they         2       THE COURT: The recharacterization subordination       3       acknowledges my brief         3       points were made in many briefs, I understood them.       3       acknowledges my brief         4       MR. MOTIF: I'm ready to come to the other important       5       MR. MOTIF: Pardon?         6       If the Court determines that it is a capital       6       THE COURT: I did read his brief.         7       contribution	
19       if control of the corporation has been taken over indefinitely,       19       And with regard to the secured bondholders property to second lien. The document indenture of 1995 is clear moment a lien is put then the unsecured bondholders in the repeated on par with the         21       therefore, the loans must be subordinated to the equity and to       21       moment a lien is put then the unsecured bondholders in the secured bondholders in the unsecured bondholders in the interest is a capital contribution.       22         23       a loan as a creditor, but would be treated as insider, and so       23       THE COURT: Is that the exact point Mr. Parke MR. MOTIF: No, I'm going to go further, Your         25       The important reason for that is if that is the       25       He made one point, but he did not elaborate more.         1       capital contribution and not a law then       1       Accurately, he admitted in his brief that they         2       THE COURT: The recharacterization subordination       2       realized this lien problem. So if you read the brief he acknowledges my brief         4       MR. MOTIF: I'm ready to come to the other important       4       THE COURT: I did read his brief.         5       MR. MOTIF: Pardon?       5       MR. MOTIF: Yeah. And he acknowledges that the idea from me.         7       contribution and not a loan per se, then the participation       7       MR. MOTIF: Yeah. And he acknowledges that the idea from me.         9	
20       then that entity should be treated as insiders. And so,       20       second lien. The document indenture of 1995 is clear         21       therefore, the loans must be subordinated to the equity and to       21       moment a lien is put then the unsecured bondholders is econd lien. The document indenture of 1995 is clear         23       a loan as a creditor, but would be treated as insider, and so       22       THE COURT: Is that the exact point Mr. Parke         24       therefore it is a capital contribution.       24       MR. MOTIF: No, I'm going to go further, Your         25       The important reason for that is if that is the       25       He made one point, but he did not elaborate more.         1       capital contribution and not a law then       1       Accurately, he admitted in his brief that they         2       THE COURT: The recharacterization subordination       2       realized this lien problem. So if you read the brief he         3       points were made in many briefs, I understood them.       3       acknowledges my brief         4       MR. MOTIF: The ready to come to the other important       5       MR. MOTIF: Pardon?         6       If the Court determines that it is a capital       6       THE COURT: I did read his brief.         7       contribution and not a loan per se, then the participation       7       MR. MOTIF: Yeah. And he acknowledges that         8<	
21       therefore, the loans must be subordinated to the equity and to       21       moment a lien is put then the unsecured bondholders in repeated on par with the         22       a loan as a creditor, but would be treated as insider, and so       23       a loan as a creditor, but would be treated as insider, and so         24       therefore it is a capital contribution.       24       THE COURT: Is that the exact point Mr. Parkee         25       The important reason for that is if that is the       25       THE COURT: The recharacterization subordination         3       points were made in many briefs, I understood them.       1       Accurately, he admitted in his brief that they         2       THE COURT: The recharacterization subordination       3       acknowledges my brief         4       MR. MOTIF: I'm ready to come to the other important       5       MR. MOTIF: Pardon?         6       If the Court determines that it is a capital       6       THE COURT: I did read his brief.         7       contribution and not a loan per se, then the participation       7       MR. MOTIF: Yeah. And he acknowledges that         8       fails because in the proposals out of 19.4 billion dollars worth       9       THE COURT: Okay.         9       was the pre-petition advances made, two million dollars worth       9       THE COURT: Okay.         10       of (indiscernible) being taken by the New	• •
22       the unsecured bondholders. Because it would not be treated as       22       repeated on par with the         23       a loan as a creditor, but would be treated as insider, and so       23       THE COURT: Is that the exact point Mr. Parke         24       therefore it is a capital contribution.       24       MR. MOTIF: No, I'm going to go further, Your         25       The important reason for that is if that is the       118       25         1       capital contribution and not a law then       1       Accurately, he admitted in his brief that they         2       THE COURT: The recharacterization subordination       3       acknowledges my brief         4       MR. MOTIF: I'm ready to come to the other important       4       THE COURT: I did read his brief.         5       point.       5       MR. MOTIF: Pardon?       6         6       If the Court determines that it is a capital       6       THE COURT: I did read his brief.         7       contribution and not a loan per se, then the participation       7       MR. MOTIF: Yeah. And he acknowledges that         8       fails because in the proposals out of 19.4 billion dollars worth       9       THE COURT: Okay.         10       of (indiscernible) being taken by the New GM with approximately       10       MR. MOTIF: Here is the question. I read the         11       <	
23a loan as a creditor, but would be treated as insider, and so23THE COURT: Is that the exact point Mr. Parke24therefore it is a capital contribution.24MR. MOTIF: No, I'm going to go further, Your25The important reason for that is if that is the11824MR. MOTIF: No, I'm going to go further, Your26THE COURT: The recharacterization subordination1Accurately, he admitted in his brief that they2THE COURT: The recharacterization subordination2acknowledges my brief3points were made in many briefs, I understood them.3acknowledges my brief4MR. MOTIF: I'm ready to come to the other important4THE COURT: I did read his brief.5point.5MR. MOTIF: Pardon?6If the Court determines that it is a capital6THE COURT: I did read his brief.7contribution and not a loan per se, then the participation7MR. MOTIF: Yeah. And he acknowledges that8fails because in the proposals out of 19.4 billion dollars that8the idea from me.9was the pre-petition advances made, two million dollars worth9THE COURT: Okay.10of (indiscernible) being taken by the New GM with approximately10MR. MOTIF: Here is the question. I read the11about eight billion dollars of (indiscernible) and so that11Chrysler opinion by Judge Gonzalez. He said with reg12leaves about nine million dollars as the big money so there12unsecured creditors the takings clause and I think he	nust be
24therefore it is a capital contribution.24MR. MOTIF: No, I'm going to go further, Your25The important reason for that is if that is the11825He made one point, but he did not elaborate more.1capital contribution and not a law then1Accurately, he admitted in his brief that they2THE COURT: The recharacterization subordination2realized this lien problem. So if you read the brief he3points were made in many briefs, I understood them.4THE COURT: I did read his brief.4MR. MOTIF: I'm ready to come to the other important5MR. MOTIF: Pardon?6If the Court determines that it is a capital6THE COURT: I did read his brief.7contribution and not a loan per se, then the participation7MR. MOTIF: Yeah. And he acknowledges that8fails because in the proposals out of 19.4 billion dollars that9THE COURT: Okay.9was the pre-petition advances made, two million dollars worth9THE COURT: Okay.10of (indiscernible) being taken by the New GM with approximately10MR. MOTIF: Here is the question. I read the11about eight billion dollars of (indiscernible) and so that11Chrysler opinion by Judge Gonzalez. He said with reg12leaves about nine million dollars as the big money so there12unsecured creditors the takings clause and I think he	m mada?
25The important reason for that is if that is the25He made one point, but he did not elaborate more.1capital contribution and not a law then1Accurately, he admitted in his brief that they2THE COURT: The recharacterization subordination1Accurately, he admitted in his brief that they3points were made in many briefs, I understood them.1Accurately, he admitted in his brief that they4MR. MOTIF: I'm ready to come to the other important3acknowledges my brief5point.5MR. MOTIF: Pardon?6If the Court determines that it is a capital6THE COURT: I did read his brief.7contribution and not a loan per se, then the participation7MR. MOTIF: Yeah. And he acknowledges that8fails because in the proposals out of 19.4 billion dollars worth9THE COURT: Okay.10of (indiscernible) being taken by the New GM with approximately10MR. MOTIF: Here is the question. I read the11about eight billion dollars of (indiscernible) and so that11Chrysler opinion by Judge Gonzalez. He said with reg12leaves about nine million dollars as the big money so there12unsecured creditors the takings clause and I think he	
1181capital contribution and not a law then2THE COURT: The recharacterization subordination3points were made in many briefs, I understood them.4MR. MOTIF: I'm ready to come to the other important5point.6If the Court determines that it is a capital7contribution and not a loan per se, then the participation8fails because in the proposals out of 19.4 billion dollars that9was the pre-petition advances made, two million dollars worth10of (indiscernible) being taken by the New GM with approximately11about eight billion dollars of (indiscernible) and so that12leaves about nine million dollars as the big money so there	r Honor.
1       capital contribution and not a law then       1       Accurately, he admitted in his brief that they         2       THE COURT: The recharacterization subordination       2       realized this lien problem. So if you read the brief he         3       points were made in many briefs, I understood them.       3       acknowledges my brief         4       MR. MOTIF: I'm ready to come to the other important       4       THE COURT: I did read his brief.         5       point.       5       MR. MOTIF: Pardon?         6       If the Court determines that it is a capital       6       THE COURT: I did read his brief.         7       contribution and not a loan per se, then the participation       7       MR. MOTIF: Yeah. And he acknowledges that         8       fails because in the proposals out of 19.4 billion dollars worth       9       THE COURT: Okay.         10       of (indiscernible) being taken by the New GM with approximately       10       MR. MOTIF: Here is the question. I read the         11       about eight billion dollars of (indiscernible) and so that       11       Chrysler opinion by Judge Gonzalez. He said with reg         12       leaves about nine million dollars as the big money so there       12       unsecured creditors the takings clause and I think he	120
2       THE COURT: The recharacterization subordination       2       realized this lien problem. So if you read the brief he         3       points were made in many briefs, I understood them.       3       acknowledges my brief         4       MR. MOTIF: I'm ready to come to the other important       3       acknowledges my brief         4       MR. MOTIF: I'm ready to come to the other important       4       THE COURT: I did read his brief.         5       point.       5       MR. MOTIF: Pardon?         6       If the Court determines that it is a capital       6       THE COURT: I did read his brief.         7       contribution and not a loan per se, then the participation       7       MR. MOTIF: Yeah. And he acknowledges that         8       fails because in the proposals out of 19.4 billion dollars that       8       the idea from me.         9       was the pre-petition advances made, two million dollars worth       9       THE COURT: Okay.         10       of (indiscernible) being taken by the New GM with approximately       10       MR. MOTIF: Here is the question. I read the         11       about eight billion dollars of (indiscernible) and so that       11       Chrysler opinion by Judge Gonzalez. He said with reg         12       leaves about nine million dollars as the big money so there       12       unsecured creditors the takings clause and I think he<	120
2       THE COURT: The recharacterization subordination       2       realized this lien problem. So if you read the brief he         3       points were made in many briefs, I understood them.       3       acknowledges my brief         4       MR. MOTIF: I'm ready to come to the other important       3       acknowledges my brief         5       point.       4       THE COURT: I did read his brief.         6       If the Court determines that it is a capital       6       THE COURT: I did read his brief.         7       contribution and not a loan per se, then the participation       7       MR. MOTIF: Yeah. And he acknowledges that         8       fails because in the proposals out of 19.4 billion dollars that       8       the idea from me.         9       was the pre-petition advances made, two million dollars worth       9       THE COURT: Okay.         10       of (indiscernible) being taken by the New GM with approximately       10       MR. MOTIF: Here is the question. I read the         11       about eight billion dollars of (indiscernible) and so that       11       Chrysler opinion by Judge Gonzalez. He said with reg         12       leaves about nine million dollars as the big money so there       12       unsecured creditors the takings clause and I think he	
3       points were made in many briefs, I understood them.       3       acknowledges my brief         4       MR. MOTIF: I'm ready to come to the other important       4       THE COURT: I did read his brief.         5       point.       5       MR. MOTIF: Pardon?         6       If the Court determines that it is a capital       6       THE COURT: I did read his brief.         7       contribution and not a loan per se, then the participation       7       MR. MOTIF: Yeah. And he acknowledges that         8       fails because in the proposals out of 19.4 billion dollars that       8       the idea from me.         9       was the pre-petition advances made, two million dollars worth       9       THE COURT: Okay.         10       of (indiscernible) being taken by the New GM with approximately       10       MR. MOTIF: Here is the question. I read the         11       about eight billion dollars of (indiscernible) and so that       11       Chrysler opinion by Judge Gonzalez. He said with reg         12       leaves about nine million dollars as the big money so there       12       unsecured creditors the takings clause and I think he	
4       MR. MOTIF: I'm ready to come to the other important       4       THE COURT: I did read his brief.         5       point.       5       MR. MOTIF: Pardon?         6       If the Court determines that it is a capital       6       THE COURT: I did read his brief.         7       contribution and not a loan per se, then the participation       7       MR. MOTIF: Yeah. And he acknowledges that         8       fails because in the proposals out of 19.4 billion dollars that       8       the idea from me.         9       was the pre-petition advances made, two million dollars worth       9       THE COURT: Okay.         10       of (indiscernible) being taken by the New GM with approximately       10       MR. MOTIF: Here is the question. I read the         11       about eight billion dollars of (indiscernible) and so that       11       Chrysler opinion by Judge Gonzalez. He said with reg         12       leaves about nine million dollars as the big money so there       12       unsecured creditors the takings clause and I think he	
5       point.       5       MR. MOTIF: Pardon?         6       If the Court determines that it is a capital       6       THE COURT: I did read his brief.         7       contribution and not a loan per se, then the participation       7       MR. MOTIF: Yeah. And he acknowledges that         8       fails because in the proposals out of 19.4 billion dollars that       8       the idea from me.         9       was the pre-petition advances made, two million dollars worth       9       THE COURT: Okay.         10       of (indiscernible) being taken by the New GM with approximately       10       MR. MOTIF: Here is the question. I read the         11       about eight billion dollars of (indiscernible) and so that       11       Chrysler opinion by Judge Gonzalez. He said with reg         12       leaves about nine million dollars as the big money so there       12       unsecured creditors the takings clause and I think he	
6       If the Court determines that it is a capital       6       THE COURT: I did read his brief.         7       contribution and not a loan per se, then the participation       7       MR. MOTIF: Yeah. And he acknowledges that         8       fails because in the proposals out of 19.4 billion dollars that       8       the idea from me.         9       was the pre-petition advances made, two million dollars worth       9       THE COURT: Okay.         10       of (indiscernible) being taken by the New GM with approximately       10       MR. MOTIF: Here is the question. I read the         11       about eight billion dollars of (indiscernible) and so that       11       Chrysler opinion by Judge Gonzalez. He said with reg         12       leaves about nine million dollars as the big money so there       12       unsecured creditors the takings clause and I think he	
7contribution and not a loan per se, then the participation7MR. MOTIF: Yeah. And he acknowledges that8fails because in the proposals out of 19.4 billion dollars that8the idea from me.9was the pre-petition advances made, two million dollars worth9THE COURT: Okay.10of (indiscernible) being taken by the New GM with approximately10MR. MOTIF: Here is the question. I read the11about eight billion dollars of (indiscernible) and so that11Chrysler opinion by Judge Gonzalez. He said with reg12leaves about nine million dollars as the big money so there12unsecured creditors the takings clause and I think he	
8       fails because in the proposals out of 19.4 billion dollars that       8       the idea from me.         9       was the pre-petition advances made, two million dollars worth       9       THE COURT: Okay.         10       of (indiscernible) being taken by the New GM with approximately       10       MR. MOTIF: Here is the question. I read the         11       about eight billion dollars of (indiscernible) and so that       11       Chrysler opinion by Judge Gonzalez. He said with reg         12       leaves about nine million dollars as the big money so there       12       unsecured creditors the takings clause and I think he	t ha got
9       was the pre-petition advances made, two million dollars worth       9       THE COURT: Okay.         10       of (indiscernible) being taken by the New GM with approximately       10       MR. MOTIF: Here is the question. I read the         11       about eight billion dollars of (indiscernible) and so that       11       Chrysler opinion by Judge Gonzalez. He said with reg         12       leaves about nine million dollars as the big money so there       12       unsecured creditors the takings clause and I think he	t ne got
10of (indiscernible) being taken by the New GM with approximately10MR. MOTIF: Here is the question. I read the11about eight billion dollars of (indiscernible) and so that11Chrysler opinion by Judge Gonzalez. He said with reg12leaves about nine million dollars as the big money so there12unsecured creditors the takings clause and I think he	
11about eight billion dollars of (indiscernible) and so that11Chrysler opinion by Judge Gonzalez. He said with reg12leaves about nine million dollars as the big money so there12unsecured creditors the takings clause and I think he	
12 leaves about nine million dollars as the big money so there 12 unsecured creditors the takings clause and I think he	11
	-
12 $\cdots$ 11 be a basis in the bid amount such that the 12 $\cdots$ 12 $\cdots$ 14 $\cdots$ 14 $\cdots$ 15 $\cdots$ 16 \cdots 16 $\cdots$ 16 $\cdots$ 16 $\cdots$ 16 $\cdots$ 16 $\cdots$ 16 $\cdots$ 16 \cdots 16 $\cdots$ 16 $\cdots$ 16 $\cdots$ 16 \cdots 16 $\cdots$ 16 \cdots 16 $\cdots$ 16 \cdots 16 $\cdots$ 16 $\cdots$ 16 \cdots 16 $\cdots$ 16 \cdots 16 \cdots 16 $\cdots$ 16 \cdots 16 $\cdots$ 16 \cdots 16 \cdots 1	
13 will be a shortage in the bid amount, even if you include the 13 might apply because they don't have a lien. But if this	
14 DIP money less the other things. I believe that this money was 14 were to decide that the fact that a lien was put on that a	
15 given here, that the total purchase price of the total value 15 that automatically triggered the other problem which is	
16 was between fifty and sixty billion dollars. If that is the 16 the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondholders also has liens on par with the unsecured bondh	
17 case then it is my submission that the Treasury bring down that 17 treasury, both with regard to the first lien that decided	
18 nine million dollars and give it to the Old GM as part of the 18 regard to the other property, and the second lien that d	
19purchase price. Plus also the eight billion dollars for eight19on the secured bondholders' property. Then we have a	-
20 million dollars of the note, plus two billion dollars that also 20 argue that the takings clause under the Fifth Amendme	ent do
21 must come for a total of 19.4 billion dollars, must come to the 21 apply.	
22   Old GM.   22   So with that, Your Honor, thank you very much.	
23Now, the other argument is that23THE COURT: Thank you. Now, putting aside	
THE COURT: Are you getting near the end, sir? 24 the record and so forth, which we can deal with later, i	is there
25 MR. MOTIF: Yes, give me five minutes. 25 any other substantive argument of a non-duplicative na	ature to
119	121

212-267-6868

1	be heard? Sir?	1	the points that the debtors have made in their reply about our
2	MR. CHEEMA: Your Honor, good afternoon. Bik Cheema	, 2	limited objection, which really seeks to characterize this as a
3	Baker Hostetler on behalf of the Bureau of Ohio Workers'	3	garden variety secured creditor $363(f)(3)$ issue; where on the
4	Compensation.	4	one hand you have is it the value of the collateral, on the
5	THE COURT: Ohio Workers' Comp.	5	other hand, is it the face amount of the lien. We think in
6	MR. CHEEMA: Yes. It's OBWC. We filed a limited	6	this context, Your Honor, that misses the point. There is only
7	motion, we don't oppose the sale. The limited motion was the	7	one value on the table here today. That is the amount of the
8	OBWC reads the sale motion as indicating that New GM intends to	<b>)</b> 8	lender's allowed secured proof of claim on file at 90.7 million
9	assume all the debtors' Ohio workers' compensation obligations.	9	dollars. The debtors have stated that they will settle for a
10	In the last few hours we've reached an agreement on	10	purchase price in excess of the value of all liens on the
11	some clarifying language with the U.S. Treasury, and we wish to	11	property, that's their obligation under 363(f)(3), and that's
12	just offer that clarifying language for the record. It will	12	the subsection they rely on to sell the facilities. Our point
13	literally take thirty seconds.	13	is simply in response, no purchase price has been specified, no
14	THE COURT: Thirty seconds, it will take longer for	14	value has been allocated. The only value that is out there is
15	me to tell you to sit down and comply with what I said before.	15	the value of the claim in our secured proof of claim. And the
16	So go ahead.	16	only value out there is
17	MR. CHEEMA: "Pursuant to the master sale and	17	THE COURT: You're saying that if you say that your
18	purchase agreement, New GM is assuming all of Old GM's	18	collateral is worth a certain amount it's binding on the world?
19	liabilities and obligations, under the workers' compensation	19	MR. KANSA: I'm not saying it's binding on the world,
20	laws, rules and regulations of the State of Ohio. OBWC reads	20	Your Honor. I'm saying if they are going to rely here today on
21	the provision to include the assumption by New GM of Old GM's	21	363(f)(3), saying that they are selling in excess for our
22	obligation to provide and to continue to provide security for	22	purchase price, in excess of the value of our liens, that is
23	the payment and performance of all obligations under the	23	what the value of the liens is. Today there is no other
24	workers' compensation laws, rules and regulations of the State	24	competing value out there. There's nothing in the record.
25	of Ohio owed by Old GM. New GM will be required to apply for	25	THE COURT: You'll agree that sometimes there is a
	122		124
1	status as a self-insuring employer in the State of Ohio. If it	1	difference between the amount that people claim in their proofs
2	seeks such status and nothing in the Court's order approving a	2	of claim as secured claims, and the value of their collateral.
3	sale shall exclude New GM from satisfying all requirements and	3	And that the actual value of the secured claim is measured by
4	conditions, including any requirement to provide security of	4	the value of the collateral and the remainder is unsecured, I
5	the OBWC to grant self-insuring employer status under	5	assume.
6	applicable Ohio law, rules and regulations."	6	MR. KANSA: No disagreement, Your Honor.
7	THE COURT: Okay.	7	THE COURT: Okay. So basically the issue to the
8	MR. CHEEMA: Thank you, Your Honor.	8	extent there is an issue, is that you're claiming an amount
9	THE COURT: All right. Mr. Miller, are you ready	9	which the debtor and other parties in the case, probably every
10	for sir, is this an objection, further argument, non-	10	single other party in the case, might have a difference in
11	repetitive argument?	11	perception from you and might say that your secured claim is
12	MR. KANSA: This is a non-repetitive very brief	12	measured by the value of your collateral. But the remainder of
13	argument, Your Honor.	13	your claim is unsecured.
14	THE COURT: All right, come on up.	14	MR. KANSA: That's true, Your Honor. But the point
15	MR. KANSA: Good morning, Your Honor. Kenneth Kansa	, 15	is there is no no one has articulated their belief as to the
16	Sidley Austin on behalf of the TPC Lender Group.	16	other value here today.
17	The TPC Lender Group is a consortium of nine	17	THE COURT: I understand your argument.
18	commercial lenders with first priority liens on two of the	18	MR. KANSA: Thank you, Your Honor.
19	debtors' facilities, one in White Marsh, Maryland and the	19	THE COURT: All right. Are we now ready for Mr.
20	second in Memphis, Tennessee.	20	Miller? No, one more.
21	Your Honor, we filed a limited objection to the sale	21	MR. WISLER: Good morning, Your Honor. Jeffrey
22	transaction. We are in the process of working on language that	22	Wisler on behalf of Connecticut General Life Insurance Company
23	we hope will resolve that objection, but we haven't dotted the	23	Your Honor, I have a non-resolved, non-cure executory
24	I's and crossed the T's yet. The only point I would raise in	24	contract objection. Would you like to hear that now, Your
25	addition to our papers, Your Honor, is in rebuttal to some of	25	Honor.
	123		125

212-267-6868

1	THE COURT: If it's an objection I think I would.	1	THE COURT: All right. Forgive me, but I know a
2	MR. WISLER: Understood. Your Honor, Connecticut	2	little bit about this area, and I still can't understand the
3	General Life Insurance, also known as CIGNA provides a range of	3	problem.
4	healthcare administrative services to GM and administers GM's	4	MR. WISLER: Well, Your Honor, if a debtor comes to
5	self-insured employee healthcare benefits plan for thousands of	5	the Court and does not identify the contract it wishes to
6	its employees.	6	assume and assign, I don't think the Court can permit that
7	CIGNA's objection isn't just critical to CIGNA, it's	7	assumption and assignment.
8	critical to GM, New GM and it's employees because we want to	8	THE COURT: Assuming arguendo that you're right, I
9	make sure that the debtors attempt to assume and assign the	9	mean after you had the dialogue with them you're saying they
10	arrangement it has with CIGNA gets the job done and assures	10	didn't tell you what contracts they wanted to assume and
11	that the employees of New GM will have the benefits that they	11	assign?
12	currently have now with Old GM. So while we do have a cure	12	MR. WISLER: Not to any specificity that anyone could
13	objection I understand that will be deferred.	13	use to identify these agreements.
14	Today's objection is more fundamental. And that is	14	The fundamental problem, being number one, that we
15	that the debtor has not given CIGNA or this Court what is	15	think there's one agreement and they think there's more than
16	necessary for this Court to approve the assumption and	16	one.
17	assignment of agreement. And there's three fundamental	17	THE COURT: But if the agreement with all of them
18	problems, Your Honor. First is, the debtor in its contract	18	what difference does that make?
19	notices identified what appeared to be eight separate contracts	19	MR. WISLER: If two parties don't agree what all
20	relating to CIGNA, but with no detail that we can comprehend.	20	means or, more specifically, if one party believes there's one
21	It simply has vendor numbers, contract numbers, row numbers, I	21	and one party believes there's multiple agreements, I don't
22	don't know what those are. CIGNA has looked at these, they're	22	think there's a meeting of the minds, Your Honor. And I'm
23	sophisticated business people, they don't know what these are.	23	certainly not standing up here saying this is not a resolvable
24	And we haven't received any clarification on what they are.	24	problem. Today's the day for the sale hearing, today's the day
25	Except that GM intends to assume and assign all of the CIGNA	25	we have to present our objection. We've attempted to come to
	126		128
1	contracts. Well that's meaningless also because we need to	1	resolution, we may actually be close to a resolution. But
2	know what they are, we need to make sure what we think is all	2	because we're not at a resolution I need to present this
3	and what they think is all, is the same thing. Because, in	3	objection to the Court.
4	fact, CIGNA's position is that there is one overriding	4	THE COURT: Okay. Make your remaining points.
5	contract, it's an administrative services contract. And under	5	MR. WISLER: Understood, Your Honor.
6	that are addendums, and riders, and amendments that encompas		THE COURT: And then I'll hear your adversary.
7	all of what CIGNA does for GM and its employee benefit plan.	, 0	MR. WISLER: Secondly, Your Honor, there are two bank
8	So to warrant this Court's approval of the assumption	8	accounts that make this plan work for GM and its employees.
9	and assignment of that agreement, the debtor needs to formally	9	And these bank accounts have authorization approvals between G
10	and unequivocally identify that contract and say to the Court	10	and CIGNA. And there has been no confirmation and no reference
11	and the contract and say to th	11	to it in the APA or the form of order and the motion that those
12		12	authorizations will continue. If they do not continue the
13	assign. THE COURT: Pause please, Mr. Wisler. What extent	13	-
13	did you or any of your guys pick up the phone and have a	13 14	self-insured plan that CIGNA administers will not work because there will be no money passing from one account to another to
14 15	did you or any of your guys pick up the phone and have a dialogue with the debtor to kind of exchange information and	14 15	pay employee benefit claims, employee healthcare claims.
15	get answers to each of those concerns?	15 16	So, again, until that is unequivocally and formally
10	MR. WISLER: Both sides have done that, Your Honor,	16 17	
17		18	confirmed we don't think any contracts, any of this particular contract that CIGNA has with GM can be assumed and assigned.
18	it is not yet resolved.	18 19	And, third, Your Honor, and very importantly, nowhere
	THE COURT: And help me understand the problem, because this stuff is done all the time. I didn't hear you	19 20	in the APA or the proposed form of order, or the motion, is
20			• •
21	accusing the debtor of cherry picking or trying to split apart	21	there confirmation that New GM will be responsible for
22	the master agreement, am I right that that's not your concern?	22	claims healthcare claims employee healthcare claims that
23	MR. WISLER: Given the debtors' statement that it	23	were incurred prior to closing but will not be processed and
24	wasn't to assume all of our contracts, I will assume that is	24	paid until after closing. That's very important because as
25	not the case.	25	claims come through a system they come through at different
	127		129

212-267-6868

2take so3the insu4then pa5line on6to be pa7questio8those ci9M10is yes, ti11T12years.13pre-pet14encoun15because16led you17on this18M19saying.20that it it21the ordi22incurrer23been ur24this obj25stated, '1know th2relief is,3of the C4unequiv5T6M7T8just to r9M10T11M12Weil Go13I'n14his clier15of Honi,'	MR. WISLER: No, Your Honor, that's what I was just g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	2 3 4 5 6 7 8 9 10 11 11 12 13 14 15 16 17	<ul> <li>which other of our suppliers, such as Medco who provide a similar service, has not requested. I haven't reviewed those document yet to the extent that they are not problematic we will provide them with the assurances they need. But to the extent that CIGNA does stand in our way of closing and transferring the employee benefits we will be back in front of you, Your Honor.</li> <li>THE COURT: All right, thank you. Okay. Can I now get to debtor reply.</li> <li>MR. MILLER: I hate to disappoint you, Your Honor, but the U.S. Attorney has asked to go first.</li> <li>THE COURT: Sure, Mr. Jones.</li> <li>MR. JONES: Thank you, Your Honor. We thought it appropriate to let GM have the last word, and so we'll have a short summation first.</li> <li>First, Mr. Schwartz is going to address, particularly, Your Honor's consent decree question, and then I'll have remarks on additional issues.</li> </ul>
3the inst4then pa5line on6to be pa7questio8those cl9M10is yes, t11T12years.13pre-pet14encoun15becausa16led you17on this18M19saying.20that it it21the ordi22incurre23been ur24this obj25stated, '1know th2relief is,3of the C4unequiv5T6M7T8just to r9M10T11M12Weil Go13In14his clier15of Honi,'	surance company has to process it. If it's approve it's baid. That takes time. There is no way to draw a bright n a closing date and say hey, these claims are not going paid, these claims aren't. It's not a cure issue, it's a tion of is New GM going to take responsibility for payin claims that were incurred prior to closing. My understanding with the discussions with the debtor , they are. But, again, that ahs not been THE COURT: I've encountered this issue over the . Whether you have to slice and dice whether a claim is tetition claim or post-petition claim. But I've never untered it with the context of the assume and assign, se it envisions a smooth transition. Has your dialogue but to believe that there's some difference in perception s one? MR. WISLER: No, Your Honor, that's what I was just g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	3 4 5 6 9 10 11 12 13 14 15 16 17 18 19	document yet to the extent that they are not problematic we will provide them with the assurances they need. But to the extent that CIGNA does stand in our way of closing and transferring the employee benefits we will be back in front of you, Your Honor. THE COURT: All right, thank you. Okay. Can I now get to debtor reply. MR. MILLER: I hate to disappoint you, Your Honor, but the U.S. Attorney has asked to go first. THE COURT: Sure, Mr. Jones. MR. JONES: Thank you, Your Honor. We thought it appropriate to let GM have the last word, and so we'll have a short summation first. First, Mr. Schwartz is going to address, particularly, Your Honor's consent decree question, and then
4then pa5line on6to be pa7question8those ci9M10is yes, t11T12years.13pre-pet14encount15becausa16led yout17on this18M19saying.20that it it21the ordition22incurrete23been ut24this obj25stated, T1know th2relief is,3of the C4unequiv5T6M7T8just to r9M10T11M12Weil Go13Th14his clier15of Honi	baid. That takes time. There is no way to draw a bright n a closing date and say hey, these claims are not going paid, these claims aren't. It's not a cure issue, it's a ion of is New GM going to take responsibility for payin claims that were incurred prior to closing. My understanding with the discussions with the debtor , they are. But, again, that ahs not been THE COURT: I've encountered this issue over the . Whether you have to slice and dice whether a claim is etition claim or post-petition claim. But I've never intered it with the context of the assume and assign, se it envisions a smooth transition. Has your dialogue ou to believe that there's some difference in perception s one? MR. WISLER: No, Your Honor, that's what I was just g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	4 5 6 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>will provide them with the assurances they need. But to the extent that CIGNA does stand in our way of closing and transferring the employee benefits we will be back in front of you, Your Honor.</li> <li>THE COURT: All right, thank you. Okay. Can I now get to debtor reply.</li> <li>MR. MILLER: I hate to disappoint you, Your Honor, but the U.S. Attorney has asked to go first.</li> <li>THE COURT: Sure, Mr. Jones.</li> <li>MR. JONES: Thank you, Your Honor. We thought it appropriate to let GM have the last word, and so we'll have a short summation first.</li> <li>First, Mr. Schwartz is going to address, particularly, Your Honor's consent decree question, and then</li> </ul>
5line on6to be pay7question8those of9M10is yes, to11T12years.13pre-pet14encound15because16led you17on this18M19saying.20that it it21the ord:22incurred23been und24this obj25stated, ord1know the2relief is,3of the C4unequiv5T6M7T8just to re9M10T11M12Weil Go13Fri14his clier15of Honi,	n a closing date and say hey, these claims are not going paid, these claims aren't. It's not a cure issue, it's a ion of is New GM going to take responsibility for payin claims that were incurred prior to closing. My understanding with the discussions with the debtor , they are. But, again, that ahs not been THE COURT: I've encountered this issue over the . Whether you have to slice and dice whether a claim is etition claim or post-petition claim. But I've never intered it with the context of the assume and assign, se it envisions a smooth transition. Has your dialogue ou to believe that there's some difference in perception s one? MR. WISLER: No, Your Honor, that's what I was just g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	extent that CIGNA does stand in our way of closing and transferring the employee benefits we will be back in front of you, Your Honor. THE COURT: All right, thank you. Okay. Can I now get to debtor reply. MR. MILLER: I hate to disappoint you, Your Honor, but the U.S. Attorney has asked to go first. THE COURT: Sure, Mr. Jones. MR. JONES: Thank you, Your Honor. We thought it appropriate to let GM have the last word, and so we'll have a short summation first. First, Mr. Schwartz is going to address, particularly, Your Honor's consent decree question, and then
6to be payed7question8those of9M10is yes, to11T12years.13pre-pet14encound15because16led youd17on this18M19saying.20that it it21the ord22incurred23been und24this obj25stated, down the2relief is,3of the C4unequive5T6M7T8just to re9M10T11M12Weil Go13Fr14his clier15of Honi,	paid, these claims aren't. It's not a cure issue, it's a ion of is New GM going to take responsibility for payin claims that were incurred prior to closing. My understanding with the discussions with the debtor , they are. But, again, that ahs not been THE COURT: I've encountered this issue over the . Whether you have to slice and dice whether a claim is etition claim or post-petition claim. But I've never intered it with the context of the assume and assign, se it envisions a smooth transition. Has your dialogue ou to believe that there's some difference in perception s one? MR. WISLER: No, Your Honor, that's what I was just g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	a 12 13 14 15 16 17 18 19	transferring the employee benefits we will be back in front of you, Your Honor. THE COURT: All right, thank you. Okay. Can I now get to debtor reply. MR. MILLER: I hate to disappoint you, Your Honor, but the U.S. Attorney has asked to go first. THE COURT: Sure, Mr. Jones. MR. JONES: Thank you, Your Honor. We thought it appropriate to let GM have the last word, and so we'll have a short summation first. First, Mr. Schwartz is going to address, particularly, Your Honor's consent decree question, and then
7       question         8       those ci         9       M         10       is yes, t         11       T         12       years.         13       pre-pet         14       encount         15       because         16       led you         17       on this         18       M         19       saying.         20       that it it         21       the ord         22       incurrent         23       been ur         24       this obj         25       stated, '         1       know th         2       of the C         4       unequiv         5       T         6       M         7       T         8       just to r         9       M         10       T         11       M         12       Weil Ge         13       In         14       his clier         15       of Honi,	ion of is New GM going to take responsibility for payin claims that were incurred prior to closing. My understanding with the discussions with the debtor , they are. But, again, that ahs not been THE COURT: I've encountered this issue over the . Whether you have to slice and dice whether a claim is etition claim or post-petition claim. But I've never intered it with the context of the assume and assign, se it envisions a smooth transition. Has your dialogue ou to believe that there's some difference in perception s one? MR. WISLER: No, Your Honor, that's what I was just g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	g 7 8 9 10 11 13 14 15 16 17 18 19	<ul> <li>you, Your Honor.</li> <li>THE COURT: All right, thank you. Okay. Can I now get to debtor reply.</li> <li>MR. MILLER: I hate to disappoint you, Your Honor, but the U.S. Attorney has asked to go first.</li> <li>THE COURT: Sure, Mr. Jones.</li> <li>MR. JONES: Thank you, Your Honor. We thought it appropriate to let GM have the last word, and so we'll have a short summation first.</li> <li>First, Mr. Schwartz is going to address, particularly, Your Honor's consent decree question, and then</li> </ul>
8those of9N10is yes, t11T12years.13pre-pet14encoun15because16led you17on this18M19saying.20that it it21the ord22incurrer23been ur24this obj25stated, '1know th2relief is,3of the C4unequiv5T6M7T8just to r9M10T11M12Weil Go13I'r14his clier15of Honi,	claims that were incurred prior to closing. My understanding with the discussions with the debtor , they are. But, again, that ahs not been THE COURT: I've encountered this issue over the . Whether you have to slice and dice whether a claim is etition claim or post-petition claim. But I've never untered it with the context of the assume and assign, se it envisions a smooth transition. Has your dialogue ou to believe that there's some difference in perception s one? MR. WISLER: No, Your Honor, that's what I was just g. My dialogue with the debtor indicates that this 'is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	8 9 10 11 13 14 15 16 17 18 19	THE COURT: All right, thank you. Okay. Can I now get to debtor reply. MR. MILLER: I hate to disappoint you, Your Honor, but the U.S. Attorney has asked to go first. THE COURT: Sure, Mr. Jones. MR. JONES: Thank you, Your Honor. We thought it appropriate to let GM have the last word, and so we'll have a short summation first. First, Mr. Schwartz is going to address, particularly, Your Honor's consent decree question, and then
9M10is yes, t11T12years.13pre-pet14encoun15because16led you17on this18M19saying.20that it it21the ordi22incurrer23been ur24this obj25stated,"1know th2relief is,3of the C4unequiv5T6M7T8just to r9M10T11M12Weil Go13Th14his clier15of Honi,	My understanding with the discussions with the debtor , they are. But, again, that ahs not been THE COURT: I've encountered this issue over the . Whether you have to slice and dice whether a claim is etition claim or post-petition claim. But I've never intered it with the context of the assume and assign, se it envisions a smooth transition. Has your dialogue ou to believe that there's some difference in perception s one? MR. WISLER: No, Your Honor, that's what I was just g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	9 10 11 12 13 14 15 16 17 18 19	get to debtor reply. MR. MILLER: I hate to disappoint you, Your Honor, but the U.S. Attorney has asked to go first. THE COURT: Sure, Mr. Jones. MR. JONES: Thank you, Your Honor. We thought it appropriate to let GM have the last word, and so we'll have a short summation first. First, Mr. Schwartz is going to address, particularly, Your Honor's consent decree question, and then
10is yes, t11T12years.13pre-pet14encoun15because16led you17on this18M19saying.20that it it21the ordi22incurre23been ur24this obj25stated,1know th2relief is,3of the C4unequiv5T6M7T8just to r9M10T11M12Weil Go13Fh14his clier15of Honi	, they are. But, again, that ahs not been THE COURT: I've encountered this issue over the Whether you have to slice and dice whether a claim is etition claim or post-petition claim. But I've never intered it with the context of the assume and assign, ise it envisions a smooth transition. Has your dialogue ou to believe that there's some difference in perception s one? MR. WISLER: No, Your Honor, that's what I was just g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	10 11 12 13 14 15 16 17 18 19	MR. MILLER: I hate to disappoint you, Your Honor, but the U.S. Attorney has asked to go first. THE COURT: Sure, Mr. Jones. MR. JONES: Thank you, Your Honor. We thought it appropriate to let GM have the last word, and so we'll have a short summation first. First, Mr. Schwartz is going to address, particularly, Your Honor's consent decree question, and then
11T12years.13pre-pet14encount15because16led you17on this18M19saying.20that it it21the ord22incurred23been und24this obj25stated,1know th2relief is,3of the C4unequive5T6M7T8just to re9M10T11M12Weil Go13In14his clier15of Honi	THE COURT: I've encountered this issue over the Whether you have to slice and dice whether a claim is etition claim or post-petition claim. But I've never intered it with the context of the assume and assign, se it envisions a smooth transition. Has your dialogue ou to believe that there's some difference in perception s one? MR. WISLER: No, Your Honor, that's what I was just g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	11 12 13 14 15 16 17 18 19	but the U.S. Attorney has asked to go first. THE COURT: Sure, Mr. Jones. MR. JONES: Thank you, Your Honor. We thought it appropriate to let GM have the last word, and so we'll have a short summation first. First, Mr. Schwartz is going to address, particularly, Your Honor's consent decree question, and then
12years.13pre-pet14encoun15because16led you17on this18M19saying.20that it it21the ord:22incurred23been und24this obj25stated, ord1know th2relief is,3of the C4unequiv5T6M7T8just to r9M10T11M12Weil Go13In14his clier15of Honi	Whether you have to slice and dice whether a claim is etition claim or post-petition claim. But I've never intered it with the context of the assume and assign, se it envisions a smooth transition. Has your dialogue ou to believe that there's some difference in perception s one? MR. WISLER: No, Your Honor, that's what I was just g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	a 12 13 14 15 16 17 18 19	THE COURT: Sure, Mr. Jones. MR. JONES: Thank you, Your Honor. We thought it appropriate to let GM have the last word, and so we'll have a short summation first. First, Mr. Schwartz is going to address, particularly, Your Honor's consent decree question, and then
13pre-pet14encoun15because16led you17on this18M19saying.20that it it21the ord22incurre23been ur24this obj25stated,1know th2relief is,3of the C4unequiv5T6M7T8just to r9M10T11M12Weil Ge13I'h14his clier15of Honi	etition claim or post-petition claim. But I've never intered it with the context of the assume and assign, use it envisions a smooth transition. Has your dialogue ou to believe that there's some difference in perception s one? MR. WISLER: No, Your Honor, that's what I was just g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	13 14 15 16 17 18 19	MR. JONES: Thank you, Your Honor. We thought it appropriate to let GM have the last word, and so we'll have a short summation first. First, Mr. Schwartz is going to address, particularly, Your Honor's consent decree question, and then
14encound15because16led youd17on this18M19saying.20that it is21the ords22incurred23been und24this obj25stated,1know the2relief is,3of the C4unequive5T6M7T8just to m9M10T11M12Weil Ge13In14his clier15of Honi,	Intered it with the context of the assume and assign, se it envisions a smooth transition. Has your dialogue ou to believe that there's some difference in perception s one? MR. WISLER: No, Your Honor, that's what I was just g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	14 15 16 17 18 19	appropriate to let GM have the last word, and so we'll have a short summation first. First, Mr. Schwartz is going to address, particularly, Your Honor's consent decree question, and then
15because16led you17on this18M19saying.20that it is21the ord:23been ur24this obj25stated,24this obj25stated,1know th2relief is,3of the C4unequiv5T6M7T8just to r9M10T11M12Weil Ge13In14his clier15of Honi,	se it envisions a smooth transition. Has your dialogue ou to believe that there's some difference in perception s one? MR. WISLER: No, Your Honor, that's what I was just g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	15 16 17 18 19	short summation first. First, Mr. Schwartz is going to address, particularly, Your Honor's consent decree question, and then
16led you17on this18M19saying.20that it it21the ordi22incurrer23been ur24this obj25stated, '26stated, '1know the2relief is,3of the C4unequiv5T6M7T8just to r9M10T11M12Weil Go13I'14his clier15of Honi,	bu to believe that there's some difference in perception s one? MR. WISLER: No, Your Honor, that's what I was just g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	16 17 18 19	First, Mr. Schwartz is going to address, particularly, Your Honor's consent decree question, and then
<ul> <li>17 on this</li> <li>18 M</li> <li>19 saying.</li> <li>20 that it is</li> <li>21 the ordi</li> <li>22 incurrence</li> <li>23 been ur</li> <li>24 this obj</li> <li>25 stated,</li> <li>1 know the</li> <li>2 relief is,</li> <li>3 of the C</li> <li>4 unequive</li> <li>5 T.</li> <li>6 M</li> <li>7 T.</li> <li>8 just to re</li> <li>9 M.</li> <li>10 T.</li> <li>11 MM</li> <li>12 Weil Go</li> <li>13 Pr</li> <li>14 his clier</li> <li>15 of Honi,</li> </ul>	s one? MR. WISLER: No, Your Honor, that's what I was just g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	17 18 19	particularly, Your Honor's consent decree question, and then
<ul> <li>18 M</li> <li>19 saying.</li> <li>20 that it is</li> <li>21 the ordination of the second se</li></ul>	MR. WISLER: No, Your Honor, that's what I was just g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	18 19	
<ul> <li>19 saying.</li> <li>20 that it it</li> <li>21 the ord:</li> <li>22 incurrent</li> <li>23 been ur</li> <li>24 this obj</li> <li>25 stated,</li> <li>25</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> <li>29</li> <li>20</li> <li>20</li> <li>21</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>25</li> <li>26</li> <li>27</li> <li>27</li> <li>28</li> <li>29</li> <li>20</li> <li>20</li> <li>20</li> <li>21</li> <li>21</li> <li>22</li> <li>22</li> <li>23</li> <li>24</li> <li>24</li> <li>24</li> <li>25</li> <li>25</li> <li>26</li> <li>27</li> <li>27</li> <li>28</li> <li>29</li> <li>20</li> <li>20</li> <li>21</li> <li>21</li> <li>22</li> <li>22</li> <li>23</li> <li>24</li> <li>24</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>27</li> <li>28</li> <li>29</li> <li>20</li> <li>20</li> <li>21</li> <li>21</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>24</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>27</li> <li>28</li> <li>29</li> <li>20</li> <li>20</li> <li>21</li> <li>21</li> <li>21</li> <li>22</li> <li>22</li> <li>23</li> <li>24</li> <li>24</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>27</li> <li>28</li> <li>29</li> <li>29</li> <li>20</li> <li>20</li> <li>21</li> <li>21</li> <li>21</li> <li>22</li> <li>22</li> <li>23</li> <li>24</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>26</li> <li>27</li> <li>27</li> <li>28</li> <li>29</li> <li>29</li> <li>20</li> <li>20</li> <li>21</li> <li>21</li> <li>22</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>27</li> <li>28</li> <li>29</li> <li>29</li> <li>29</li> <li>20</li> <li>20</li> <li>21</li> <li>21</li> <li>22</li> <li>24</li> <li>24<td>g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were</td><td>19</td><td>I'll have remarks on additional issues.</td></li></ul>	g. My dialogue with the debtor indicates that this is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	19	I'll have remarks on additional issues.
<ul> <li>20 that it it</li> <li>21 the ordination of the ordinatio</li></ul>	is New GM's intent to just continue to pay claims in dinary course of business regardless of when they were	1	
<ul> <li>21 the ord:</li> <li>22 incurrence</li> <li>23 been ur</li> <li>24 this obj</li> <li>25 stated,</li> <li>1 know the</li> <li>2 relief is,</li> <li>3 of the C</li> <li>4 unequiv</li> <li>5 T</li> <li>6 MM</li> <li>7 T</li> <li>8 just to re</li> <li>9 MM</li> <li>10 T</li> <li>11 MM</li> <li>12 Weil Ge</li> <li>13 In</li> <li>14 his clier</li> <li>15 of Honi,</li> </ul>	dinary course of business regardless of when they were	20	THE COURT: Sure. Mr. Schwartz.
<ul> <li>22 incurrent</li> <li>23 been ur</li> <li>24 this obj</li> <li>25 stated, 1</li> <li>1 know th</li> <li>2 relief is,</li> <li>3 of the C</li> <li>4 unequiv</li> <li>5 T</li> <li>6 M</li> <li>7 T</li> <li>8 just to re</li> <li>9 M</li> <li>10 T</li> <li>11 M</li> <li>12 Weil Ge</li> <li>13 In</li> <li>14 his clier</li> <li>15 of Honi,</li> </ul>			MS. CORDRY: Your Honor?
<ul> <li>23 been ur</li> <li>24 this obj</li> <li>25 stated, '</li> <li>1 know th</li> <li>2 relief is,</li> <li>3 of the C</li> <li>4 unequiv</li> <li>5 T:</li> <li>6 M</li> <li>7 T:</li> <li>8 just to re</li> <li>9 M</li> <li>10 T:</li> <li>11 MM</li> <li>12 Weil Go</li> <li>13 In</li> <li>14 his clier</li> <li>15 of Honi,</li> </ul>		21	THE COURT: Ms. Cordry?
<ul> <li>24 this obj</li> <li>25 stated,</li> <li>1 know th</li> <li>2 relief is,</li> <li>3 of the C</li> <li>4 unequiv</li> <li>5 T.</li> <li>6 M.</li> <li>7 T.</li> <li>8 just to re</li> <li>9 M.</li> <li>10 T.</li> <li>11 M.</li> <li>12 Weil Go</li> <li>13 P.</li> <li>14 his clier</li> <li>15 of Honi,</li> </ul>	red. But, again, that has not been formalized, it has not	22	MS. CORDRY: Yes, sir. Karen Cordry from National
<ul> <li>25 stated,</li> <li>1 know th</li> <li>2 relief is,</li> <li>3 of the C</li> <li>4 unequiv</li> <li>5 T</li> <li>6 Mi</li> <li>7 T</li> <li>8 just to r</li> <li>9 Mi</li> <li>10 T</li> <li>11 Mi</li> <li>12 Weil Go</li> <li>13 In</li> <li>14 his clier</li> <li>15 of Honi,</li> </ul>	unequivocally stated. Today's the day I have to present	23	Association of Attorneys Generals.
1know th2relief is,3of the C4unequiv5T6M7T8just to r9M10T11M12Weil Go13In14his clier15of Honi,	bjection. If it's not formalized or unequivocally	24	We've been working with the debtors late into the
<ul> <li>2 relief is,</li> <li>3 of the C</li> <li>4 unequiv</li> <li>5 T</li> <li>6 M</li> <li>7 T</li> <li>8 just to re</li> <li>9 M</li> <li>10 T</li> <li>11 M</li> <li>12 Weil Ge</li> <li>13 In</li> <li>14 his clier</li> <li>15 of Honi,</li> </ul>	, we have a problem is we go into closing and we don't	25	night and this morning, and all this time. I think we're at
<ul> <li>2 relief is,</li> <li>3 of the C</li> <li>4 unequiv</li> <li>5 T</li> <li>6 M</li> <li>7 T</li> <li>8 just to re</li> <li>9 M</li> <li>10 T</li> <li>11 M</li> <li>12 Weil Ge</li> <li>13 In</li> <li>14 his clier</li> <li>15 of Honi,</li> </ul>	130		132
<ul> <li>2 relief is,</li> <li>3 of the C</li> <li>4 unequiv</li> <li>5 T</li> <li>6 M</li> <li>7 T</li> <li>8 just to re</li> <li>9 M</li> <li>10 T</li> <li>11 M</li> <li>12 Weil Ge</li> <li>13 In</li> <li>14 his clier</li> <li>15 of Honi,</li> </ul>			
3of the C4unequiv5T6M7T8just to r9M10T11M12Weil Go13I'r14his clier15of Honi,	the answer to that question. So our simple request for	1	close to an agreement. But the discussion we've been having
<ul> <li>4 unequiv</li> <li>5 T</li> <li>6 M</li> <li>7 T</li> <li>8 just to r</li> <li>9 M</li> <li>10 T</li> <li>11 M</li> <li>12 Weil Go</li> <li>13 I'r</li> <li>14 his clier</li> <li>15 of Honi,</li> </ul>	is, Your Honor, do not approve assumption and assignment	2	with them when we had the terms in the order we would be able
5 T. 6 M 7 T 8 just to r 9 M 10 T 11 M 12 Weil Go 13 In 14 his clier 15 of Honi	CIGNA agreement until the debtor formally and	3	to say we have a resolution that I am still in the process of
6 M 7 T 8 just to r 9 M 10 T 11 M 12 Weil Go 13 In 14 his clier 15 of Honi	ivocally clarifies those three points.	4	getting all the attorneys general to sign on to that. If it
<ul> <li>7 T.</li> <li>8 just to re</li> <li>9 Me</li> <li>10 T.</li> <li>11 Me</li> <li>12 Weil Ge</li> <li>13 In</li> <li>14 his clier</li> <li>15 of Honi,</li> </ul>	THE COURT: Thank you, Mr. Wisler.	5	didn't then we would be in position to weave our objections on
8 just to r 9 M 10 T 11 M 12 Weil Ge 13 I'n 14 his clier 15 of Honi	MR. WISLER: Thank you, Your Honor.	6	the record, if the order is not done. I didn't realize I was
9 M 10 T 11 M 12 Weil Go 13 I'n 14 his clier 15 of Honi	THE COURT: Mr. Smolinsky, you're rising. Is this	7	momentarily distracted, we got it in of everybody else there.
10         T           11         M           12         Weil Go           13         In           14         his clier           15         of Honi,	respond to what Mr. Wisler said?	8	I think we are very close to having that. I guess I
11M12Weil Go13I'n14his clier15of Honi	MR. SMOLINSKY: Yes, it is.	9	would just like to reserve my right to state where that whole
<ol> <li>Weil Go</li> <li>Weil Go</li> <li>I's</li> <li>I's</li> <li>his clier</li> <li>of Honi</li> </ol>	THE COURT: Sure, come on up.	10	position is. I don't want to necessarily hold up all this.
13I'm14his clier15of Honig	MR. SMOLINSKY: Your Honor, again, Joe Smolinsky fro	1	And I don't think anything I would say with that would
14his clier15of Honi		12	necessarily require them to have any different rebuttal than
15 of Honi	I'm not sure if Mr. Wisler is in communication with	13	they would have.
	ent. We are aware of the CIGNA situation. Seth Drucker	14	THE COURT: What's your recommendation, Ms. Cordry
	nigman Miller has been working with Janice Heulig, who is	15	do I let Mr. Schwartz or Mr. Miller speak? Maybe you'll have
	ad of HR at GM. I've received no fewer than a dozen e-	16	the answer again. Otherwise, I assume that on issues that
	over the last forty-eight hours specifically with respect	17	haven't been resolved to your satisfaction I have your papers.
		18	But I also sense that you're so close to the go line that
-	GNA. We are assuming the CIGNA contracts. We have	19	you're saying it might help me to do my job if you have some
	GNA. We are assuming the CIGNA contracts. We have led them with the with a lot of information. In fact,		news to report to me.
	GNA. We are assuming the CIGNA contracts. We have led them with the with a lot of information. In fact, anor, an employee of GM who is on vacation this week, car	21	MS. CORDRY: Yes. I think in the same way that you
-	GNA. We are assuming the CIGNA contracts. We have led them with the with a lot of information. In fact, anor, an employee of GM who is on vacation this week, can o the office to put together the documents that CIGNA has	22	were saying that other people were trying to work towards
-	GNA. We are assuming the CIGNA contracts. We have led them with the with a lot of information. In fact, anor, an employee of GM who is on vacation this week, can o the office to put together the documents that CIGNA has sted. There are bank accounts that need to be moved, the		reporting, I hope I'm going to be in that position as soon as I
	GNA. We are assuming the CIGNA contracts. We have led them with the with a lot of information. In fact, anor, an employee of GM who is on vacation this week, can o the office to put together the documents that CIGNA has sted. There are bank accounts that need to be moved, the any is in the process of moving those bank accounts.	23	hear back their last couple of words or two on that page.
25 a variety	GNA. We are assuming the CIGNA contracts. We have led them with the with a lot of information. In fact, anor, an employee of GM who is on vacation this week, car o the office to put together the documents that CIGNA has sted. There are bank accounts that need to be moved, the uny is in the process of moving those bank accounts. As I understand it, CIGNA has requested execution of	24	
	GNA. We are assuming the CIGNA contracts. We have led them with the with a lot of information. In fact, anor, an employee of GM who is on vacation this week, can o the office to put together the documents that CIGNA has sted. There are bank accounts that need to be moved, the any is in the process of moving those bank accounts.	24	THE COURT: Let's agree that as of this point the 133

212-267-6868

1	train hasn't left the station. If you need to be heard after	1	the debtor under a consent decree are to pay money does not
2	everybody else is done, I'll give you that chance, subject to	2	necessarily mean that it is a claim within the meaning of the
3	anybody else's rights to express a different view if you need	3	Bankruptcy Code. I think that's enough for today's purposes.
4	to.	4	Because ultimately the objection that Mr. Bernstein raised is
5	MS. CORDRY: Okay. And when I do that I would	5	not an objection to the sale. His consent decree is either
6	certainly keep in mind Your Honor has heard a great deal on a	6	enforceable against GM or it isn't. So that obligation will
7	great many topics that we had in our papers.	7	either be treated as an unsecured claim, or it will be
8	THE COURT: Yes. I've also heard capable arguments.	8	enforceable and so they will have to pay in full. But either
9	MS. CORDRY: Exactly, every capable arguments, far	9	way, the claim is against OldCo. The claim is not against
10	beyond what I was probably planning on doing. So anything that	10	NewCo. There's no basis, as Mr. Bernstein suggests, to go into
11	I would say would be specifically on very short points and	11	the MSPA and rewrite excluded liabilities to add his consent
12	other issues that people definitely have no raised to this	12	decree. That's the only issue on today's record. And so Mr.
13	point. So thank you, Your Honor.	13	Bernstein's objection should be denied and we can take up the
14	THE COURT: Okay.	14	more substantive issues on a
15	MR. MILLER: Your Honor, there will be one other	15	THE COURT: To be denied without prejudice to his
16	speaker. I understand that the UAW would also like to speak.	16	raising it in a different context against OldCo.
17	THE COURT: Is this a good time, or would the UAW be	17	MR. SCHWARTZ: Against OldCo, correct.
18	speaking after the U.S. and the debtor?	18	THE COURT: Okay.
19	MR. MILLER: After the Treasury, Your Honor.	19	MR. SCHWARTZ: Against NewCo it's just essentially
20	MR. SCHWARTZ: Why don't I make my remarks which will		the successor liability issue.
21	take about a minute, and then Mr. Jones and Mr. Bromley can	21	THE COURT: Okay. All right, Mr. Jones?
22	discuss their order.	22	MR. JONES: Thank you, Your Honor.
23	I just wanted to address Matthew Schwartz for the	23	Your Honor, the government simply is not sacrificing
24	United States, the questions Your Honor asked about	24	principles for expediency as it has been accused of doing. Far
25	environmental consent decrees because, of course, we're here	25	from it. We are using established law to purchase assets full
2.5	134	20	136
1	representing the United States, including the Environmental	1	stop. Specifically, the government sponsored purchasing entity
2	Protection Agency.	2	is purchasing the pieces necessary to operate the strongest
3	Your Honor asked two specific questions, I'd like to	3	possible New GM. This is a liquidating estate, there's no
4	quickly provide answers and then suggest why it is you don't	4	dispute about that. There is no alternative and no scenario in
5	have to answer those questions yourself today on this motion.	5	which this bankruptcy proceeding ends in anything other than
6	First, I heard the Court ask yesterday whether an	6	some form of liquidation. And as in any liquidation
7	environmental consent decrees is a contract an executory	7	proceeding, the goal is to maximize recoveries and
8	contract that can be rejected by a debtor in bankruptcy. As	8	distributions to the estate and its creditors.
9	Mr. Bernstein said, a consent decree has features of contract	9	So what is before the Court today is simply an asset
10	and features of order. But I think the law is relative clear	10	sale. It's not a plan. What is before the Court does not
11	that they are not executory contracts that can be rejected. I	11	dictate anything about the treatment of any creditor going
12	would point you to Judge Coudle's (ph.) opinion in New York v.	12	forward in the bankruptcy proceedings which will remain in
13	Mirant. That's at 300 B.R. 174 at page 181.	13	place. The evidence is clear that this sale achieves far and
		13	
14	The further question that Your Honor asked today, I	14 15	away the highest possible recovery for the assets being sold.
16	think the important question is whether a surrout des	1.0	And as is salient for legal purposes, vastly in excess of their
15	think the important question, is whether a consent decrees is,		
16	therefore, enforceable against the debtor. And as Your Honor	16	liquidation value which is the only legally relevant or
16 17	therefore, enforceable against the debtor. And as Your Honor said that turns on whether the consent decree creates a	16 17	liquidation value which is the only legally relevant or possible alternative scenario.
16 17 18	therefore, enforceable against the debtor. And as Your Honor said that turns on whether the consent decree creates a monetary or injunctive obligation. Whether it embodies a claim	16 17 18	liquidation value which is the only legally relevant or possible alternative scenario. The evidence also shows that the opportunity to
16 17 18 19	therefore, enforceable against the debtor. And as Your Honor said that turns on whether the consent decree creates a monetary or injunctive obligation. Whether it embodies a claim within the meaning of the Bankruptcy Code that's Chateaugay in	16 17 18 19	liquidation value which is the only legally relevant or possible alternative scenario. The evidence also shows that the opportunity to achieve value through the sale is fleeting. And that the
16 17 18 19 20	therefore, enforceable against the debtor. And as Your Honor said that turns on whether the consent decree creates a monetary or injunctive obligation. Whether it embodies a claim within the meaning of the Bankruptcy Code that's Chateaugay in the Second Circuit, Trouweko in the Third Circuit. That is a	16 17 18 19 20	liquidation value which is the only legally relevant or possible alternative scenario. The evidence also shows that the opportunity to achieve value through the sale is fleeting. And that the achievable value of this of any portion of General Motors is
16 17 18 19 20 21	therefore, enforceable against the debtor. And as Your Honor said that turns on whether the consent decree creates a monetary or injunctive obligation. Whether it embodies a claim within the meaning of the Bankruptcy Code that's Chateaugay in the Second Circuit, Trouweko in the Third Circuit. That is a remarkably fact-intensive inquiry. And the fact	16 17 18 19 20 21	liquidation value which is the only legally relevant or possible alternative scenario. The evidence also shows that the opportunity to achieve value through the sale is fleeting. And that the achievable value of this of any portion of General Motors is fragile and soon will be lost if not seized now.
16 17 18 19 20 21 22	therefore, enforceable against the debtor. And as Your Honor said that turns on whether the consent decree creates a monetary or injunctive obligation. Whether it embodies a claim within the meaning of the Bankruptcy Code that's Chateaugay in the Second Circuit, Trouweko in the Third Circuit. That is a remarkably fact-intensive inquiry. And the fact THE COURT: Depends on what the decree actually says.	16 17 18 19 20 21 22	liquidation value which is the only legally relevant or possible alternative scenario. The evidence also shows that the opportunity to achieve value through the sale is fleeting. And that the achievable value of this of any portion of General Motors is fragile and soon will be lost if not seized now. There will be a plan as this case progresses. Again,
16 17 18 19 20 21 22 23	therefore, enforceable against the debtor. And as Your Honor said that turns on whether the consent decree creates a monetary or injunctive obligation. Whether it embodies a claim within the meaning of the Bankruptcy Code that's Chateaugay in the Second Circuit, Trouweko in the Third Circuit. That is a remarkably fact-intensive inquiry. And the fact THE COURT: Depends on what the decree actually says. MR. SCHWARTZ: That's right. And I've only skimmed	16 17 18 19 20 21 22 23	liquidation value which is the only legally relevant or possible alternative scenario. The evidence also shows that the opportunity to achieve value through the sale is fleeting. And that the achievable value of this of any portion of General Motors is fragile and soon will be lost if not seized now. There will be a plan as this case progresses. Again, the case will go forward and there are mechanisms to ensure the
16 17 18 19 20 21 22 23 24	therefore, enforceable against the debtor. And as Your Honor said that turns on whether the consent decree creates a monetary or injunctive obligation. Whether it embodies a claim within the meaning of the Bankruptcy Code that's Chateaugay in the Second Circuit, Trouweko in the Third Circuit. That is a remarkably fact-intensive inquiry. And the fact THE COURT: Depends on what the decree actually says. MR. SCHWARTZ: That's right. And I've only skimmed the consent decree that Mr. Bernstein was speaking to, but I'll	16 17 18 19 20 21 22 23 24	liquidation value which is the only legally relevant or possible alternative scenario. The evidence also shows that the opportunity to achieve value through the sale is fleeting. And that the achievable value of this of any portion of General Motors is fragile and soon will be lost if not seized now. There will be a plan as this case progresses. Again, the case will go forward and there are mechanisms to ensure the estate will remain administratively solvent and funded through
16 17 18 19 20 21 22 23	therefore, enforceable against the debtor. And as Your Honor said that turns on whether the consent decree creates a monetary or injunctive obligation. Whether it embodies a claim within the meaning of the Bankruptcy Code that's Chateaugay in the Second Circuit, Trouweko in the Third Circuit. That is a remarkably fact-intensive inquiry. And the fact THE COURT: Depends on what the decree actually says. MR. SCHWARTZ: That's right. And I've only skimmed	16 17 18 19 20 21 22 23 24	liquidation value which is the only legally relevant or possible alternative scenario. The evidence also shows that the opportunity to achieve value through the sale is fleeting. And that the achievable value of this of any portion of General Motors is fragile and soon will be lost if not seized now. There will be a plan as this case progresses. Again, the case will go forward and there are mechanisms to ensure the

212-267-6868

1	procedures under the Bankruptcy Code will provide the frameworl	: 1	supports the relief sought today, the ruling was correct on its
2	for determining the respect of recoveries for all parties-in-	2	own terms, as shown in ours and GM's papers, and that ruling
3	interest	3	simply controls here.
4	Your Honor, the evidence is unambiguous and	4	Your Honor, I won't elaborate, although and go
5	unrebutted that the government has no intention of funding this	5	into
6	deal if an order is not in place by July 10th. Mr. Richman	6	THE COURT: That ruling being Chrysler, you're
7	speculates that the government doesn't really mean it, and that	7	saying?
8	the government will fund beyond that date if Your Honor just	8	MR. JONES: I'm sorry?
9	calls our supposed bluff. But, Your Honor, speculation does	9	THE COURT: That ruling being Chrysler?
10	not trump evidence. There is no evidence of bad faith and	10	MR. JONES: Correct, Your Honor. And through
11	there is no evidence undermining what the government has	11	Chrysler, because it expressly adopted TWA, TWA's analysis as
12	plainly stated in Court during these proceedings.	12	well.
13	To the contrary, Mr. Wilson was extraordinary	13	THE COURT: Um-hum.
14	forthright and he explained compellingly and without hesitation	14	MR. JONES: Your Honor, I'm not going to go into
15	what steps the government has taken in regards to General	15	detail on objections. I expect that Weil will address those
16	Motors so far. And the reasons for those actions. And its	16	very ably, more than ably. I want to take a moment to thank
17	plans for its future actions with regard to New GM.	17	the extraordinary assistance provided throughout these
18	Your Honor, the gamble that Mr. Richman asks the	18	proceedings by the Cadwalader who is not authorized to
19	Court to take would be extraordinarily risky and contrary to	19	represent the government in court but has done a fantastic job
20	the best interest of the estate. In fact, he concedes that the	20	of supporting us in our endeavors and in serving the government
21	risk he asks the Court to take today would, in fact, breach the	21	as a whole. And, Your Honor, in closing, let me simply urge
22	fiduciary duty if undertaken by GM itself. It is clear that the	22	the Court that for the reasons stated and supported by the
23	Court cannot require a lender to lend. It is clear that the	23	evidence presented to the Court over these three days, the
24	Court cannot compel a buyer to buy.	24	Court should grant the 363 sale motion. Thank you.
25	This transaction is certain. It is here today. It	25	THE COURT: Thank you.
	138		140
1	is extraordinarily favorable, and it is the only one insight.	1	Sure, Mr. Schein, come on up.
2	The purchase fully complies with all applicable law, including	2	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can
2 3	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in	2 3	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as
2 3 4	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to	2 3 4	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the
2 3 4 5	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully	2 3 4 5	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export
2 3 4 5 6	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge	2 3 4 5 6	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada.
2 3 4 5 6 7	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third	2 3 4 5 6 7	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was
2 3 4 5 6 7 8	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by	2 3 4 5 6 7 8	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to
2 3 4 5 6 7 8 9	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That	2 3 4 5 6 7 8 9	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise
2 3 4 5 6 7 8	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a	2 3 4 5 ; 6 7 8 9 10	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th
2 3 4 5 6 7 8 9 10 11	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a sale free and clear of claims, both known and unknown, and it	2 3 4 5 6 7 8 9 10 11	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th milestone, not defer their fund, he made a statement that that
2 3 4 5 6 7 8 9 10 11 12	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a sale free and clear of claims, both known and unknown, and it further enjoined claims in the future being brought against the	2 3 4 5 7 8 9 10 11 12	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th milestone, not defer their fund, he made a statement that that would be an implied breach of covenant of fair dealing and good
2 3 4 5 6 7 8 9 10 11 12 13	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a sale free and clear of claims, both known and unknown, and it further enjoined claims in the future being brought against the purchaser of the assets.	2 3 4 5 7 8 9 10 11 12 13	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th milestone, not defer their fund, he made a statement that that would be an implied breach of covenant of fair dealing and good faith and that maybe that would give rise to a contract claim
2 3 4 5 6 7 8 9 10 11 12 13 14	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a sale free and clear of claims, both known and unknown, and it further enjoined claims in the future being brought against the purchaser of the assets. Your Honor, the I know Your Honor's made reference	2 3 4 5 ; 6 7 8 9 10 11 12 13 14	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th milestone, not defer their fund, he made a statement that that would be an implied breach of covenant of fair dealing and good faith and that maybe that would give rise to a contract claim by the committee.
2 3 4 5 6 7 8 9 10 11 12 13 14 15	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a sale free and clear of claims, both known and unknown, and it further enjoined claims in the future being brought against the purchaser of the assets. Your Honor, the I know Your Honor's made reference to reading the transcript of arguments before the Second	2 3 4 5 7 8 9 10 11 12 13 14 15	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th milestone, not defer their fund, he made a statement that that would be an implied breach of covenant of fair dealing and good faith and that maybe that would give rise to a contract claim by the committee. I'd just like to give the Court a cite that expressly
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a sale free and clear of claims, both known and unknown, and it further enjoined claims in the future being brought against the purchaser of the assets. Your Honor, the I know Your Honor's made reference to reading the transcript of arguments before the Second Circuit, and I will not undertake here a detailed exegesis of	2 3 4 5 7 8 9 10 11 12 13 14 15 16	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th milestone, not defer their fund, he made a statement that that would be an implied breach of covenant of fair dealing and good faith and that maybe that would give rise to a contract claim by the committee. I'd just like to give the Court a cite that expressly rejects that argument so the Court's aware that if that right
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a sale free and clear of claims, both known and unknown, and it further enjoined claims in the future being brought against the purchaser of the assets. Your Honor, the I know Your Honor's made reference to reading the transcript of arguments before the Second Circuit, and I will not undertake here a detailed exegesis of the interlocking provisions of the Bankruptcy Code. But I will	2 3 4 5 7 8 9 10 11 12 13 14 15 16 17	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th milestone, not defer their fund, he made a statement that that would be an implied breach of covenant of fair dealing and good faith and that maybe that would give rise to a contract claim by the committee. I'd just like to give the Court a cite that expressly rejects that argument so the Court's aware that if that right is exercised. Specifically, Your Honor, it is Mirax Chemical
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a sale free and clear of claims, both known and unknown, and it further enjoined claims in the future being brought against the purchaser of the assets. Your Honor, the I know Your Honor's made reference to reading the transcript of arguments before the Second Circuit, and I will not undertake here a detailed exegesis of the interlocking provisions of the Bankruptcy Code. But I will note that Fiat's counsel did an extraordinarily abled job of	2 3 4 5 7 8 9 10 11 12 13 14 15 16 17 18	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th milestone, not defer their fund, he made a statement that that would be an implied breach of covenant of fair dealing and good faith and that maybe that would give rise to a contract claim by the committee. I'd just like to give the Court a cite that expressly rejects that argument so the Court's aware that if that right is exercised. Specifically, Your Honor, it is Mirax Chemical Products Corp. v. First Interstate Commercial Corp., and Eighth
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a sale free and clear of claims, both known and unknown, and it further enjoined claims in the future being brought against the purchaser of the assets. Your Honor, the I know Your Honor's made reference to reading the transcript of arguments before the Second Circuit, and I will not undertake here a detailed exegesis of the interlocking provisions of the Bankruptcy Code. But I will note that Fiat's counsel did an extraordinarily abled job of doing just that in arguing before the Second Circuit. So, for	2 3 4 5 7 8 9 10 11 12 13 14 15 16 17 18 19	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th milestone, not defer their fund, he made a statement that that would be an implied breach of covenant of fair dealing and good faith and that maybe that would give rise to a contract claim by the committee. I'd just like to give the Court a cite that expressly rejects that argument so the Court's aware that if that right is exercised. Specifically, Your Honor, it is Mirax Chemical Products Corp. v. First Interstate Commercial Corp., and Eighth Circuit Court of Appeals Case, 950 F.2d 566. And just one
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a sale free and clear of claims, both known and unknown, and it further enjoined claims in the future being brought against the purchaser of the assets. Your Honor, the I know Your Honor's made reference to reading the transcript of arguments before the Second Circuit, and I will not undertake here a detailed exegesis of the interlocking provisions of the Bankruptcy Code. But I will note that Fiat's counsel did an extraordinarily abled job of doing just that in arguing before the Second Circuit. So, for my purposes today, Your Honor, I'll limit myself to saying the	2 3 4 5 7 8 9 10 11 12 13 14 15 16 17 18 19 20	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th milestone, not defer their fund, he made a statement that that would be an implied breach of covenant of fair dealing and good faith and that maybe that would give rise to a contract claim by the committee. I'd just like to give the Court a cite that expressly rejects that argument so the Court's aware that if that right is exercised. Specifically, Your Honor, it is Mirax Chemical Products Corp. v. First Interstate Commercial Corp., and Eighth Circuit Court of Appeals Case, 950 F.2d 566. And just one statement. The Court said that that duty, which was the duty
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a sale free and clear of claims, both known and unknown, and it further enjoined claims in the future being brought against the purchaser of the assets. Your Honor, the I know Your Honor's made reference to reading the transcript of arguments before the Second Circuit, and I will not undertake here a detailed exegesis of the interlocking provisions of the Bankruptcy Code. But I will note that Fiat's counsel did an extraordinarily abled job of doing just that in arguing before the Second Circuit. So, for my purposes today, Your Honor, I'll limit myself to saying the case law is very clear and establishes that exactly what is	2 3 4 5 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th milestone, not defer their fund, he made a statement that that would be an implied breach of covenant of fair dealing and good faith and that maybe that would give rise to a contract claim by the committee. I'd just like to give the Court a cite that expressly rejects that argument so the Court's aware that if that right is exercised. Specifically, Your Honor, it is Mirax Chemical Products Corp. v. First Interstate Commercial Corp., and Eighth Circuit Court of Appeals Case, 950 F.2d 566. And just one statement. The Court said that that duty, which was the duty of good faith and fair dealing, however, cannot be breached by
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a sale free and clear of claims, both known and unknown, and it further enjoined claims in the future being brought against the purchaser of the assets. Your Honor, the I know Your Honor's made reference to reading the transcript of arguments before the Second Circuit, and I will not undertake here a detailed exegesis of the interlocking provisions of the Bankruptcy Code. But I will note that Fiat's counsel did an extraordinarily abled job of doing just that in arguing before the Second Circuit. So, for my purposes today, Your Honor, I'll limit myself to saying the case law is very clear and establishes that exactly what is happening here today is permissible and entirely authorized by	2 3 4 5 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th milestone, not defer their fund, he made a statement that that would be an implied breach of covenant of fair dealing and good faith and that maybe that would give rise to a contract claim by the committee. I'd just like to give the Court a cite that expressly rejects that argument so the Court's aware that if that right is exercised. Specifically, Your Honor, it is Mirax Chemical Products Corp. v. First Interstate Commercial Corp., and Eighth Circuit Court of Appeals Case, 950 F.2d 566. And just one statement. The Court said that that duty, which was the duty of good faith and fair dealing, however, cannot be breached by actions that are specifically authorized in an agreement.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a sale free and clear of claims, both known and unknown, and it further enjoined claims in the future being brought against the purchaser of the assets. Your Honor, the I know Your Honor's made reference to reading the transcript of arguments before the Second Circuit, and I will not undertake here a detailed exegesis of the interlocking provisions of the Bankruptcy Code. But I will note that Fiat's counsel did an extraordinarily abled job of doing just that in arguing before the Second Circuit. So, for my purposes today, Your Honor, I'll limit myself to saying the case law is very clear and establishes that exactly what is happening here today is permissible and entirely authorized by Section 363.	2 3 4 5 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th milestone, not defer their fund, he made a statement that that would be an implied breach of covenant of fair dealing and good faith and that maybe that would give rise to a contract claim by the committee. I'd just like to give the Court a cite that expressly rejects that argument so the Court's aware that if that right is exercised. Specifically, Your Honor, it is Mirax Chemical Products Corp. v. First Interstate Commercial Corp., and Eighth Circuit Court of Appeals Case, 950 F.2d 566. And just one statement. The Court said that that duty, which was the duty of good faith and fair dealing, however, cannot be breached by actions that are specifically authorized in an agreement. That's just the one clarification, Your Honor. Thank you.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a sale free and clear of claims, both known and unknown, and it further enjoined claims in the future being brought against the purchaser of the assets. Your Honor, the I know Your Honor's made reference to reading the transcript of arguments before the Second Circuit, and I will not undertake here a detailed exegesis of the interlocking provisions of the Bankruptcy Code. But I will note that Fiat's counsel did an extraordinarily abled job of doing just that in arguing before the Second Circuit. So, for my purposes today, Your Honor, I'll limit myself to saying the case law is very clear and establishes that exactly what is happening here today is permissible and entirely authorized by Section 363. So and, Your Honor, in addition to being law, case	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th milestone, not defer their fund, he made a statement that that would be an implied breach of covenant of fair dealing and good faith and that maybe that would give rise to a contract claim by the committee. I'd just like to give the Court's aware that if that right is exercised. Specifically, Your Honor, it is Mirax Chemical Products Corp. v. First Interstate Commercial Corp., and Eighth Circuit Court of Appeals Case, 950 F.2d 566. And just one statement. The Court said that that duty, which was the duty of good faith and fair dealing, however, cannot be breached by actions that are specifically authorized in an agreement. That's just the one clarification, Your Honor. Thank you. THE COURT: Thank you.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	The purchase fully complies with all applicable law, including Section 363 of the Code. The Second Circuit just recently in Chrysler heard these issues squarely, and intensively argued to it in an appeal from Judge Gonzalez's decision which also fully considered the very arguments here today. And of course Judge Gonzalez explicitly adopted and followed TWA, the Third Circuit's decision in TWA and has, in turn, been affirmed by the Second Circuit for the reasons Judge Gonzalez stated. That TWA order, just as the Chrysler order, expressly affirmed a sale free and clear of claims, both known and unknown, and it further enjoined claims in the future being brought against the purchaser of the assets. Your Honor, the I know Your Honor's made reference to reading the transcript of arguments before the Second Circuit, and I will not undertake here a detailed exegesis of the interlocking provisions of the Bankruptcy Code. But I will note that Fiat's counsel did an extraordinarily abled job of doing just that in arguing before the Second Circuit. So, for my purposes today, Your Honor, I'll limit myself to saying the case law is very clear and establishes that exactly what is happening here today is permissible and entirely authorized by Section 363.	2 3 4 5 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	MR. SCHEIN: Yes, Your Honor. So that Mr. Miller can have his final comment, I'm not adding any further comments as to Export Development Canada's position. First of all, for the record, Michael Schein, Vedder Price, on behalf of Export Development Canada for the governments of Ontario and Canada. I just want to clarify one legal point that was raised yesterday by Mr., I believe, Jakubowski with respect to an argument that he said was that if the DIP lenders exercise their rights under the loan agreement come the July 10th milestone, not defer their fund, he made a statement that that would be an implied breach of covenant of fair dealing and good faith and that maybe that would give rise to a contract claim by the committee. I'd just like to give the Court a cite that expressly rejects that argument so the Court's aware that if that right is exercised. Specifically, Your Honor, it is Mirax Chemical Products Corp. v. First Interstate Commercial Corp., and Eighth Circuit Court of Appeals Case, 950 F.2d 566. And just one statement. The Court said that that duty, which was the duty of good faith and fair dealing, however, cannot be breached by actions that are specifically authorized in an agreement. That's just the one clarification, Your Honor. Thank you.

212-267-6868

1	MR. BROMLEY: Thank you, Your Honor. James Bromley	1	In addition, Section 7.4(h) of the DIP says that
2	of Cleary Gottlieb on behalf of the UAW. Just want to make one	2	unless by July 10 the agreement, the master service sale and
3	particular point before I ceded to Mr. Miller, which is, to	3	purchase agreement, is approved, that there'll be an event of
4	address Mr. Richman's issue as opposed as it relates to the	4	default under the DIP. That includes all of the related
5	linkage between the collective bargaining agreement and the	5	documents, and the UAW retiree settlement agreement in Schedul
6	VEBA. Mr. Richman made a fair amount of hay out of a lack of	6	1.1(e) to the DIP is one of those agreements.
7	linkage, as he said, in the documents and in the evidence. But	7	So, Your Honor, I think that the record is replete
8	I think it's important to look at the evidence. What we have	8	with evidence of linkage between the UAW's collective
9	here is testimony from Mr. Henderson that if there was no VEBA	9	bargaining agreement and the VEBA. And there shouldn't be any
10	there would be no collective bargaining agreement, and with no	10	doubt or any concern that a showing's been made on that front.
11	collective bargaining agreement there would be no workforce.	11	And it's very important to keep in mind that that showing is
12	We have testimony from Mr. Wilson, again, saying if	12	being made by the UAW on behalf of the 475,000 individuals whe
13	there was no VEBA there would be no collective bargaining	13	have either worked or depended on those who've worked for
14	agreement and, again, without a 1collective bargaining	14	General Motors, as well as the 61,000 active employees. There
15	agreement, no workforce.	15	are over half a million individuals who are dependent on this
16	Mr. Curson's declaration said exactly the same thing.	16	transaction closing, and closing quickly. And I think we need
17	The exhibits to Mr. Curson's declaration, the ratification	17	to look through the shorthand that is being used as timing. If
18	summary at Exhibit 1 Exhibit A, I'm sorry, at page 1 and	18	a little more time is given, everything will be fine, nothing
19	page 11 made it crystal clear that when the UAW membership was	19	will change. But that's shorthand for if there's a little more
20	voting, they were voting on both the VEBA and the collective	20	time, I can get a little more, maybe a lot more. And it would
21	bargaining agreement. And as Mr. Curson said unequivocally, it	21	fundamentally change all of the carefully constructed
22	was a single vote, up or down, for both.	22	arrangements that have been put in place and, indeed, would go
23	Exhibit B to Mr. Curson's declaration is the white	23	directly to the problem that both Treasury and General Motors
24	book, the white book which contains the amendments to the	24	have pointed out, which is the damage that would be done to
25	collective bargaining agreement. It makes absolutely clear	25	this business in connection with a long-term contested Chapter
	142		144
1	that the VEBA and the modifications are part of the collective	1	11 proceeding.
2	bargaining agreement that appears at page i, which says that	2	So for those reasons, Your Honor, the UAW strongly
3	the ratification is on the terms of the ratification, that	3	urges that the Court approve the sale transaction.
4	single vote up or down.	4	THE COURT: Okay.
5	And the addendum relating to the changes to the VEBA	5	MR. BROMLEY: Thank you.
6	appears at page 169 of that white book, and it is indeed part	6	THE COURT: Thank you.
7	and parcel of the amendments to the collective bargaining	7	Mr. Miller?
8	agreement.	8	MR. MILLER: Good afternoon, Your Honor. Harvey
9	And this shouldn't come as any surprise to the	9	Miller on behalf of the debtors. First, Your Honor, one
10	objectors. It's not new. Indeed, of all the information	10	overarching comment. I was brought up in the school that
11	that's been provided to the Court, this is probably the least	11	closing arguments should be confined by the record that was
12	new because there is a full paragraph in the Chrysler opinion	12	made before the Court. As I sat here and listened to the
13	going directly to this point where Judge Gonzalez found that	13	closing arguments, Your Honor, many of the closing argument
14	there is unequivocal evidence presented in the Chrysler trial	14	made no reference to evidence which is in the record in these
15	by Mr. Curson as the witness that there was direct linkage,	15	cases. Rather, we heard opinions as to what could have
16	there was clear and unequivocal value being presented to the	16	happened and not references to evidence that's in the record.
17	new company and that the value of the VEBA was receiving was		So I just make that as an overarching comment.
18	not being received by the old company but indeed by the new	18	I want to note that none of the objectors has
19	company.	19	suggested to the Court that it wants to see a liquidation of
20	In addition, the UAW is an express third-party	20	the assets of GM. Rather, each of the objectors reiterates
21	beneficiary of the master sale and purchase agreement. That	21	that it should not be affected by the 363 transaction and,
1.1	agreement requires that the collective bargaining agreement be	22	therefore, it will receive more consideration than what
22	agreement requires that the collective bargaining agreement be	0.0	the main milling and the second state of the s
23	assumed and assigned. It requires that the VEBA be entered	23	
23 24	assumed and assigned. It requires that the VEBA be entered into by the new company. These are unwaivable conditions to	24	plan of liquidation which will follow the consummation of the
23	assumed and assigned. It requires that the VEBA be entered		otherwise will be recoverable from the Old GM pursuant to the plan of liquidation which will follow the consummation of the 363 transaction. 145

212-267-6868

1	Every objector recognizes that a liquidation will	1	avenue for the Court to go down in the face of the record in
2	result in no recovery to general unsecured creditors. So what	2	these proceedings. Liquidation or the risk of liquidation is
3	has happened? By objecting to the 363 transaction, the	3	too great a danger to imperil the many beneficiaries of the 363
4	objectors are exercising what they perceive to be their	4	transaction. A transaction, Your Honor, that squarely complies
5	leverage. Certain of the objectors are asking the Court to	5	with the applicable principles of law, no objector questions
6	conditionally allow the 363 transaction by laying down terms	6	the business rationale articulated by GM in support of the
7	and conditions that the purchaser would have to comply with or	7	sale. No evidence was presented to Your Honor, through
8	walk.	8	testimony or otherwise, that the business rationale to
9	To paraphrase the words of Mr. Jakubowski, Your	9	reconstitute these assets and make them the foundation of a
10	Honor, they want you to enter the negotiations and bargain with	10	viable automotive manufacturing company there is no contrary
11	the purchaser. Indeed, Mr. Jakubowski suggested that the	11	evidence in the record. Rather, the complaint is that the pie
12	debtors and the purchasers should have come to you as soon as	12	is not big enough to satisfy the particular needs of each
13	they knew you were assigned to the case to negotiate the terms	13	objector and, therefore, the 363 transaction cannot be
14	and conditions of the sale before finalizing the master	14	approved. That is not a legally sustainable objection.
15	purchase agreement. I suggest that the role that Mr.	15	Mr. Bressler, representing the tort victims, or some
16	Jakubowski has tailored for you is inconsistent with your role	16	tort victims who have actual claims has argued that this
17	and your responsibilities as a judge.	17	clients are entitled to extra indulgence. He cites no legal
18	The essence of what the objectors want, as pointed	18	proposition or authority for that proposition I'm sorry, no
19	out by my predecessors, is that you should gamble the	19	legal authority for that proposition. Of course everybody
20	preservation of the value of the GM assets, the hundreds of	20	empathizes with his clients, but as stated, bankruptcy is a
21	thousands of jobs involved, the welfare of the communities they	21	zero-sum game. And if GM is liquidated, his clients will
22	rely upon in an ongoing automotive industry as well as incur	22	receive no recovery.
23	the risk of the probability of systemic failure in the hope	23	He described the purchase as an extraordinary
24	that the undisputed testimony of the Treasury's representative	24	transaction because the government is not the usual purchaser.
25	is a lie and that the Treasury will not exercise its rights to	25	But as Mr. Jones has pointed out, Your Honor, the United States
	146		148
	· · · · · ·	_	
1	cease financing the debtors.	1	Treasury, in the perspective of this case, is a creditor; it is
2	This is an awesome gamble. It ignores the interests	2	a secured creditor. It can stand in the position of any
3	of all other economic stakeholders, including the over 60,000	3	secured creditor that appears in the bankruptcy proceeding.
4	UAW active employees as well as the approximate 500,000	4	From that conclusion, he jumps to another and more
5	retirees and dependents represented by the UAW, as well as the		far-fetched contention that the purchase is a result of a
6	bondholders who have supported the 363 transaction, the	6	conspiracy among the Treasury, General Motors, and I guess the
7	suppliers and their industry and the states and communities who		UAW, to deprive his clients of their right to trace the assets
8	will be severely prejudiced if the gamble is lost.	8	to New GM. He argues that New GM must assume the potential
9	Essentially, the objectors ask Your Honor to play Russian	9	liabilities due to his clients because there was no independent
10	Roulette.	10	purchaser of the GM assets. Yet, the record is devoid of any
11	Now, Mr. Richman referred to footnote 15 in Judge	11	evidence to establish the facts that would support a finding
12	Gonzalez's decision, and he read to you a portion of it, but he	12	and conclusion of the existence of a conspiracy directed at all
13	did not read the last sentence. He read the sentence, "The	13	product liability claimants. It's just not in the record, Your
14	Court concludes that gambling on the possibility that the	14	Honor.
15	government was bluffing and risking the potential for a lesser	15	So Mr. Bressler argues that there are no similar
16	recovery in a resulting liquidation would have been a breach of	16	situations where a pre-petition lender has been the purchaser
17	the debtor's fiduciary duty." The next sentence is the key	17	and the DIP financer and pre-petition creditor. I suggest that
18	sentence, Your Honor: "This was simply not a viable option."	18	Mr. Bressler is on weak ground. The concept of loan-to-own has
19	So what Judge Gonzalez held and used as a material	19	permeated bankruptcy practice throughout this decade. An
20	point in his decision, he could not take that option of the	20	example is In re Radner Holdings Corporation, 353 B.R. 820, a
21	financing disappearing and risking and bluffed that the U.S.	21	bankruptcy case in Delaware before Judge Walsh. In that case,
22	Treasury was bluffing.	22	Tennenbaum Capital Partners was a substantial investor. It
23	In effect, the objectors are saying if I can't get my	23	continued to finance the debtor as its fortunes declined and
0.4		24	acquired more and more collateral security in substantially of
24	pound of flesh, then let GM go down in flames and everybody		
24 25	pound of flesh, then let GM go down in flames and everybody lose and the devil take the hindmost. It is not a rational 147	25	the debtor's property. When the debtor's revolving lenders 149

212-267-6868

1threatened to cut off funding, the company commenced a Chapte1There was a negotiation over that, and that's just one little211 case.2item, Your Honor, of what was negotiated during the course of3TCP, Tennenbaum, agreed to purchase the assets under3this somewhat complex proceeding.4Section 363 and credit bid its 128.8 million dollar pre-4In terms of independence, Your Honor, a great deal of5petition date claims. That was challenged, Your Honor, as not6of New GM. Other executives will be employees of New GM. A6na independent purchaser, was challenged in the context of6of New GM. Other executives will be employees of New GM. A7recharacterization and equitable subordination.7Because of that, this is a tainted transaction. But as Your8In another case, Your Honor, to do a great deal of research, but9an acquirer of a business will take that business with its10another case is In re Medical Software Solutions, 286 B.R. 431,10employees. And when you think of this behemoth that is Old GM11a bankruptcy case out of the district of Utah.11a purchaser would not be in its right frame of mind if it did12THE COURT: Before you go on to the second one, the13Software Solutions, you told me the contention rendered. Judge13Software Solutions, you told me the contention rendered.14vale the employees who know the business, at least14Walsh rejected the contention and he said that the lender did14other events may unfold. The testimony is clear, Your Honor, <th>,</th>	,
3TCP, Tennenbaum, agreed to purchase the assets under3this somewhat complex proceeding.4Section 363 and credit bid its 128.8 million dollar pre-1In terms of independence, Your Honor, a great deal of5petition date claims. That was challenged, Your Honor, as not6moment is given to the fact that Mr. Henderson will be the CEO6an independent purchaser, was challenged in the context of6of New GM. Other executives will be employees of New GM. A7recharacterization and equitable subordination.7because of that, this is a tainted transaction. But as Your8In another case, Your Honor, of that and I didn't8Honor knows, there are many cases in the bankruptcy court where9have a chance, Your Honor, to do a great deal of research, but9an acquirer of a business will take that business with its10another case is In re Medical Software Solutions, 286 B.R. 431,10employees. And when you think of this behemoth that is Old GM12THE COURT: Before you go on to the second one, the12not take the employees who know the business, at least13Software Solutions, you told me the contention rendered. Judge13initially, to allow the stabilization of the business while14Walsh rejected the contention and he said that the lender did14other events may unfold. The testimony is clear, Your Honor,15in fact have the ability to15Mr. Henderson doesn't have an employment contract, he has no16MR. MILLER: Yes, Your Honor.16employment contract with the purchaser, and none of the other </td <td>,</td>	,
4Section 363 and credit bid its 128.8 million dollar pre- petition date claims. That was challenged, Your Honor, as not 64In terms of independence, Your Honor, a great deal of moment is given to the fact that Mr. Henderson will be the CEO of New GM. Other executives will be employees of New GM. A because of that, this is a tainted transaction. But as Your Honor, to do a great deal of research, but 95moment is given to the fact that Mr. Henderson will be the CEO of New GM. Other executives will be employees of New GM. A because of that, this is a tainted transaction. But as Your Honor knows, there are many cases in the bankruptcy court where 98In another case, Your Honor, to do a great deal of research, but 99an acquirer of a business will take that business with its10another case is In re Medical Software Solutions, 286 B.R. 431, 1010employees. And when you think of this behemoth that is Old GM 11 a purchaser would not be in its right frame of mind if it did 1213Software Solutions, you told me the contention rendered. Judge 1313initially, to allow the stabilization of the business, at least 1414Walsh rejected the contention and he said that the lender did 1414other events may unfold. The testimony is clear, Your Honor, 1516MR. MILLER: Yes, Your Honor.16employment contract, with the purchaser, and none of the other executives have employments contracts.18MR. MILLER: And he approved the 363 sale, and in a 1918And in terms of independence, Your Honor, what's happened to the stockholders of Old GM? They're being wiped out, Your Honor, because of the financial condition of the estate. New GM w	,
5petition date claims. That was challenged, Your Honor, as not5moment is given to the fact that Mr. Henderson will be the CEO6an independent purchaser, was challenged in the context of6of New GM. Other executives will be employees of New GM. A7recharacterization and equitable subordination.7because of that, this is a tainted transaction. But as Your8In another case, Your Honor, of that and I didn't8Honor knows, there are many cases in the bankruptcy court where9have a chance, Your Honor, to do a great deal of research, but9an acquirer of a business will take that business with its10another case is In re Medical Software Solutions, 286 B.R. 431,10employees. And when you think of this behemoth that is Old GM11a bankruptcy case out of the district of Utah.11a purchaser would not be in its right frame of mind if it did12THE COURT: Before you go on to the second one, the12not take the employees who know the business, at least13Software Solutions, you told me the contention rendered. Judge13initially, to allow the stabilization of the business while14Walsh rejected the contention and he said that the lender did14other events may unfold. The testimony is clear, Your Honor,15in fact have the ability to15Mr. Henderson doesn't have an employment contract, he has no16MR. MILLER: Yes, Your Honor.16employment contract with the purchaser, and none of the other17THE COURT: take it over?17executives have employments contracts.18	,
6an independent purchaser, was challenged in the context of recharacterization and equitable subordination.6of New GM. Other executives will be employees of New GM. A because of that, this is a tainted transaction. But as Your8In another case, Your Honor, of that and I didn't8Honor knows, there are many cases in the bankruptcy court where a nacquirer of a business will take that business with its10another case is In re Medical Software Solutions, 286 B.R. 431, a bankruptcy case out of the district of Utah.11a purchaser would not be in its right frame of mind if it did12THE COURT: Before you go on to the second one, the in fact have the ability to12not take the employees who know the business, at least13Software Solutions, you told me the contention rendered. Judge in fact have the ability to15Mr. Henderson doesn't have an employment contract, he has no16MR. MILLER: Yes, Your Honor.16employment contract with the purchaser, and none of the other17THE COURT: take it over?17executives have employments contracts.18MR. MILLER: And he approved the 363 sale, and in a18And in terms of independence, Your Honor, what's19long opinion, Your Honor.19happened to the stockholders of Old GM? They're being wiped20THE COURT: With the same types of protection on 363?20out, Your Honor, because of the financial condition of the21MR. MILLER: Yes, Your Honor.21estate. New GM will have new stockholders. In addition, New	,
7recharacterization and equitable subordination.7because of that, this is a tainted transaction. But as Your8In another case, Your Honor, of that and I didn't8Honor knows, there are many cases in the bankruptcy court where9have a chance, Your Honor, to do a great deal of research, but9an acquirer of a business will take that business with its10another case is In re Medical Software Solutions, 286 B.R. 431,10employees. And when you think of this behemoth that is Old GM11a bankruptcy case out of the district of Utah.11a purchaser would not be in its right frame of mind if it did12THE COURT: Before you go on to the second one, the12not take the employees who know the business, at least13Software Solutions, you told me the contention rendered. Judge13initially, to allow the stabilization of the business while14Walsh rejected the contention and he said that the lender did14other events may unfold. The testimony is clear, Your Honor,16MR. MILLER: Yes, Your Honor.16employment contract with the purchaser, and none of the other17THE COURT: take it over?17executives have employments contracts.18MR. MILLER: And he approved the 363 sale, and in a18And in terms of independence, Your Honor, what's19long opinion, Your Honor.19happened to the stockholders of Old GM? They're being wiped20THE COURT: With the same types of protection on 363?20out, Your Honor, because of the financial condition of the21MR. MILLER: Yes, Your Ho	,
8In another case, Your Honor, of that and I didn't8Honor knows, there are many cases in the bankruptcy court where9have a chance, Your Honor, to do a great deal of research, but9an acquirer of a business will take that business with its10another case is In re Medical Software Solutions, 286 B.R. 431,10employees. And when you think of this behemoth that is Old GM11a bankruptcy case out of the district of Utah.11a purchaser would not be in its right frame of mind if it did12THE COURT: Before you go on to the second one, the12not take the employees who know the business, at least13Software Solutions, you told me the contention rendered. Judge13initially, to allow the stabilization of the business while14Walsh rejected the contention and he said that the lender did14other events may unfold. The testimony is clear, Your Honor,16MR. MILLER: Yes, Your Honor.16employment contract with the purchaser, and none of the other17THE COURT: take it over?17executives have employments contracts.18MR. MILLER: And he approved the 363 sale, and in a18And in terms of independence, Your Honor, what's19long opinion, Your Honor.19happened to the stockholders of Old GM? They're being wiped20THE COURT: With the same types of protection on 363?20out, Your Honor, because of the financial condition of the21MR. MILLER: Yes, Your Honor.21estate. New GM will have new stockholders. In addition, New	
9have a chance, Your Honor, to do a great deal of research, but another case is In re Medical Software Solutions, 286 B.R. 431, a bankruptcy case out of the district of Utah.9an acquirer of a business will take that business with its employees. And when you think of this behemoth that is Old GM 11 a purchaser would not be in its right frame of mind if it did not take the employees who know the business, at least initially, to allow the stabilization of the business while13Software Solutions, you told me the contention rendered. Judge in fact have the ability to12not take the employees who know the business, at least initially, to allow the stabilization of the business while16MR. MILLER: Yes, Your Honor.16employment contract with the purchaser, and none of the other executives have employments contracts.18MR. MILLER: And he approved the 363 sale, and in a 1918And in terms of independence, Your Honor, what's 1920THE COURT: With the same types of protection on 363? 2119out, Your Honor, because of the financial condition of the estate. New GM will have new stockholders. In addition, New	
10another case is In re Medical Software Solutions, 286 B.R. 431, a bankruptcy case out of the district of Utah.10employees. And when you think of this behemoth that is Old GM11a bankruptcy case out of the district of Utah.11a purchaser would not be in its right frame of mind if it did12THE COURT: Before you go on to the second one, the12not take the employees who know the business, at least13Software Solutions, you told me the contention rendered. Judge13initially, to allow the stabilization of the business while14Walsh rejected the contention and he said that the lender did14other events may unfold. The testimony is clear, Your Honor,15in fact have the ability to15Mr. Henderson doesn't have an employment contract, he has no16MR. MILLER: Yes, Your Honor.16employment contract with the purchaser, and none of the other17THE COURT: take it over?17executives have employments contracts.18MR. MILLER: And he approved the 363 sale, and in a18And in terms of independence, Your Honor, what's19long opinion, Your Honor.19happened to the stockholders of Old GM? They're being wiped20THE COURT: With the same types of protection on 363?20out, Your Honor, because of the financial condition of the21MR. MILLER: Yes, Your Honor.21estate. New GM will have new stockholders. In addition, New	ί,
11a bankruptcy case out of the district of Utah.11a purchaser would not be in its right frame of mind if it did12THE COURT: Before you go on to the second one, the11not take the employees who know the business, at least13Software Solutions, you told me the contention rendered. Judge13initially, to allow the stabilization of the business while14Walsh rejected the contention and he said that the lender did14other events may unfold. The testimony is clear, Your Honor,15in fact have the ability to15Mr. Henderson doesn't have an employment contract, he has no16MR. MILLER: Yes, Your Honor.16employment contract with the purchaser, and none of the other17THE COURT: take it over?17executives have employments contracts.18MR. MILLER: And he approved the 363 sale, and in a18And in terms of independence, Your Honor, what's19long opinion, Your Honor.19happened to the stockholders of Old GM? They're being wiped20THE COURT: With the same types of protection on 363?20out, Your Honor, because of the financial condition of the21MR. MILLER: Yes, Your Honor.21estate. New GM will have new stockholders. In addition, New	
12THE COURT: Before you go on to the second one, the12not take the employees who know the business, at least13Software Solutions, you told me the contention rendered. Judge13initially, to allow the stabilization of the business while14Walsh rejected the contention and he said that the lender did14other events may unfold. The testimony is clear, Your Honor,15in fact have the ability to15Mr. Henderson doesn't have an employment contract, he has no16MR. MILLER: Yes, Your Honor.16employment contract with the purchaser, and none of the other17THE COURT: take it over?17executives have employments contracts.18MR. MILLER: And he approved the 363 sale, and in a18And in terms of independence, Your Honor, what's19long opinion, Your Honor.19happened to the stockholders of Old GM? They're being wiped20THE COURT: With the same types of protection on 363?20out, Your Honor, because of the financial condition of the21MR. MILLER: Yes, Your Honor.21estate. New GM will have new stockholders. In addition, New	
13Software Solutions, you told me the contention rendered. Judge13initially, to allow the stabilization of the business while14Walsh rejected the contention and he said that the lender did14other events may unfold. The testimony is clear, Your Honor,15in fact have the ability to15Mr. Henderson doesn't have an employment contract, he has no16MR. MILLER: Yes, Your Honor.16employment contract with the purchaser, and none of the other17THE COURT: take it over?17executives have employments contracts.18MR. MILLER: And he approved the 363 sale, and in a18And in terms of independence, Your Honor, what's19long opinion, Your Honor.19happened to the stockholders of Old GM? They're being wiped20THE COURT: With the same types of protection on 363?20out, Your Honor, because of the financial condition of the21MR. MILLER: Yes, Your Honor.21estate. New GM will have new stockholders. In addition, New	
14Walsh rejected the contention and he said that the lender did14other events may unfold. The testimony is clear, Your Honor,15in fact have the ability to15Mr. Henderson doesn't have an employment contract, he has no16MR. MILLER: Yes, Your Honor.16employment contract with the purchaser, and none of the other17THE COURT: take it over?17executives have employments contracts.18MR. MILLER: And he approved the 363 sale, and in a18And in terms of independence, Your Honor, what's19long opinion, Your Honor.19happened to the stockholders of Old GM? They're being wiped20THE COURT: With the same types of protection on 363?20out, Your Honor, because of the financial condition of the21MR. MILLER: Yes, Your Honor.21estate. New GM will have new stockholders. In addition, New	
15in fact have the ability to15Mr. Henderson doesn't have an employment contract, he has no16MR. MILLER: Yes, Your Honor.16employment contract with the purchaser, and none of the other17THE COURT: take it over?17executives have employments contracts.18MR. MILLER: And he approved the 363 sale, and in a18And in terms of independence, Your Honor, what's19long opinion, Your Honor.19happened to the stockholders of Old GM? They're being wiped20THE COURT: With the same types of protection on 363?20out, Your Honor, because of the financial condition of the21MR. MILLER: Yes, Your Honor.21estate. New GM will have new stockholders. In addition, New	
16MR. MILLER: Yes, Your Honor.16employment contract with the purchaser, and none of the other17THE COURT: take it over?17executives have employments contracts.18MR. MILLER: And he approved the 363 sale, and in a18And in terms of independence, Your Honor, what's19long opinion, Your Honor.19happened to the stockholders of Old GM? They're being wiped20THE COURT: With the same types of protection on 363?20out, Your Honor, because of the financial condition of the21MR. MILLER: Yes, Your Honor.21estate. New GM will have new stockholders. In addition, New	
17THE COURT: take it over?17executives have employments contracts.18MR. MILLER: And he approved the 363 sale, and in a18And in terms of independence, Your Honor, what's19long opinion, Your Honor.19happened to the stockholders of Old GM? They're being wiped20THE COURT: With the same types of protection on 363?20out, Your Honor, because of the financial condition of the21MR. MILLER: Yes, Your Honor.21estate. New GM will have new stockholders. In addition, New	
18MR. MILLER: And he approved the 363 sale, and in a18And in terms of independence, Your Honor, what's19long opinion, Your Honor.19happened to the stockholders of Old GM? They're being wiped20THE COURT: With the same types of protection on 363?20out, Your Honor, because of the financial condition of the21MR. MILLER: Yes, Your Honor.21estate. New GM will have new stockholders. In addition, New	
19long opinion, Your Honor.19happened to the stockholders of Old GM? They're being wiped20THE COURT: With the same types of protection on 363?20out, Your Honor, because of the financial condition of the21MR. MILLER: Yes, Your Honor.21estate. New GM will have new stockholders. In addition, New	
20       THE COURT: With the same types of protection on 363?       20       out, Your Honor, because of the financial condition of the         21       MR. MILLER: Yes, Your Honor.       21       estate. New GM will have new stockholders. In addition, New	
21       MR. MILLER: Yes, Your Honor.       21       estate. New GM will have new stockholders. In addition, New	
22 THE COURT: Um-hum. 22 GM, Your Honor, will have an independent board of directors.	
<ul> <li>MR. MILLER: In the Medical Software case, Judge</li> <li>Five independent directors from Old GM, people of great repute</li> </ul>	
24 Thurman held that there was a sound business reason that 24 and great business experience, are moving over to New GM.	
<ul> <li>existed for the sale of the Chapter 11 debtors outside the</li> <li>Mr. Henderson is moving over to New GM. But there will be</li> </ul>	
150 152	>
1 ordinary course of business and outside of the plan based 1 seven other directors. And Mr. Edward Whittaker, the former	
2 chiefly upon the lack of funds for continued operations and the 2 CEO of AT&T, has already been designated to be the chairman	of
3 narrowing window for the sale of assets before they 3 the board of directors.	
4 significantly declined in value. 4 That board of directors, Your Honor, will decide the	
5 THE COURT: The Judge Thurman, is that Bill Thurman 5 role in the future I mean the future role that Mr. Henderson	
6 out in Utah? 6 and other executives and other employees of Old GM will occup	уy
7 MR. MILLER: Yes, sir. A corporate insider that had 7 in the operation of New GM. There has been full disclosure,	
8 provided both pre- and post-petition financing for the 8 Your Honor, in this record of what the relationships are	
9 operation of the debtor's business had a valid security 9 between the parties and which, I submit to Your Honor, clearly	
10 interest in the assets being sold and could credit bid its 10 established the independence of the parties.	
11 secured claim. An insider qualified as a good-faith purchaser, 11 Mr. Bressler also complains that the UAW VEBA is just	
12 and the Court approved the sale as being for a fair and 12 too good a deal to be approved. He ignores the fact that it is	
13 reasonable price and supported by sound business reasons. 13 the purchaser who made the deal with the VEBA in its interest	
14There are I'm sure, Your Honor, with additional14of getting employees to operate the business and enhance the	
15 time, we can find many more cases that follow in the concept of 15 recoveries and the general unsecured creditors who will receive	
16loan-to-own.16equity securities as part of this transaction. One objective	
17So, turning to the concept that this was not an17of this transaction, Your Honor, is to enhance the value of the	
18 independent transaction, the record demonstrates, Your Honor, 18 equity securities. And that enhancement obviously requires the	
19 that there were strenuous arms'-length negotiations. There 19 employment of the UAW and the other employees. There would	1 te
20 were differences of opinion. There were requests made by GM; 20 no business without that. And as Mr. Curson testified, Your	
21 they were either rejected by Treasury or they were negotiated. 21 Honor, and notwithstanding Mr. Richman's statements, the record	d
22 And one example, Your Honor, is that GM tried to, in respect of 22 is clear there is only one witness and he testified, and	
23the seven-plus billion dollars of retiree benefits, it tried to23he's a union officer that the ratification of a modified	
24 keep the cut down to sixty-two percent, but the Treasury came 24 collective bargaining agreement and the VEBA was one	
25back and said no, it's got to be sixty-six and two-thirds.25ratification. And if the VEBA is not approved, all of the	
151 153	3

212-267-6868

1	modifications to the collective bargaining agreement are	1	reorganizations. But
2	rescinded and we're back to where we were before with work	2	THE COURT: Or NOL protection.
3	conditions, wage rates, et cetera, which are not tenable in an	3	MR. MILLER: Or NO exactly, Your Honor. But be
4	automotive industry that is in such severe crisis as this	4	that as it may, Mr. Jakubowski argued that the jurisdiction of
5	automotive industry.	5	this Court is extremely limited and unless you are able to find
6	The argument, Your Honor, that another potential 900	6	specific words in the Code you are acting beyond your power.
7	million dollars of liabilities, irrespective of the asbestos	7	He invites you to teach a lesson to the Second Circuit and tell
8	liabilities, assuming the asbestos liabilities, and another 300	8	the judges of that court that they don't really understand
9	million-plus dollars of liabilities in connection with retiree	9	statutory construction. Yet, his idol Judge Posner, in a case
10	benefits, is insignificant. And, therefore, the purchaser	10	called FutureSources LLC v. Reuters Limited at 312 F.2d 281,
11	should be required to assume those liabilities.	11	283, a 2002 case, Judge Posner criticized a district court for
12	The objective of the purchase, as I said, Your Honor,	12	relying on an unreported opinion from another circuit and for
13	is to acquire the assets and assume only those liabilities that	13	one of the parties to rely upon it in his argument. Judge
14	will contribute to the success of the purchaser. You take 900	14	Posner said that while, and I'm quoting, "The reasoning of a
15	million, 300 million, another 600 million, and pretty soon	15	district judge is of course is entitled to respect, the
16	you're in the area where Senator Dirksen said you're talking	16	decision of a district judge cannot be controlling precedent.
17	about real money.	17	The law's coherence could not be maintained if district courts
18	The purchaser has drawn the line as to what it is	18	were deemed to make law for their circuit, let alone for the
19	willing to pay for the assets in the context of its credit bid	19	nation, since district courts do not have circuitwide or
20	and its assumption of liabilities and the voluntary contractual	20	nationwide jurisdiction." Notwithstanding those piercing words
21	obligations that it has made to the UAW VEBA.	21	of Judge Posner, Mr. Jakubowski wants you to take on the Second
22	Now, Your Honor, turning to Mr. Jakubowski,	22	Circuit judges and, in effect, suggests to them that they
23	Mr. Jakubowski made an impassioned argument. Essentially he	23	really ought to act a lot more like Judge Posner. I don't
24	told the Court that it should forget about being in the Second	24	believe that Your Honor has a death wish.
25	Circuit and it should ignore the Court's stated principle of	25	Last week in the argument on the effect of the
	154		156
1	consistency in the decisions of the bankruptcy court in this	1	Sprague Sixth Circuit decision, Your Honor unequivocally stated
2		2	
2	district. Mr. Jakubowski speaks of Judge Posner in the Seventh Circuit as if he is immortal and infallible. I have great	3	that Sprague was never binding on you was not binding on you and that your obligation is to follow the directions of the
4	respect for Judge Posner and for his colleague Judge	4	Second Circuit and to maintain consistency of bankruptcy court
4 5	Easterbrook, but neither is infallible and particularly	4 5	decisions in this district in the absence of clear error. And
6	conversant with bankruptcy in Chapter 11. I once debated Judg		as Your Honor stated yesterday, you don't view Judge Gonzalez'
7		7	decision as clear error. And right now, Your Honor, the law of
8	Easterbrook at a University of Pennsylvania Business and Law Forum. He argued that persons in businesses should be allowed		this circuit is the decision of the Second Circuit affirming
° 9	to contractually waive the benefit of the right to seek	9	the Chrysler decision on the basis of the reasoning that Judge
9 10		9 10	
	bankruptcy protection. He posited the argument on the basis		Gonzalez used in his opinion. That's the law in this circuit which I believe Your Honor is required to follow.
11	that the contracting parties had equal bargaining leverage and	11	*
12	could freely negotiate that provision. I asked Judge	12	Mr. Jakubowski alluded to stare I'm sorry, Your Honor, alluded to stare decisis and the peril of the Court to
13	Easterbrook if he had ever studied a credit card agreement and tried to always the terms of thet printed agreement or horround	13	
14	tried to change the terms of that printed agreement or borrowed	14 15	fill in gaps in the statute. Mr. Jakubowski argued that 363(f)
15	money from a financial institution while in financial distress.	15	subject to the plain meaning rule and must be construed
16	He replied in the negative and then said he would have to	16	narrowly based upon a whole host of Supreme Court decisions
17	rethink his position.	17	that he cited generally involving Chapter 7 or Chapter 13
18 19	As for Judge Posner, Mr. Jakubowski never named a particular case that he was talking about yesterday and stating	18	cases. Bankruptcy courts deal with business reorganizations as
		19	situations which require flexibility and the exercise of
20	that it was in conflict with TWA. Let us not forget, Your	20	reasonable judgment by a bankruptcy court. Courts need to fit
21	Honor, that the Seventh Circuit is the circuit that is the	21	the requirements of the case in achieving the objectives and
22	Chicago school of finance, and it is the circuit that is the	22	policies of the Code. A perfect example of the kind of role
23	least receptive to business reorganizations. A circuit, Your	23	that must be played by bankruptcy courts is demonstrated with
24	Honor, that is so unreceptive that it does not endorse the	24	the situation that arose as a result of the Supreme Court's
25	critical vendor situation that is so important in most	25	decision in Hartford Accident and Underwriters v. Union
	155		157

212-267-6868

1	Planter's Bank at 530 U.S. 1, a 2000 case. As Your Honor	1	action in the first instance, should be recognized. But that
2	undoubtedly knows, the case involved the construction of	2	there was a missing link. And where there was a missing link
3	Section 506(c) of the Bankruptcy Code and whether the Hartford	3	the Court said we believe that the missing link is supplied by
4	Accident and Underwriters could present a case for	4	bankruptcy court's equitable powers "to craft flexible remedies
5	administrative expenses under 506(c) when the language of the	5	in situations where the Code's causes of action failed to
6	statute read that only a trustee could do that.	6	receive their intended purpose."
7	And the Supreme Court, in applying what essentially,	7	The Third Circuit went on to say, Your Honor, "that
8	I think, was Judge Scalia, the plain meaning rule, said the	8	the Supreme Court has long recognized that bankruptcy courts
9	statute says the trustee can only do that, therefore Hartford	9	are equitable tribunals that apply equitable principals in the
10	could not step into the shoes of the trustee, could not qualify	10	administration of bankruptcy proceedings." And it noted, Your
11	under 506(c), and that's what the statute says and that's what	11	Honor, that the Court in the 105(a) has the power to issue any
12	courts have to pay attention to. So and they cite the Ron	12	orders, process or judgment that is necessary or appropriate to
13	Pair case and some of the cases that were cited by	13	carry out the provisions of this title. No provisions of this
14	Mr. Jakubowski.	14	title providing for the raising of an issue by a party-in-
15	So what followed after Hartford? In 2003, a case	15	interest shall be construed to preclude the Court from sua
16	came to the Third Circuit, Cybergenics case at 130 F.3d 545, a	16	sponte taking any action or making any determination necessary
17	2003 case. This was an en banc	17	or appropriate to enforce or implement court orders or rules,
18	THE COURT: You're talking about Cybergenics before	18	or to prevent an abuse of process.
19	or after the first en banc?	19	So what that those decisions say, Your Honor, is
20	MR. MILLER: I'm talking about the en banc decision,	20	where there is a statutory provision that doesn't comport with
21	Your Honor. The issue in Cybergenics involved Section 544(b)	21	a holistic interpretation of the Bankruptcy Code, and the
22	of the Bankruptcy Code and that's the section, part of the	22	objectors and policies of the Bankruptcy Code, the bankruptcy
23	avoidance powers where a trustee may prosecute actions based	23	courts have the equitable power to construe that statute to
24	upon nonbankruptcy law to recover preferences, fraudulent	24	accomplish those objectives and purposes of the Bankruptcy
25	transfers, et cetera. 158	25	Code. 160
	156		100
1	The language of the statute is almost precisely the	1	And in connection with Section 363(f), Your Honor,
2	same as Section 506(c) of the Bankruptcy Code. And when the	2	Mr. Jakubowski says you can't give it effect. It cannot it
3	case was heard before the Third Circuit on appeal from the	3	just doesn't cover claims. Claims are not included in the
4	bankruptcy court and the district court, a three-judge court in	4	statutory language and, therefore, this Court is without power
5	the Third Circuit reversed the lower courts on the basis of the	5	to issue an order that provides free and clear of all liens,
6	Hartford Accident case, a pure case of statutory construction	6	claims and encumbrances.
7	as far as the three-judge court was concerned. That decision	7	Now, if you think about Mr. Jakubowski's argument,
8	was withdrawn as a result of the granting of a motion that the	8	Your Honor, what he is basically saying that every single
9	case be heard en banc.	9	unsecured claim carries over, that 363(f) is totally
10	When it was heard en banc, the issue of the	10	inapplicable, that it doesn't work. That, Your Honor, is not a
11	creditors' committee prosecuting avoidance actions under	11	principal statutory construction. Courts are under the duty, I
12	Section 544(b) was upheld by a majority of the en banc court.	12	believe, Your Honor, to give effect to the words of a statute,
13	The Third Circuit decision, the en banc decision, reflects a	13	and to harmonize a statue so that it is effective. And for
14	court recognizing the needs of the case and the necessity of	14	many, many years, Your Honor, courts have issued 363(f)
15	making the statute work. And, if I might find let me just	15	protections in connection with the 363(b) transaction. And the
16	get that decision.	16	law in this Circuit, based upon Judge Gonzalez' order, is that
17	THE COURT: You're talking the second Cybergenics	17	this Court the bankruptcy court has the authority to issue a
18	decision, the en banc one that	18	free and clear order as requested by the debtors in this
19	MR. MILLER: Yes, I am. As Your Honor does with	19	action, which is almost identical to the order that was entered
20	great frequency, first you look at the statute. And they	20	in the Chrysler case.
21	looked at the statue. And can you hear me? How's that.	21	The scope of the power of the bankruptcy court under
22	First the Court noted that statutory construction is	22	Section 363 Your Honor once referred to in the Magnesium
23	a holistic endeavor, citing the Timbers case. And then, Your	23	Corporation of America case. And you said in that case on June
24		21	12 2002 "I baliava Judga Walch and it ana dir makt in TW/A
24 25	Honor, in reviewing what had occurred, the Third Circuit noted		13, 2002 "I believe Judge Walsh got it exactly right in TWA. I
24 25	Honor, in reviewing what had occurred, the Third Circuit noted that the fact that the language does not authorize derivative	24 25	am not going to burden this already very lengthy decision by
	Honor, in reviewing what had occurred, the Third Circuit noted		

212-267-6868

1	telling you all of the reasons I believe Judge Walsh is right.	1	department that is attempting to salvage an industry and all it
2	But I have rarely seen on my time on the bench a decision that	2	represents, as well as protect the taxpayers' money. The
3	was as closely relevant and directly on point" and this was	3	Treasury hired an extremely abled cadre of experienced person
4	in connection with a 363(b) sale, "and as well thought out as	4	to discharge this function. They have made the Treasury has
5	his decision. At the risk of appearing less than thorough I am	5	made a decision that a prompt approval of the 363 transaction
6	going to adopt his analysis by reference."	6	is a condition precedent. If there is no sale order there's no
7	THE COURT: That is the same TWA but before it was	7	more financing. And, Your Honor, there is no evidence to the
8	affirmed all the way up to the Third Circuit?	8	contrary in respect of that.
9	MR. MILLER: That's correct, Your Honor. Your Honor	9	Mr. Richman raises for the first time the credibility
10	also referred to the Leckie Smokeless Coal Company case at 99	10	of Mr. Wilson. Mr. Wilson testified yesterday candidly and at
11	F.3d 573. Your Honor said that Leckie that you interpreted	11	length. And there is nothing in his testimony which would
12	the Fourth Circuit as saying "That Congress did not expressly	12	establish that he was lying, falsifying any respect whatsoever.
13	indicate that the language of 363(f) was intended to limit the	13	And counsel for the treasury has reiterated the position that
14	scope of its application to in rem interest."	14	Mr. Wilson testified, and there's nothing else in the record,
15	If Mr. Jakubowski's argument was taken and adopted by	15	Your Honor.
16	Your Honor it would mean, Your Honor, that 363(b) is out of the	16	The Court must accept that undisputed evidence and
17	statute, and there can never be any sales of assets if they're	17	take it into account the consequences of non-approval. So in
18	always going to be subject to the claims, the unsecured claims,	18	connection with Mr. Jakubowski's argument, both the statutory
19	of the debtor. Even outside of selling substantially all of	19	construction, I would submit to Your Honor that this Court has
20	the assets every single sale under Section 363(b) would be	20	ample power under its equitable powers to construe a statute so
21	impaired by the fact that the purchaser is assuming or is going	21	that it may implement and further the interests of bankruptcy
22	to be responsible for claims that may drift or migrate with the	22	reorganization and bankruptcy law under the bankruptcy code.
23	assets that are being sold. That, Your Honor, cannot be the	23	And in the context of stare decisis, again, Your
24	law. Common sense says that you cannot effect that kind of a	24	Honor, the Chrysler case is the decisional authority in this
25	ruling in the face of what has transpired in bankruptcy courts	25	circuit. And, certainly, the TWA case is very persuasive, both
	162		164
1	through thirty years since the adoption of the 1978 code. And,	1	on bankruptcy court level and on the Court of Appeals level.
2	again, Your Honor, as I said before, the law in this circuit is	2	So then, Your Honor, I turn to Mr. Esserman. And in
2 3	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler.	2 3	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos
2 3 4	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's	2 3 4	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow
2 3 4 5	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government	2 3 4 5	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very
2 3 4 5 6	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this	2 3 4 5 6	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of
2 3 4 5 6 7	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government	2 3 4 5 6 7	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There
2 4 5 7 8	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're	2 4 5 7 8	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in
2 4 5 7 8 9	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government.	2 3 4 5 6 7 8 9	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities.
2 3 6 7 8 9	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government. Counsel referred to a case right on point and in	2 3 4 5 6 7 8 9 10	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because
2 3 4 5 6 7 8 9 10 11	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government. Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume	2 3 4 5 6 7 8 9 10 11	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving
2 3 4 5 7 8 9 10 11 12	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government. Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume liabilities and express conditions in a contract, where there	2 3 4 5 6 7 8 9 10 11 12	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving corporation is not available. So 524(g) is not a player in
2 3 4 5 6 7 8 9 10 11 12 13	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government. Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume liabilities and express conditions in a contract, where there are express conditions in a contract, where there are milestone	2 3 4 5 6 7 8 9 10 11 12 13	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving corporation is not available. So 524(g) is not a player in this scenario, Your Honor. And Judge Gonzalez, again, Your
2 3 4 5 6 7 8 9 10 11 12 13 14	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government. Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume liabilities and express conditions in a contract, where there are express conditions in a contract, where there are milestone that have to be accomplished, such as there are in this	2 3 4 5 6 7 8 9 10 11 12 13 14	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving corporation is not available. So 524(g) is not a player in this scenario, Your Honor. And Judge Gonzalez, again, Your Honor, specifically held that 524(g) did not apply to the
2 3 4 5 6 7 8 9 10 11 12 13	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government. Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume liabilities and express conditions in a contract, where there are express conditions in a contract, where there are milestone that have to be accomplished, such as there are in this financing, if there is no order of approval on September 10 and	2 3 4 5 6 7 8 9 10 11 12 13 14 15	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving corporation is not available. So 524(g) is not a player in this scenario, Your Honor. And Judge Gonzalez, again, Your Honor, specifically held that 524(g) did not apply to the Chrysler 363 transaction. There is no discharge and there is
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government. Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume liabilities and express conditions in a contract, where there are express conditions in a contract, where there are milestone that have to be accomplished, such as there are in this financing, if there is no order of approval on September 10 and there is no wavier on the part of the U.S. Treasury, the U.S.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving corporation is not available. So 524(g) is not a player in this scenario, Your Honor. And Judge Gonzalez, again, Your Honor, specifically held that 524(g) did not apply to the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government. Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume liabilities and express conditions in a contract, where there are express conditions in a contract, where there are milestone that have to be accomplished, such as there are in this financing, if there is no order of approval on September 10 and there is no wavier on the part of the U.S. Treasury, the U.S. Treasury has the absolute right to terminate. And that does	2 3 4 5 6 7 8 9 10 11 12 13 14 15	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving corporation is not available. So 524(g) is not a player in this scenario, Your Honor. And Judge Gonzalez, again, Your Honor, specifically held that 524(g) did not apply to the Chrysler 363 transaction. There is no discharge and there is no channeling order requested. What we have said to Your Honor in the course of these proceedings, this will be an issue that
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government. Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume liabilities and express conditions in a contract, where there are express conditions in a contract, where there are milestone that have to be accomplished, such as there are in this financing, if there is no order of approval on September 10 and there is no wavier on the part of the U.S. Treasury, the U.S. Treasury has the absolute right to terminate. And that does not give rise to a breach of contract. And it is not subject	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving corporation is not available. So 524(g) is not a player in this scenario, Your Honor. And Judge Gonzalez, again, Your Honor, specifically held that 524(g) did not apply to the Chrysler 363 transaction. There is no discharge and there is no channeling order requested. What we have said to Your Honor in the course of these proceedings, this will be an issue that Old GM, OldCo, will have to deal with. That the creditors'
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government. Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume liabilities and express conditions in a contract, where there are express conditions in a contract, where there are milestone that have to be accomplished, such as there are in this financing, if there is no order of approval on September 10 and there is no wavier on the part of the U.S. Treasury, the U.S. Treasury has the absolute right to terminate. And that does	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving corporation is not available. So 524(g) is not a player in this scenario, Your Honor. And Judge Gonzalez, again, Your Honor, specifically held that 524(g) did not apply to the Chrysler 363 transaction. There is no discharge and there is no channeling order requested. What we have said to Your Honor in the course of these proceedings, this will be an issue that Old GM, OldCo, will have to deal with. That the creditors' committee will have to deal with in structuring a plan of
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government. Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume liabilities and express conditions in a contract, where there are express conditions in a contract, where there are milestone that have to be accomplished, such as there are in this financing, if there is no order of approval on September 10 and there is no wavier on the part of the U.S. Treasury, the U.S. Treasury has the absolute right to terminate. And that does not give rise to a breach of contract. And it is not subject	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving corporation is not available. So 524(g) is not a player in this scenario, Your Honor. And Judge Gonzalez, again, Your Honor, specifically held that 524(g) did not apply to the Chrysler 363 transaction. There is no discharge and there is no channeling order requested. What we have said to Your Honor in the course of these proceedings, this will be an issue that Old GM, OldCo, will have to deal with. That the creditors'
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government. Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume liabilities and express conditions in a contract, where there are express conditions in a contract, where there are express conditions in a contract, where there are milestone that have to be accomplished, such as there are in this financing, if there is no order of approval on September 10 and there is no wavier on the part of the U.S. Treasury, the U.S. Treasury has the absolute right to terminate. And that does not give rise to a breach of contract. And it is not subject to a commercially unreasonable actions." In connection, Your Honor, to the arguments that Mr. Jakubowski made that the treasury is not if it wants to act	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving corporation is not available. So 524(g) is not a player in this scenario, Your Honor. And Judge Gonzalez, again, Your Honor, specifically held that 524(g) did not apply to the Chrysler 363 transaction. There is no discharge and there is no channeling order requested. What we have said to Your Honor in the course of these proceedings, this will be an issue that Old GM, OldCo, will have to deal with. That the creditors' committee will have to deal with in structuring a plan of
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government. Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume liabilities and express conditions in a contract, where there are express conditions in a contract, where there are express conditions in a contract, where there are milestone that have to be accomplished, such as there are in this financing, if there is no order of approval on September 10 and there is no wavier on the part of the U.S. Treasury, the U.S. Treasury has the absolute right to terminate. And that does not give rise to a breach of contract. And it is not subject to a commercially unreasonable actions." In connection, Your Honor, to the arguments that Mr.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving corporation is not available. So 524(g) is not a player in this scenario, Your Honor. And Judge Gonzalez, again, Your Honor, specifically held that 524(g) did not apply to the Chrysler 363 transaction. There is no discharge and there is no channeling order requested. What we have said to Your Honor in the course of these proceedings, this will be an issue that Old GM, OldCo, will have to deal with. That the creditors' committee will have to deal with in structuring a plan of liquidation for OldCo. How existing asbestos claimants are
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government. Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume liabilities and express conditions in a contract, where there are express conditions in a contract, where there are express conditions in a contract, where there are milestone that have to be accomplished, such as there are in this financing, if there is no order of approval on September 10 and there is no wavier on the part of the U.S. Treasury, the U.S. Treasury has the absolute right to terminate. And that does not give rise to a breach of contract. And it is not subject to a commercially unreasonable actions." In connection, Your Honor, to the arguments that Mr. Jakubowski made that the treasury is not if it wants to act	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving corporation is not available. So 524(g) is not a player in this scenario, Your Honor. And Judge Gonzalez, again, Your Honor, specifically held that 524(g) did not apply to the Chrysler 363 transaction. There is no discharge and there is no channeling order requested. What we have said to Your Honor in the course of these proceedings, this will be an issue that Old GM, OldCo, will have to deal with. That the creditors' committee will have to deal with in structuring a plan of liquidation for OldCo. How existing asbestos claimants are going to be treated to the extent they have allowed claims, and
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government. Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume liabilities and express conditions in a contract, where there are express conditions in a contract, where there are express conditions in a contract, where there are milestone that have to be accomplished, such as there are in this financing, if there is no order of approval on September 10 and there is no wavier on the part of the U.S. Treasury, the U.S. Treasury has the absolute right to terminate. And that does not give rise to a breach of contract. And it is not subject to a commercially unreasonable actions." In connection, Your Honor, to the arguments that Mr. Jakubowski made that the treasury is not if it wants to act like a commercial bank it should be treated like a commercial	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving corporation is not available. So 524(g) is not a player in this scenario, Your Honor. And Judge Gonzalez, again, Your Honor, specifically held that 524(g) did not apply to the Chrysler 363 transaction. There is no discharge and there is no channeling order requested. What we have said to Your Honor in the course of these proceedings, this will be an issue that Old GM, OldCo, will have to deal with. That the creditors' committee will have to deal with in structuring a plan of liquidation for OldCo. How existing asbestos claimants are going to be treated to the extent they have allowed claims, and potential future claimants may be treated is an appropriate
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government. Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume liabilities and express conditions in a contract, where there are express conditions in a contract, where there are express conditions in a contract, where there are milestone that have to be accomplished, such as there are in this financing, if there is no order of approval on September 10 and there is no wavier on the part of the U.S. Treasury, the U.S. Treasury has the absolute right to terminate. And that does not give rise to a breach of contract. And it is not subject to a commercially unreasonable actions." In connection, Your Honor, to the arguments that Mr. Jakubowski made that the treasury is not if it wants to act like a commercial bank it should be treated like a commercial bank. I would submit to Your Honor that the commercial bank analogy is inappropriate. We are not just talking about a JPMorgan or a Citibank, we are involved with a federal	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving corporation is not available. So 524(g) is not a player in this scenario, Your Honor. And Judge Gonzalez, again, Your Honor, specifically held that 524(g) did not apply to the Chrysler 363 transaction. There is no discharge and there is no channeling order requested. What we have said to Your Honor in the course of these proceedings, this will be an issue that Old GM, OldCo, will have to deal with. That the creditors' committee will have to deal with in structuring a plan of liquidation for OldCo. How existing asbestos claimants are going to be treated to the extent they have allowed claims, and potential future claimants may be treated is an appropriate subject for OldCo. And it would not be different from some
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	again, Your Honor, as I said before, the law in this circuit is clearly Chrysler. Now, Mr. Jakubowski also, like a true plaintiff's lawyer, immediately jumped up and said if the government doesn't go through with this acquisition or finance this acquisition it will be a clear breach of contract. And he turns to the creditors' committee and says I hope you're drafting a complaint against the government. Counsel referred to a case right on point and in Willis on Contracts under the title Express Conditions "assume liabilities and express conditions in a contract, where there are express conditions in a contract, where there are milestone that have to be accomplished, such as there are in this financing, if there is no order of approval on September 10 and there is no wavier on the part of the U.S. Treasury, the U.S. Treasury has the absolute right to terminate. And that does not give rise to a breach of contract. And it is not subject to a commercially unreasonable actions." In connection, Your Honor, to the arguments that Mr. Jakubowski made that the treasury is not if it wants to act like a commercial bank it should be treated like a commercial bank. I would submit to Your Honor that the commercial bank analogy is inappropriate. We are not just talking about a	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	So then, Your Honor, I turn to Mr. Esserman. And in connection with that I will also deal with all the asbestos claimants. The argument is made, Your Honor, that somehow OldCo should comply with 524(g). 524(g), by it's very language, refers to the confirmation of a plan of reorganization that would discharge asbestos claimants. There is not going to be any discharge here, Your Honor. OldCo is in liquidation, there will be no discharge of liabilities. 524(g), by its very terms, could not be complied with because fifty percent of the equity of the so-called surviving corporation is not available. So 524(g) is not a player in this scenario, Your Honor. And Judge Gonzalez, again, Your Honor, specifically held that 524(g) did not apply to the Chrysler 363 transaction. There is no discharge and there is no channeling order requested. What we have said to Your Honor in the course of these proceedings, this will be an issue that Old GM, OldCo, will have to deal with. That the creditors' committee will have to deal with in structuring a plan of liquidation for OldCo. How existing asbestos claimants are going to be treated to the extent they have allowed claims, and potential future claimants may be treated is an appropriate subject for OldCo. And it would not be different from some other cases where, in the situation of a liquidation, a

212-267-6868

1			
	that's an issue to be determined, Your Honor, after the sale is	1	Court said that it wasn't ruling on the merits, it did say that
2	consummated.	2	the applicant, the Indiana Pension Funds, had failed to
3	THE COURT: Mr. Miller, there's no channeling order,	3	demonstrate: 1) a reasonable probability that four justices
4	but there is an injunction requested. And the two lawyers who	4	would consider an issue sufficiently meritorious to grant
5	were raising asbestos issues pointed out that if you did give	5	certiorari, or to no probable jurisdiction. Now, in reaching
6	personal notice and applied it to every state in the United	6	that conclusion they had to evaluate what was decided by Judge
7	States you wouldn't be able to do much with it because they	7	Gonzalez. 2) a fair prospect that a majority of the Court will
8	wouldn't know that they've contracted asbestos.	8	conclude that the decision below was erroneous; and 3) a
9	Now, I have an interesting twist here. Both of those	9	likelihood that an irreparable harm would result from the
10	folks represent existing asbestos claimants who analytically in	10	denial of the stay. So while it's not a ruling on the merits,
11	the Jakubowski situation. But I also believe that this issue	11	Your Honor, it does say something about the Supreme Court's
12	was raised that hasn't been discussed in the Second Circuit	12	view of Judge Gonzalez's decision.
13	argument in the (indiscernible) appeal. To what extent would	13	So coming back, Your Honor, into the context of stare
14	it be proper or improper in Your view if words were added to	14	decisis, again, this is the law in the Second Circuit, and this
15	any approval order that said to the fullest extent	15	is the law that should be followed in connection with this
16	constitutional principal?	16	transaction that is so important to so many people.
17	MR. MILLER: Just speaking for myself, Your Honor,	17	Now, Your Honor, turning to Mr. Kennedy who made,
18	without consultation for client, I don't have problem with that	18	likewise, a very impassioned and emotional argument, and
19	language. But I would, again, note, Your Honor, that Judge	19	likewise, I and everybody here, Your Honor, empathizes with his
20	Gonzalez dealt with the issue of notice and I do not recall the	20	
20			clients and wished that there was a way to assuage his emotion
	colloquy between Judge Sack and Mr. Esserman, and I'm not sur		as well as his client's. But alas, I can't do it, Your Honor.
22	that colloquy related to injunctions or the ability to sue.	22	He took issue, Your Honor, with a statement I made in
23	All I'm saying, Your Honor, there is going to be an estate.	23	connection with my initial closing argument referring to his
24	And estate which we believe will have significant value.	24	papers as construing that there was a conspiracy, a conspiracy
25	Part of the claimants who will have rights against	25	among GM and the Treasury to deprive the splinter union
	166		168
1	the property of that estate will be asbestos claimants, current	1	retirees of their benefits.
2	and future. And that estate, as part of its plan of	2	There is nothing in this record, Your Honor, that
3	liquidation can provide a mechanic to deal with future	3	would support a determination of a conspiracy and all of the
4	claimants. That's not unheard of, Your Honor, the creation of	4	would support a determination of a conspiracy and an of the
	chainants. That's not unneard of, Tour Honor, the creation of		elements that would constitute a conspiracy. Indeed the
5	a fund or nutting acide accets, so when the disease manifests	5	elements that would constitute a conspiracy. Indeed, the
5	a fund or putting aside assets, so when the disease manifests	5	record goes the other way, Your Honor. Mr. Henderson testified
6	itself and there is an actual claim there will be a source of	6	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM
6 7	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is	6 7	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the
6 7 8	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor.	6 7 8	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would
6 7 8 9	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch	6 7 8 9	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees.
6 7 8 9 10	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos	6 7 8 9 10	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees. And further, Your Honor, in Mr. Rory's deposition,
6 7 8 9 10 11	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty	6 7 8 9 10 11	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees. And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 I'm
6 7 8 9 10 11 12	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty close to thirty-five years. GM has not been using brake	6 7 8 9 10 11 12	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees. And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 I'm sorry, page 43, Your Honor, he refers to an exhibit which is
6 7 9 10 11 12 13	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty close to thirty-five years. GM has not been using brake linings with asbestos for a long time. If and when these	6 7 9 10 11 12 13	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees. And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 I'm sorry, page 43, Your Honor, he refers to an exhibit which is really Exhibit 9, which is in the record. And he was directed
6 7 8 9 10 11 12 13 14	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty close to thirty-five years. GM has not been using brake linings with asbestos for a long time. If and when these claims manifest and whether they're allowable or not, Your	6 7 8 9 10 11 12 13 14	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees. And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 I'm sorry, page 43, Your Honor, he refers to an exhibit which is really Exhibit 9, which is in the record. And he was directed his attention to the first page of that exhibit. And there's a
6 7 9 10 11 12 13 14 15	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty close to thirty-five years. GM has not been using brake linings with asbestos for a long time. If and when these claims manifest and whether they're allowable or not, Your Honor, is another issue that has to be dealt with. But as far	6 7 8 9 10 11 12 13 14 15	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees. And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 I'm sorry, page 43, Your Honor, he refers to an exhibit which is really Exhibit 9, which is in the record. And he was directed his attention to the first page of that exhibit. And there's a line in this exhibit, and the title of this exhibit, Your
6 7 9 10 11 12 13 14 15 16	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty close to thirty-five years. GM has not been using brake linings with asbestos for a long time. If and when these claims manifest and whether they're allowable or not, Your Honor, is another issue that has to be dealt with. But as far as 363(f) is concerned, as Judge Gonzalez held, and the	6 7 8 9 10 11 12 13 14 15 16	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees. And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 I'm sorry, page 43, Your Honor, he refers to an exhibit which is really Exhibit 9, which is in the record. And he was directed his attention to the first page of that exhibit. And there's a line in this exhibit, and the title of this exhibit, Your Honor, is History of OPEB Defeasement - IUE. And in the middle
6 7 8 9 10 11 12 13 14 15 16 17	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty close to thirty-five years. GM has not been using brake linings with asbestos for a long time. If and when these claims manifest and whether they're allowable or not, Your Honor, is another issue that has to be dealt with. But as far as 363(f) is concerned, as Judge Gonzalez held, and the specific provision in the order is I would construe it as a	6 7 8 9 10 11 12 13 14 15 16 17	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees. And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 I'm sorry, page 43, Your Honor, he refers to an exhibit which is really Exhibit 9, which is in the record. And he was directed his attention to the first page of that exhibit. And there's a line in this exhibit, and the title of this exhibit, Your Honor, is History of OPEB Defeasement - IUE. And in the middle of the third bullet point, it says, "2006, IUE resisted
6 7 8 9 10 11 12 13 14 15 16 17 18	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty close to thirty-five years. GM has not been using brake linings with asbestos for a long time. If and when these claims manifest and whether they're allowable or not, Your Honor, is another issue that has to be dealt with. But as far as 363(f) is concerned, as Judge Gonzalez held, and the specific provision in the order is I would construe it as a very broad provision. And you have to assume, Your Honor, tha	6 7 8 9 10 11 12 13 14 15 16 17 t 18	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees. And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 I'm sorry, page 43, Your Honor, he refers to an exhibit which is really Exhibit 9, which is in the record. And he was directed his attention to the first page of that exhibit. And there's a line in this exhibit, and the title of this exhibit, Your Honor, is History of OPEB Defeasement - IUE. And in the middle of the third bullet point, it says, "2006, IUE resisted mitigation VEBA concept - reluctant to bargain retiree VEBA for
6 7 8 9 10 11 12 13 14 15 16 17 18 19	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty close to thirty-five years. GM has not been using brake linings with asbestos for a long time. If and when these claims manifest and whether they're allowable or not, Your Honor, is another issue that has to be dealt with. But as far as 363(f) is concerned, as Judge Gonzalez held, and the specific provision in the order is I would construe it as a very broad provision. And you have to assume, Your Honor, tha in the appeal in Chrysler it was considered as Your Honor may	6 7 8 9 10 11 12 13 14 15 16 17 t 18 19	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees. And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 I'm sorry, page 43, Your Honor, he refers to an exhibit which is really Exhibit 9, which is in the record. And he was directed his attention to the first page of that exhibit. And there's a line in this exhibit, and the title of this exhibit. Your Honor, is History of OPEB Defeasement - IUE. And in the middle of the third bullet point, it says, "2006, IUE resisted mitigation VEBA concept - reluctant to bargain retiree VEBA for large population from legacy operations (e.g. Frigidaire) not
6 7 8 9 10 11 12 13 14 15 16 17 18	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty close to thirty-five years. GM has not been using brake linings with asbestos for a long time. If and when these claims manifest and whether they're allowable or not, Your Honor, is another issue that has to be dealt with. But as far as 363(f) is concerned, as Judge Gonzalez held, and the specific provision in the order is I would construe it as a very broad provision. And you have to assume, Your Honor, tha	6 7 8 9 10 11 12 13 14 15 16 17 t 18	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees. And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 I'm sorry, page 43, Your Honor, he refers to an exhibit which is really Exhibit 9, which is in the record. And he was directed his attention to the first page of that exhibit. And there's a line in this exhibit, and the title of this exhibit, Your Honor, is History of OPEB Defeasement - IUE. And in the middle of the third bullet point, it says, "2006, IUE resisted mitigation VEBA concept - reluctant to bargain retiree VEBA for
6 7 8 9 10 11 12 13 14 15 16 17 18 19	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty close to thirty-five years. GM has not been using brake linings with asbestos for a long time. If and when these claims manifest and whether they're allowable or not, Your Honor, is another issue that has to be dealt with. But as far as 363(f) is concerned, as Judge Gonzalez held, and the specific provision in the order is I would construe it as a very broad provision. And you have to assume, Your Honor, tha in the appeal in Chrysler it was considered as Your Honor may	6 7 8 9 10 11 12 13 14 15 16 17 t 18 19	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees. And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 I'm sorry, page 43, Your Honor, he refers to an exhibit which is really Exhibit 9, which is in the record. And he was directed his attention to the first page of that exhibit. And there's a line in this exhibit, and the title of this exhibit. Your Honor, is History of OPEB Defeasement - IUE. And in the middle of the third bullet point, it says, "2006, IUE resisted mitigation VEBA concept - reluctant to bargain retiree VEBA for large population from legacy operations (e.g. Frigidaire) not
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty close to thirty-five years. GM has not been using brake linings with asbestos for a long time. If and when these claims manifest and whether they're allowable or not, Your Honor, is another issue that has to be dealt with. But as far as 363(f) is concerned, as Judge Gonzalez held, and the specific provision in the order is I would construe it as a very broad provision. And you have to assume, Your Honor, tha in the appeal in Chrysler it was considered as Your Honor may have noted in the colloquy, there was a discussion of it.	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees. And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 I'm sorry, page 43, Your Honor, he refers to an exhibit which is really Exhibit 9, which is in the record. And he was directed his attention to the first page of that exhibit. And there's a line in this exhibit, and the title of this exhibit. Your Honor, is History of OPEB Defeasement - IUE. And in the middle of the third bullet point, it says, "2006, IUE resisted mitigation VEBA concept - reluctant to bargain retiree VEBA for large population from legacy operations (e.g. Frigidaire) not represented by active members - relatively small active
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty close to thirty-five years. GM has not been using brake linings with asbestos for a long time. If and when these claims manifest and whether they're allowable or not, Your Honor, is another issue that has to be dealt with. But as far as 363(f) is concerned, as Judge Gonzalez held, and the specific provision in the order is I would construe it as a very broad provision. And you have to assume, Your Honor, tha in the appeal in Chrysler it was considered as Your Honor may have noted in the colloquy, there was a discussion of it. THE COURT: Oh, there was definitely a discussion of	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees. And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 I'm sorry, page 43, Your Honor, he refers to an exhibit which is really Exhibit 9, which is in the record. And he was directed his attention to the first page of that exhibit. And there's a line in this exhibit, and the title of this exhibit, Your Honor, is History of OPEB Defeasement - IUE. And in the middle of the third bullet point, it says, "2006, IUE resisted mitigation VEBA concept - reluctant to bargain retiree VEBA for large population from legacy operations (e.g. Frigidaire) not represented by active members - relatively small active population to generate wage and COLA deferrals."
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty close to thirty-five years. GM has not been using brake linings with asbestos for a long time. If and when these claims manifest and whether they're allowable or not, Your Honor, is another issue that has to be dealt with. But as far as 363(f) is concerned, as Judge Gonzalez held, and the specific provision in the order is I would construe it as a very broad provision. And you have to assume, Your Honor, tha in the appeal in Chrysler it was considered as Your Honor may have noted in the colloquy, there was a discussion of it. THE COURT: Oh, there was definitely a discussion of it.	6 7 8 9 10 11 12 13 14 15 16 17 t 18 19 20 21 22	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees. And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 I'm sorry, page 43, Your Honor, he refers to an exhibit which is really Exhibit 9, which is in the record. And he was directed his attention to the first page of that exhibit. And there's a line in this exhibit, and the title of this exhibit, Your Honor, is History of OPEB Defeasement - IUE. And in the middle of the third bullet point, it says, "2006, IUE resisted mitigation VEBA concept - reluctant to bargain retiree VEBA for large population from legacy operations (e.g. Frigidaire) not represented by active members - relatively small active population to generate wage and COLA deferrals." So what does that demonstrate, Your Honor? That in
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty close to thirty-five years. GM has not been using brake linings with asbestos for a long time. If and when these claims manifest and whether they're allowable or not, Your Honor, is another issue that has to be dealt with. But as far as 363(f) is concerned, as Judge Gonzalez held, and the specific provision in the order is I would construe it as a very broad provision. And you have to assume, Your Honor, tha in the appeal in Chrysler it was considered as Your Honor may have noted in the colloquy, there was a discussion of it. THE COURT: Oh, there was definitely a discussion of it. MR. MILLER: And also, Your Honor, I think we have to	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees. And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 I'm sorry, page 43, Your Honor, he refers to an exhibit which is really Exhibit 9, which is in the record. And he was directed his attention to the first page of that exhibit. And there's a line in this exhibit, and the title of this exhibit, Your Honor, is History of OPEB Defeasement - IUE. And in the middle of the third bullet point, it says, "2006, IUE resisted mitigation VEBA concept - reluctant to bargain retiree VEBA for large population from legacy operations (e.g. Frigidaire) not represented by active members - relatively small active population to generate wage and COLA deferrals." So what does that demonstrate, Your Honor? That in 2006, GM was in actual negotiations with the IUE about creating
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	itself and there is an actual claim there will be a source of recovery. That can be done within that context. And there is no discharge in connection with that, Your Honor. And besides, Your Honor, I think it was Mr. Koch testified it will be three or five years, the asbestos situation has been going on now, Your Honor, for I think pretty close to thirty-five years. GM has not been using brake linings with asbestos for a long time. If and when these claims manifest and whether they're allowable or not, Your Honor, is another issue that has to be dealt with. But as far as 363(f) is concerned, as Judge Gonzalez held, and the specific provision in the order is I would construe it as a very broad provision. And you have to assume, Your Honor, tha in the appeal in Chrysler it was considered as Your Honor may have noted in the colloquy, there was a discussion of it. THE COURT: Oh, there was definitely a discussion of it. MR. MILLER: And also, Your Honor, I think we have to refer to the per curiam decision of the Supreme Court in	6 7 8 9 10 11 12 13 14 15 16 17 t 18 19 20 21 22 23 24	record goes the other way, Your Honor. Mr. Henderson testified that up until the very end of May, there was the hope of GM that the bond exchange offer would be successful. And if the bond exchange offer would have been successful, there would have been no impact on the retirees. And further, Your Honor, in Mr. Rory's deposition, which has been designated to Your Honor, at page 44 I'm sorry, page 43, Your Honor, he refers to an exhibit which is really Exhibit 9, which is in the record. And he was directed his attention to the first page of that exhibit. And there's a line in this exhibit, and the title of this exhibit, Your Honor, is History of OPEB Defeasement - IUE. And in the middle of the third bullet point, it says, "2006, IUE resisted mitigation VEBA concept - reluctant to bargain retiree VEBA for large population from legacy operations (e.g. Frigidaire) not represented by active members - relatively small active population to generate wage and COLA deferrals." So what does that demonstrate, Your Honor? That in 2006, GM was in actual negotiations with the IUE about creating a VEBA, a VEBA that would have provided the health and medica

212-267-6868

1	have been set up in 2006, Your Honor, and it would have been	1	There is no requirement that before you transfer assets, you
2	active.	2	must reject the collective bargaining agreement, if that's the
3	In addition, Your Honor, Mr. Kennedy is an excellent	3	condition. There is no requirement in connection with a 363
4	lawyer, and he knew how to play the strings on numbers. He	4	sale that you must comply with 1114. OldCo
5	talked about the 26,000 retirees of the splinter unions who	5	THE COURT: Can I assume that there will be
6	will be deprived of retiree benefits. And actually, as he	6	compliance by OldCo with 1114?
7	spoke, Your Honor, he went on to say that approximately 20,000	7	MR. MILLER: Until such time as Your Honor may rule
8	of those retirees are already post-sixty-five, so they're on	8	on an 1114 motion. Yes, sir. Right now, today, all of the IUE
9	Medicare. And under the proposed retiree benefits that had	9	retirees are still receiving the full benefits under that
10	been offered, all benefits cease from the VEBA or General	10	program. That's what's costing and I'm including all the
11	Motors at the point that you go on Medicare. So basically,	11	splinter unions, Your Honor that's what's costing
12	Your Honor, we're talking about 6,000 retirees, who right now,	12	approximately twenty-five- to twenty-six million dollars a
13	are getting their retiree benefits.	13	month.
14	Unfortunately, as OldCo goes into liquidation,	14	Now, as OldCo goes into its liquidation phase,
15	there's no way that you can sustain paying 26 million dollars a	15	obviously that is not a sustainable benefit in a liquidation
16	month for retiree and medical benefits. The exhibit I	16	scenario, nor is it a sustainable benefit in the context of New
17	forget the number, Your Honor of the statement made by Mr.	17	GM, Your Honor. Are we going to inflict upon New GM some of
18	Henderson, clearly demonstrates that there was an effort to try	18	the problems that contributed mightily to the demise of Old GM.
19	and find a way, a means, to assist the splinter union retirees	19	The concept of having job banks of thousands of employees who
20	and the maintenance of benefits for those retirees. There's	20	sit around and don't do anything except paychecks with no
21	nothing else in the record, Your Honor, except that what	21	benefit to the ongoing operations, work rules, et cetera, and
22	happened at the end of May when a decision was made that there	22	conditions under collective bargaining agreements. What has
23	had to be a transaction, there had to be something to	23	happened here, Your Honor, is the Treasury, a government
24	regenerate and maintain the going concern value of these	24	sponsored purchaser, who has had to make an agreement with the
25	assets, and that the 363 transaction was the best way to do	25	UAW because otherwise there would be no employees. And it's
	170		172
1	that, that this sale was finalized.	1	unfortunate that the IUE has basically no active employees.
2	That doesn't give rise, Your Honor, to a conspiracy	2	Not necessary to the operation of the plants that are being
2 3	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson	2 3	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of
2 3 4	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury	2 3 4	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to
2 3 4 5	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were	2 3 4 5	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale.
2 3 4 5 6	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial	2 3 4 5 6	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the
2 3 4 5 6 7	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to	2 3 4 5 6 7	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions
2 3 4 5 6 7 8	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo.	2 3 4 5 6 7 8	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries through
2 4 5 6 7 8 9	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo. This morning Your Honor heard of a potential	2 3 4 5 6 7 8 9	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries throug the purchaser. I withdraw the word jealousy. Nonetheless,
2 3 4 5 6 7 8 9 10	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo. This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's	2 3 4 5 6 7 8 9 10	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries through the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over
2 3 4 5 6 7 8 9 10 11	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo. This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's Compensation, where NewCo or New GM has agreed to pick up th	2 3 4 5 6 7 8 9 10 e 11	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries through the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over again, that the UAW is getting too much and that it's just
2 3 4 5 6 7 8 9 10 11 12	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo. This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's Compensation, where NewCo or New GM has agreed to pick up th Workman's Compensation obligations. Now, why was that done?	2 3 4 5 6 7 8 9 10 e 11 12	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries through the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over again, that the UAW is getting too much and that it's just unfair. Well, it's the economic circumstances, Your Honor,
2 3 4 5 6 7 8 9 10 11 12 13	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo. This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's Compensation, where NewCo or New GM has agreed to pick up th Workman's Compensation obligations. Now, why was that done? That was done because if GM New GM did not do that, the	2 3 4 5 6 7 8 9 10 e 11 12 13	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries through the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over again, that the UAW is getting too much and that it's just unfair. Well, it's the economic circumstances, Your Honor, that resulted in the UAW situation. The proposal by Mr.
2 3 4 5 6 7 8 9 10 11 12 13 14	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo. This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's Compensation, where NewCo or New GM has agreed to pick up th Workman's Compensation obligations. Now, why was that done? That was done because if GM New GM did not do that, the State of Michigan was not going to allow New GM to be a self	2 3 4 5 6 7 8 9 10 e 11 12 13 14	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries throug the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over again, that the UAW is getting too much and that it's just unfair. Well, it's the economic circumstances, Your Honor, that resulted in the UAW situation. The proposal by Mr. Jakubowski that Your Honor an order of conditional approval
2 3 4 5 6 7 8 9 10 11 12 13 14 15	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo. This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's Compensation, where NewCo or New GM has agreed to pick up th Workman's Compensation obligations. Now, why was that done? That was done because if GM New GM did not do that, the State of Michigan was not going to allow New GM to be a self insurer, which would have cost New GM an enormous amount of	2 3 4 5 6 7 8 9 10 e 11 12 13 14 15	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries through the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over again, that the UAW is getting too much and that it's just unfair. Well, it's the economic circumstances, Your Honor, that resulted in the UAW situation. The proposal by Mr. Jakubowski that Your Honor an order of conditional approval just doesn't work, it's not acceptable to the purchaser. It
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo. This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's Compensation, where NewCo or New GM has agreed to pick up th Workman's Compensation obligations. Now, why was that done? That was done because if GM New GM did not do that, the State of Michigan was not going to allow New GM to be a self insurer, which would have cost New GM an enormous amount of money; and which would come out of its cash flow. By assuming	2 3 4 5 6 7 8 9 10 e 11 12 13 14 15 16	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries through the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over again, that the UAW is getting too much and that it's just unfair. Well, it's the economic circumstances, Your Honor, that resulted in the UAW situation. The proposal by Mr. Jakubowski that Your Honor an order of conditional approval just doesn't work, it's not acceptable to the purchaser. It doesn't benefit the New GM and it doesn't benefit the Old GM.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo. This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's Compensation, where NewCo or New GM has agreed to pick up th Workman's Compensation obligations. Now, why was that done? That was done because if GM New GM did not do that, the State of Michigan was not going to allow New GM to be a self insurer, which would have cost New GM an enormous amount of money; and which would come out of its cash flow. By assuming that liability, it is now going to be allowed to be a self	2 3 4 5 6 7 8 9 10 e 11 12 13 14 15 16 17	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries throug the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over again, that the UAW is getting too much and that it's just unfair. Well, it's the economic circumstances, Your Honor, that resulted in the UAW situation. The proposal by Mr. Jakubowski that Your Honor an order of conditional approval just doesn't work, it's not acceptable to the purchaser. It doesn't benefit the New GM and it doesn't benefit the Old GM. Because the conditional approval will have a terrible negative
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo. This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's Compensation, where NewCo or New GM has agreed to pick up th Workman's Compensation obligations. Now, why was that done? That was done because if GM New GM did not do that, the State of Michigan was not going to allow New GM to be a self insurer, which would have cost New GM an enormous amount of money; and which would come out of its cash flow. By assuming that liability, it is now going to be allowed to be a self insurer.	2 3 4 5 6 7 8 9 10 e 11 12 13 14 15 16 17 18	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries through the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over again, that the UAW is getting too much and that it's just unfair. Well, it's the economic circumstances, Your Honor, that resulted in the UAW situation. The proposal by Mr. Jakubowski that Your Honor an order of conditional approval just doesn't work, it's not acceptable to the purchaser. It doesn't benefit the New GM and it doesn't benefit the Old GM. Because the conditional approval will have a terrible negative effect on consumers. Everything that this company has been
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo. This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's Compensation, where NewCo or New GM has agreed to pick up th Workman's Compensation obligations. Now, why was that done? That was done because if GM New GM did not do that, the State of Michigan was not going to allow New GM to be a self insurer, which would have cost New GM an enormous amount of money; and which would come out of its cash flow. By assuming that liability, it is now going to be allowed to be a self insurer. Essentially, Mr. Kennedy, in his impassioned plea, is	2 3 4 5 6 7 8 9 10 e 11 12 13 14 15 16 17 18 19	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries through the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over again, that the UAW is getting too much and that it's just unfair. Well, it's the economic circumstances, Your Honor, that resulted in the UAW situation. The proposal by Mr. Jakubowski that Your Honor an order of conditional approval just doesn't work, it's not acceptable to the purchaser. It doesn't benefit the New GM and it doesn't benefit the Old GM. Because the conditional approval will have a terrible negative effect on consumers. Everything that this company has been fighting for the last thirty days to make it clear to the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo. This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's Compensation, where NewCo or New GM has agreed to pick up th Workman's Compensation obligations. Now, why was that done? That was done because if GM New GM did not do that, the State of Michigan was not going to allow New GM to be a self insurer, which would have cost New GM an enormous amount of money; and which would come out of its cash flow. By assuming that liability, it is now going to be allowed to be a self insurer. Essentially, Mr. Kennedy, in his impassioned plea, is arguing something which is novel. He is basically saying, Your	2 3 4 5 6 7 8 9 10 e 11 12 13 14 15 16 17 18 19 20	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries through the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over again, that the UAW is getting too much and that it's just unfair. Well, it's the economic circumstances, Your Honor, that resulted in the UAW situation. The proposal by Mr. Jakubowski that Your Honor an order of conditional approval just doesn't work, it's not acceptable to the purchaser. It doesn't benefit the New GM and it doesn't benefit the Old GM. Because the conditional approval will have a terrible negative effect on consumers. Everything that this company has been fighting for the last thirty days to make it clear to the consumer that it's not going to be entangled in a bankruptcy
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo. This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's Compensation, where NewCo or New GM has agreed to pick up th Workman's Compensation obligations. Now, why was that done? That was done because if GM New GM did not do that, the State of Michigan was not going to allow New GM to be a self insurer, which would have cost New GM an enormous amount of money; and which would come out of its cash flow. By assuming that liability, it is now going to be allowed to be a self insurer. Essentially, Mr. Kennedy, in his impassioned plea, is arguing something which is novel. He is basically saying, Your Honor, that Sections 1113 and 1114 are effectively in the same	2 3 4 5 6 7 8 9 10 e 11 12 13 14 15 16 17 18 19 20 21	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries through the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over again, that the UAW is getting too much and that it's just unfair. Well, it's the economic circumstances, Your Honor, that resulted in the UAW situation. The proposal by Mr. Jakubowski that Your Honor an order of conditional approval just doesn't work, it's not acceptable to the purchaser. It doesn't benefit the New GM and it doesn't benefit the Old GM. Because the conditional approval will have a terrible negative effect on consumers. Everything that this company has been fighting for the last thirty days to make it clear to the consumer that it's not going to be entangled in a bankruptcy case, that these assets which will form a foundation of a new
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo. This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's Compensation, where NewCo or New GM has agreed to pick up th Workman's Compensation obligations. Now, why was that done? That was done because if GM New GM did not do that, the State of Michigan was not going to allow New GM to be a self insurer, which would have cost New GM an enormous amount of money; and which would come out of its cash flow. By assuming that liability, it is now going to be allowed to be a self insurer. Essentially, Mr. Kennedy, in his impassioned plea, is arguing something which is novel. He is basically saying, Your Honor, that Sections 1113 and 1114 are effectively in the same status as liens on the land. They run with the assets. That	2 3 4 5 6 7 8 9 10 e 11 12 13 14 15 16 17 18 19 20 21 22	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries through the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over again, that the UAW is getting too much and that it's just unfair. Well, it's the economic circumstances, Your Honor, that resulted in the UAW situation. The proposal by Mr. Jakubowski that Your Honor an order of conditional approval just doesn't work, it's not acceptable to the purchaser. It doesn't benefit the New GM and it doesn't benefit the Old GM. Because the conditional approval will have a terrible negative effect on consumers. Everything that this company has been fighting for the last thirty days to make it clear to the consumer that it's not going to be entangled in a bankruptcy case, that these assets which will form a foundation of a new OEM will be there free of the entanglements of bankruptcy will
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo. This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's Compensation, where NewCo or New GM has agreed to pick up th Workman's Compensation obligations. Now, why was that done? That was done because if GM New GM did not do that, the State of Michigan was not going to allow New GM to be a self insurer, which would have cost New GM an enormous amount of money; and which would come out of its cash flow. By assuming that liability, it is now going to be allowed to be a self insurer. Essentially, Mr. Kennedy, in his impassioned plea, is arguing something which is novel. He is basically saying, Your Honor, that Sections 1113 and 1114 are effectively in the same status as liens on the land. They run with the assets. That you cannot transfer assets of a unionized business without	2 3 4 5 6 7 8 9 10 e 11 12 13 14 15 16 17 18 19 20 21 22 23	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries through the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over again, that the UAW is getting too much and that it's just unfair. Well, it's the economic circumstances, Your Honor, that resulted in the UAW situation. The proposal by Mr. Jakubowski that Your Honor an order of conditional approval just doesn't work, it's not acceptable to the purchaser. It doesn't benefit the New GM and it doesn't benefit the Old GM. Because the conditional approval will have a terrible negative effect on consumers. Everything that this company has been fighting for the last thirty days to make it clear to the consumer that it's not going to be entangled in a bankruptcy case, that these assets which will form a foundation of a new OEM will be there free of the entanglements of bankruptcy will dissipate.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo. This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's Compensation, where NewCo or New GM has agreed to pick up th Workman's Compensation obligations. Now, why was that done? That was done because if GM New GM did not do that, the State of Michigan was not going to allow New GM to be a self insurer, which would have cost New GM an enormous amount of money; and which would come out of its cash flow. By assuming that liability, it is now going to be allowed to be a self insurer. Essentially, Mr. Kennedy, in his impassioned plea, is arguing something which is novel. He is basically saying, Your Honor, that Sections 1113 and 1114 are effectively in the same status as liens on the land. They run with the assets. That you cannot transfer assets of a unionized business without dealing with obligations under 1113 and 1114. There is no	2 3 4 5 6 7 8 9 10 e 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries throug the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over again, that the UAW is getting too much and that it's just unfair. Well, it's the economic circumstances, Your Honor, that resulted in the UAW situation. The proposal by Mr. Jakubowski that Your Honor an order of conditional approval just doesn't work, it's not acceptable to the purchaser. It doesn't benefit the New GM and it doesn't benefit the Old GM. Because the conditional approval will have a terrible negative effect on consumers. Everything that this company has been fighting for the last thirty days to make it clear to the consumer that it's not going to be entangled in a bankruptcy case, that these assets which will form a foundation of a new OEM will be there free of the entanglements of bankruptcy will dissipate. And Mr. Richman, again, raised the issue in his
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	That doesn't give rise, Your Honor, to a conspiracy to deprive these retirees of their benefits. As Mr. Wilson testified, Your Honor, the guiding principle of the Treasury was to acquire the assets and assume the liabilities which were necessary and incidental to the creation of a commercial success; a commercial success, Your Honor, which would inure to the benefit of OldCo and the creditors of OldCo. This morning Your Honor heard of a potential compromise with the State of Michigan on Workman's Compensation, where NewCo or New GM has agreed to pick up th Workman's Compensation obligations. Now, why was that done? That was done because if GM New GM did not do that, the State of Michigan was not going to allow New GM to be a self insurer, which would have cost New GM an enormous amount of money; and which would come out of its cash flow. By assuming that liability, it is now going to be allowed to be a self insurer. Essentially, Mr. Kennedy, in his impassioned plea, is arguing something which is novel. He is basically saying, Your Honor, that Sections 1113 and 1114 are effectively in the same status as liens on the land. They run with the assets. That you cannot transfer assets of a unionized business without	2 3 4 5 6 7 8 9 10 e 11 12 13 14 15 16 17 18 19 20 21 22 23	Not necessary to the operation of the plants that are being acquired by the purchaser. And there has to be a line of commercial reasonableness in terms of what New GM is going to assume in connection with a sale. Mr. Kennedy also criticized me because I used the word jealousy in respect of the discussions or descriptions that have been made in connection of the UAW recoveries through the purchaser. I withdraw the word jealousy. Nonetheless, through half this case I have heard repeated over, and over again, that the UAW is getting too much and that it's just unfair. Well, it's the economic circumstances, Your Honor, that resulted in the UAW situation. The proposal by Mr. Jakubowski that Your Honor an order of conditional approval just doesn't work, it's not acceptable to the purchaser. It doesn't benefit the New GM and it doesn't benefit the Old GM. Because the conditional approval will have a terrible negative effect on consumers. Everything that this company has been fighting for the last thirty days to make it clear to the consumer that it's not going to be entangled in a bankruptcy case, that these assets which will form a foundation of a new OEM will be there free of the entanglements of bankruptcy will dissipate.

212-267-6868

1	look at the month of June. It was only thirty-three percent	1	asked for more time to prepare his closing arguments so that he
2	below June of 2008. And as Mr. Henderson testified lead sales	2	could address the evidence in the record. I listened carefully
3	were down by an even greater margin. And if Your Honor	3	to Mr. Richman's argument. There were no references to the
4	happened to read this morning's New York Times it shows the	4	record other than his claim that Mr. Wilson is not credible.
5	relative figures between Chrysler, Ford and GM. And what you	5	During the course of these proceedings, he put on no evidence,
6	have to surmise out of that or infer out of those discussions,	6	no witnesses, no declaration of fact, no expert witness. In
7	Your Honor, that Ford's market share is rising. And where is	7	fact, he didn't do very much other than work off what was in
8	that market share coming from. As we sit here today stand	8	the record.
9	here today, GM's market share is our owee. And the longer it's	9	All of the others' evidence shows good-faith
10	in this process the more that will happen.	10	bargaining, good-faith business judgment. And he concedes that
11	And Mr. Henderson testified that GM will not make	11	it's in the best interest of all parties that the GM assets be
12	money in 2009, which means that somebody has to finance thes	<b>e</b> 12	sold. His cross-examination of Mr. Wilson certainly did not
13	operations going forward. And not one objector has brought	13	shake Mr. Wilson's credibility. What he's doing, Your Honor,
14	forth a financier. Not one objector has brought forth an	14	he's asking you to take his opinion and speculate on the future
15	alterative a viable alternative other than, Your Honor, you	15	and not refer to the evidence that has been sworn to in these
16	should deny this application, we'll play poker or Russian	16	cases in these proceedings. And basically he says, Your
17	roulette with the government. And if the government walks,	17	Honor, oh, Chapter 11 is an easy process, given a few days
18	well, we'll just have a Chapter 11 case and see what happens.	18	parties can agree on various things and in ninety days we can
19	Well, what does that mean, Your Honor? Without	19	be out of Chapter 11. I would just say, Your Honor, just
20	financing it would be the obligation of Old GM to close every	20	taking these three days of hearings as an example of what
21	factory, to terminate every employee except those that are	21	happens in a Chapter 11, the concept that you could file a
22	needed to preserve and protect the properties. The results	22	Chapter 11 plan, and he doesn't even describe the Chapter 11
23	will be catastrophic, Your Honor, and irreversible. So we're	23	plan that you would file on the first day, but any Chapter 11
24	be brought back again, Your Honor, to the bluff game.	24	plan that you file that had open ends to it would involve the
25	But there's nothing in the record that says that the	25	appointment of creditors' committees, disclosure statements,
	174		176
1		1	The second dist of the second dist is a first second dist.
1 2	Treasury is bluffing. And I take the representation of counsel	1 2	arguments over valuation. The concept that a case of the size
	for the United States that that representation is made on		and complexity of GM would move through some accelerated basi
3	information furnished to him by his client, the U.S. Treasury.	3 4	so that you can have a confirmation in ninety days, I think,
4 5	But again we hear the argument, Your Honor, that this was all	5	Your Honor, is not credible. It just doesn't happen.
6	a this is not a true sale, and part of that also relates		I refer to the Delphi case. The Delphi case was
о 7	back to this infamous document, Bondholders' Exhibit 2 from the	7	supposed to move on a fast track. That track seems to have
8	Cadwalader firm, about the use of Section 363. I would venture	8	disappeared. And in July later this month, I should say,
	to say, Your Honor, if anybody goes to a CLE program on		Your Honor, Delphi will either have a resolicited plan of
9	bankruptcy, they will get this slide show without the names. I	9 10	reorganization or will have a 363 sale with substantially less
10 11	don't want to demean Cadwalader, Your Honor, but I think that		recoveries for the creditors and basically no recoveries for
11	this is in general circulation.	11	the unsecured creditors.
12	Now, looking at that exhibit, Your Honor, and looking	12	The problem with long term bankruptcies and I don't mean long term to be years, Your Honor is that things
13	at the record as to what GM did, if the board of directors of GM did not consider the various alternatives, that beard of	13	
14	GM did not consider the various alternatives, that board of	14	happen in bankruptcy cases. People come into the court with
15	directors might have been remiss in its duties. It had an	15	all kinds of motions, applications, and various moves to get
16	obligation to consider all alternatives and to rely upon the	16	leverage. We spent three days on this proceeding. Think of
17	advice of its professionals and advisors. That's what the	17	the days that would be spent in valuation discussions; the
18	board of directors did, and that's what the exhibits establish.	18	possibility of the appointment of an examiner; fights between
19	Clearly, there were presentations to the board as to what	19	ad hoc committees and independent committees. And all during
20	bankruptcy provides for, what happens in a bankruptcy.	20	this process, Mr. Richman never refers to who's going to
21	Otherwise, the board of directors could not be discharging its	21	finance it. Where's the money going to come from while
22	fiduciary obligations.	22	everybody's having fun in the courtroom.
23	I just want to see where I am in this, Your Honor.	23	Mr. Jones says don't look at the Treasury. We've got
24	Now, if I might, Your Honor, I would turn to Mr.	24	to protect the taxpayer's money and we're not going to put good
25	Richman's comments. Last evening, Your Honor, Mr. Richman	25	dollars after bad dollars. And while this is happening, Your
-	175		177

212-267-6868

516-608-2400

1	Honor, the consumer is scratching his or her head and saying is	1	House recently about these cases, but I recall President
2	there going to be a GM that's going to produce good vehicles,	2	Obama's speech that either Chrysler finds itself a purchaser by
3	reliable vehicles that I know I can service? What are the	3	May 1 or April 30 or there will be no further financing. And
4	dealers going to say, Your Honor, when this process goes on	4	if GM doesn't come up with a viable plan by June 1st, that's
5	with no plan other than "We're going to stiff the Treasury and	5	the end. And I believe the President meant it. And clearly,
6	we're going to make the Treasury put in more money." That is	6	the Chrysler people believe that he meant it, even though it
7	an awful gamble to play in this case when you're dealing	7	must have given Fiat some bargaining leverage. There is
8	with and I sympathize with Mr. Kennedy and his 26,000	8	nothing on the record I keep repeating this Your Honor
9	retirees, but we're talking about the UAWs with almost 600,000	9	that there will ever be additional financing.
10	retirees and active employees, 235,000 GM employees worldwide,	10	I believe all of the objectors agree that if Your
11	Yesterday, I think, Your Honor, Lear, a supplier to	11	Honor found that this is a legitimate sale, then the
12	GM, commenced bankruptcy, Chapter 11 cases. In the past month	12	transaction should be approved. Delaying the transaction so
13	I think there have been three or four suppliers. If this case	13	that various parties can try to exercise leverage by being ad
14	doesn't come out the way it has been programmed, with a 363	14	hoc committees in a Chapter 11 or attempting to be additional
15	transaction, there will be chaos in the supplier industry.	15	committees only means further delay in the conservation of a
16	Systemic danger is all over the horizon, Your Honor.	16	plan, a delay that cannot be borne by this company.
17	So what do we get down to, Your Honor? We get down	17	Mr. Richman's closing argument, Your Honor, as I
18	to a situation in which there is no palatable alternative. No	18	said, had nothing to do with the record that was made before
19	financier has shown up, and I think it is very significant,	19	Your Honor in the past two days. It was his ipse dixit as to
20	Your Honor, that notwithstanding all the notoriety about GM	20	what he thinks could happen in a Chapter 11 case. With no
21	pre-Chapter 11 and post-Chapter 11, nobody no hedge fund, no	21	expert testifying, there's no other person offering any support
22	private equity fund, no foreign investor has come along and	22	for that position. He offers nothing in the way of a
23	said gee, I really would like to take a look at GM and maybe I	23	purchaser. He offers nothing in the way of a financier.
24	would like to buy it or parts of it. Not one party has been	24	I believe, Your Honor, Mr. Richman's closing argumen
25	interested. Not one party has been willing to sign a	25	was just his opinion and his advice to you that you should tak
2.5	178	2.5	180
			100
1	confidentiality agreement to get into the data room and look at	1	up the purported bluff of the U.S. Treasury and that's an
2	it for the purposes of considering a bid. There hasn't been	2	awesome responsibility that he wants to impose on your
3	one expression of interest.	3	shoulders.
4	So we have a situation, Your Honor, where the only	4	With respect to, Your Honor, to Mr. Parker, we have
5	offer at all for these assets is the government-sponsored	5	submitted, Your Honor, and I'm not going to speak further on
6	purchaser, the only entity that will be able to get financing	6	it, the statements and the arguments made by Mr. Parker with
7	and make these assets into a valuable original equipment	7	respect to the equal and ratable clauses in the indentures, are
8	manufacture. The only other option is to commence the	8	just not accurate. Mr. Parker has not established and he's not
9	liquidation process because this company cannot survive withou		produced any certifications or a record of any lien filings
10	financing, and there is no financing. And when that becomes	10	with respect to the excluded assets, and the agreements are
11	public knowledge, that's the end of its ability to really sell	11	quite clear that if there were no liens granted to the federal
12	cars. Then you are in the liquidation and no consumer, unless	12	government, the U.S. Treasure in connection with the security
13	he gets a terrific discount and takes his chances or her	13	agreement of $12/31/08$ that was subject to those indentures.
14	chances, will buy a GM vehicle.	14	THE COURT: Let me go back to the Secured Financing
15	There has to be a cutoff and a creation of certainty	15	101. UCC-1 perfects the security interests but the security
16	as to the future of these GM assets. And the fact, Your Honor,	16	interest has to it's separately granted, am I correct?
17	as I alluded to before, that GM management is moving over,	17	MR. MILLER: That's correct, Your Honor.
18	doesn't make it a nonsale. It's a sale. There's a real	18	THE COURT: And romanette v says that (indiscernible
19	purchase price that's being paid here. There is an independent	19	will be granting the security interest?
20	company that is buying these assets and will be an independent	20	MR. MILLER: I'm sorry, sir?
21	company going forward, and hopefully in a very short period of		THE COURT: And romanette v says, in its excluded
22	time, a publicly owned company for the benefit not only of	22	assets or excluded liens provision, that there isn't a grant
23	shareholders of this company but the whole automotive industry		of security?
23	Mr. Richman said that the White House will not allow	24	MR. MILLER: That's correct, Your Honor.
	with Rieminan sale that the withe House with not allow	24	WIX. WILLER. That's collect, I out fioliof.
25	GM to fail I haven't heard anything come out of the White	25	THE COURT: Okay
25	GM to fail. I haven't heard anything come out of the White 179	25	THE COURT: Okay.

212-267-6868

1	MR. MILLER: And Mr. Henderson testified at length,	1	says has controversial implications that I'm not sensitive
2	Your Honor, that there were no liens granted in violation of	2	enough to.
3	the indentures.	3	MR. MILLER: I would just note, Your Honor, that the
4	Bad faith. Mr. Parker says that the purchaser has	4	proposed sale order in paragraph 55 states, "Nothing contained
5	not acted in good faith. Yet the record is to the contrary.	5	in this order shall in any way: 1) diminish the obligation of
6	The record establishes the extent and nature of the	6	the purchasers to comply with environmental laws or 2) diminish
7	negotiations, how they were conducted, and that they were	7	the obligations of the debtors to comply with environmental
8	consistent with the standards of good faith under the cases.	8	laws consistent with their rights and obligations as debtors-
9	The TARP argument. Again, Your Honor, that argument	9	in-possession under the Bankruptcy Code." I would submit to
10	was raised in Chrysler, and Judge Gonzalez ruled on that. It	10	Your Honor that is fairly broad language that imposes on the
11	involved the DDSA and TARP, and that argument was not	11	purchaser and the debtors as debtors-in-possession. And there
12	successful and was continually raised by the Indiana pension	12	is no intent to circumvent or evade the environmental laws. To
13	plans that you can't use TARP money for these purposes. And in	13	the extent that New GM is acquiring plants that may have
14	this circuit, Your Honor, at least, that is not an argument	14	environmental problems, they will be responsible for that. To
15	that can stand.	15	the extent
16	Mr. Parker also complains about the scheme of	16	THE COURT: Kind of like in Magcorp.
17	distribution. And again, the basis of his argument on the	17	MR. MILLER: I'm sorry?
18	scheme of distribution is the UAW is just getting too much,	18	THE COURT: Kind of like in Magnesium Corporation of
19	while the record is replete with the rationalization and	19	America.
20	reasons why the UAW ended up in that position. There are	20	MR. MILLER: That's correct, Your Honor. And to the
21	sometimes, Your Honor, when union membership is a good thing.	21	extent that OldCo retains plants that haven't I mean, the
22		22	whole controversy, Your Honor, about the wind-down budget only
	Sometimes not. But these active employees are critical to this	22	
23	transaction. If we did not have these employees, there would		related to environmental claims. As the analysis of the
24	not be a 363 transaction. And more importantly, Your Honor,	24	environmental claims and the potential exposure there went up,
25	the consideration that is being given to the UAW VEBA is coming 182	25	the committee, justifiably, said we need more in the wind-down
	102		184
1	from the purchaser and not from OldCo.	1	budget to cover environmental claims. So there is no intent
2	And if this deal is not approved and this transaction	2	and I would submit to Your Honor the language is sufficiently
3	doesn't go forward, and Mr. Curson's testimony demonstrates,	3	broad, and if the New York State Attorney General has a problem
4	the UAW claims, the VEBA claims will be reasserted in the OldC		with it, we'd be happy to work that language out with her.
5	case so that you will be adding on an additional twenty plus	5	THE COURT: Okay. Continue.
6	billion dollars of liabilities which will substantially dilute	6	MR. MILLER: So Your Honor, we come down to the final
7	the position of the bondholders and other creditors.	7	
8	*	8	aspect, I hope, of this proceeding. The record, Your Honor, I
9	I am not going to deal with Mr. Bernstein's argument,	9	believe is abundantly clear. The business justification has
	Your Honor, as to the consent decree and the effect of that.		been articulated. Mr. Richman referred to the Lionel case and
10	That's an issue that can be determined in the future. My	10	the various factors in the Lionel case. And in the Lionel
11	colleague, Mr. Karotkin, said I should refer to the case of In	11	case, as Your Honor may recall, the sale was disapproved. It
12	re Rochnunis (ph.) and say pay the 62,000 dollars. I'm not	12	was disapproved and reversed by the Second Circuit because it
13	going to do that.	13	was being done at the insistence of the creditors' committee
14	As I understand it, Your Honor, the indenture	14	who wanted a cash distribution as part of a subsequent plan of
15	trustees are no longer objecting. Mr. Reinsel, I think his	15	reorganization. And the issue was their electronics, the
16	name is, made the same arguments as Mr. Esserman in respect of	16	common stock of that partially owned subsidiary. But in the
17	asbestos claimants, and I think I've dealt with that.	17	Lionel case, Your Honor, there was no danger of diminution in
18	So Your Honor, we get down to the basic issue. And	18	value. Dale Electronics was an independent company listed on
19	in connection with	19	the New York Stock Exchange. The value of that stock was not
20	THE COURT: Before you wrap up, do you want to	20	diminishing. And as it turns out, three years later or two
21	comment in any way on Ms. Taylor's point that I should have	21	years later it was at the same value.
22	language in the approved order that says, in substance I	22	We have a different case, Your Honor. And as pointed
23	don't know if she's saying just that nothing in this order	23	out by the Second Circuit in Lionel, the most important factor
24	affects the government's ability to use its police power or if	24	is the potential diminution in the value of the assets. This
25	she's looking for more than that. And I don't know if what she	25	record establishes that if this transaction is not approved,
25	she's looking for more than that. And I don't know if what she $183$	25	record establishes that if this transaction is not approved, 185

212-267-6868

1	the value of the GM assets will deteriorate and may deteriorate	1	good faith in negotiating this transaction, as demonstrated by
2	at a much more rapid pace than either you or I or Mr. Richman	2	the negotiations that have gone on to this very hour. There
3	understands. The fact that GM did better than its downside	3	has been no bad faith as Mr. Parker alleges.
4	projections in the month of June doesn't establish anything	4	To allow these assets to go through a process of
5	when the month of June was thirty-three percent below the same	5	liquidation would be horrific, Your Honor, a situation that
6	period in 2008, and a decline of forty-three percent in fleet	6	Your Honor should not allow. And Your Honor should approve
7	sales. And then we have Mr. Henderson's testimony, even going	<b>z</b> 7	this transaction. Thank you.
8	forward GM will lose money in 2009. If we don't start if	8	THE COURT: All right. Thank you. All right.
9	the purchaser doesn't start using these assets as part of a new	9	Ladies and gentlemen, this hearing is now closed. We're going
10	GM, a new, leaner, more competitive, more efficient GM, the	10	to take a lunch break for an hour, and then if you have any
11	downward cycle will be irreversible.	11	deals to announce to me or any housekeeping matters, I'll hear
12	So we fit right within Lionel and its progeny. We	12	them an hour from now. However, there will be no further
13	have I will have to call it, Your Honor I don't want to	13	argument on today. If it turns out that there are no
14	call it a melting ice cube because I got criticized for that	14	additional deals to announce or understandings to confirm, it
15	once before a wasting asset. These are assets that will	15	will be very short an hour from now. The purpose of this,
16	deteriorate in value. And that deterioration will be felt by	16	among other things, is to give you a chance to talk to folks to
17	all of the stakeholders, including the stakeholders that oppose	17	ascertain whether or not you need or want to put anything on
18	this transaction.	18	the record. And there may be other people similarly situated.
19	The bottom line, Your Honor, is that there is no	19	I also will need to talk to at least one person of medium or
20	viable alternative. And that's the kind of situation that	20	higher level seniority from each constituency to discuss
21	Section 363 was enacted for, to deal with a situation where	21	getting the transcript and exhibits to make sure that I have a
22	there had to be a relatively quick sale of assets. And	22	full set and the like. This matter is taken under submission
23	fortunately, we've had thirty days to see if there's anybody	23	and at this point we're in recess. Thank you.
24	else in the market for these assets. What we have done, Your	24	(Recess from 1:42 p.m. until 2:54 p.m.)
25	Honor, is establish the value of these assets. We've also	25	THE COURT: Okay, folks, I need to get to work. And
	186		188
1	established that nobody's interested in buying them other than	1	we said that we would set aside some time for you folks to put
2	this purchaser.	2	deals on the record and deal with housekeeping matters, and I
3	And the fact that it's the government, Your Honor,	3	have one or two of my own.
4	doesn't detract that it is a purchaser. It's voluntarily doing	4	Mr. Karotkin or Ms. Cordry, who would like to take
5	this, Your Honor. One, to protect the taxpayer's monies in the	5	the lead on taking care of some of those things?
6	hope that it will recover a portion of the taxpayer's monies.	6	MR. KAROTKIN: Your Honor, I believe we have reached
7	And two, to try and salvage an industry. But there are limits	7	an understanding with Ms. Cordry as to the proposed terms and
8	to that, Your Honor, and the government has clearly said what	8	provisions of a proposed order to address the concerns she has
9	the limits are.	9	raised.
10	So we are in a situation where we can do this	10	THE COURT: Okay.
11	transaction, we can create a new GM. Yes, we're going to use	11	MR. KAROTKIN: Is that correct?
12	the same name, but we're only going to have four brands, Your	12	MS. CORDY: Yes.
13	Honor. We're going to have Cadillac, Chevrolet, Buick, and	13	MR. KAROTKIN: Okay. And the one so I think that
14	GMC. A leaner, more competitive GM that will benefit the	14	addresses those issues. If I might, Your Honor, the Attorney
15	domestic industry, that will provide more value to the economic	15	General from the State of Texas would like to leave to catch a
16	stakeholders than any other alternative that has been	16	plane.
17	proffered, and no alternative, unfortunately, Your Honor, has	17	THE COURT: Sure.
18	been proffered to date.	18	MR. KAROTKIN: So I
19	So on behalf of the debtors, Your Honor, we submit	19	THE COURT: Would you like to say something before
20	that this case fits squarely within the four corners of 363(b).	20	you have to go?
21	There has been an articulated business reason for this sale.	21	MR. KAROTKIN: He had asked me if I would read into
22	It is reasonable business judgment. The board of directors of	22	the record
23	GM discharged their fiduciary obligations in considering the	23	THE COURT: Oh, okay.
			· ·
24		24	MR. KAROTKIN: three paragraphs which would
24 25	alternatives and going forward with this Section 363 sale. And	24 25	MR. KAROTKIN: three paragraphs which would address his concerns as well.
24 25			MR. KAROTKIN: three paragraphs which would address his concerns as well. 189

212-267-6868

1	THE COURT: All right.	1	THE COURT: Okay. Fair enough.
2	MR. KAROTKIN: These would be three paragraphs that	2	MR. KAROTKIN: I believe, with that, this gentleman
3	would be inserted into the proposed order:	3	is prepared to withdraw the
4	"Entry by GM into the Participation Agreements with	4	MR. ROY: Yeah, Your Honor, with the agreement that
5	Accepting Dealers is hereby approved, and that the offer by GM	5	that language is going to be in the order that the debtors
6	and entry into the Participation Agreements was appropriate and	6	submit as a proposed sale order, and with the understanding
7	not the product of coercion. The Court makes no finding as to	7	that there's no objection from any other party, including
8	whether any specific provision of any participation agreement	8	Treasury, the State of Texas is prepared to withdraw its
9	governing the obligations of Purchaser and its Dealers is	9	objection.
10	enforceable under applicable provisions of state law. Any	10	THE COURT: Okay, Mr. Schwartz?
11	disputes that may arise under the Participation Agreements	11	MR. SCHWARTZ: That's correct, there's no objection.
12	shall be adjudicated on a case-by-case basis in an appropriate	12	We had a small tweak to add the federal government's ability to
13	forum other than this court."	13	continue to regulate the purchaser. I'm not sure if these
14	THE COURT: Mr. Roy, did he get it right?	14	folks have signed off on it.
15	MR. ROY: He got the first paragraph right, Your	15	THE COURT: In other words, you're proposing that
16	Honor.	16	there be an even more regulatory environment than what Mr. Roy
17	THE COURT: Still didn't express your last	17	was asking for?
18	implication there?	18	MR. SCHWARTZ: Exactly right.
19	MR. KAROTKIN: This is very stressful for me, Your	19	MR. ROY: So I'm getting more than I asked for.
20	Honor.	20	THE COURT: It sounds to me like you wouldn't care if
21	THE COURT: Okay.	21	they got that, Mr. Roy.
22	MR. KAROTKIN: The next paragraph would be, "Nothing	22	MR. ROY: No, not at all. This I believe that
23	contained in the preceding two paragraphs shall impact the	23	this protects the state's ability to enforce its regulatory
24	authority of any state to regulate Purchaser subsequent to the	24	scheme.
25	closing."	25	THE COURT: Okay. Well, fair enough. I assume that
	190		192
1	And the final paragraph is as follows: "This Court	1	takes care of your needs and concerns then, Mr. Roy?
2	retains exclusive jurisdiction to enforce and implement the	2	MR. ROY: It does, Your Honor.
3	terms and provisions of this order, the MPA, all amendments	3	THE COURT: Have a good flight.
4			THE COORT. Have a good hight.
-	thereto, any waivers and consents thereunder, and each of the	4	MR. ROY: Thank you so much.
5	thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, including the	4 5	
	· · ·	5	MR. ROY: Thank you so much.
5	agreements executed in connection therewith, including the	5	MR. ROY: Thank you so much. THE COURT: Thank you.
5 6	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including but	5 6	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege.
5 6 7	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including but not limited to retaining jurisdiction to: (a) compel delivery	5 6 7 8	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege. THE COURT: Thank you.
5 6 7 8	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including bur not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery	5 6 7 8	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege. THE COURT: Thank you. Ms. Cordry?
5 6 7 8 9	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including but not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed	5 6 7 8 9	<ul><li>MR. ROY: Thank you so much.</li><li>THE COURT: Thank you.</li><li>MR. ROY: It's been a privilege.</li><li>THE COURT: Thank you.</li><li>Ms. Cordry?</li><li>MS. CORDY: Having come here and sat here through the</li></ul>
5 6 7 8 9 10	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including but not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors; (c) resolve any disputes arising under or	5 6 7 8 9 10	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege. THE COURT: Thank you. Ms. Cordry? MS. CORDY: Having come here and sat here through the last couple of days, I did want to indicate for the record the
5 6 7 8 9 10 11	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including bur not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors; (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein; (d)	5 6 7 8 9 10 11	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege. THE COURT: Thank you. Ms. Cordry? MS. CORDY: Having come here and sat here through the last couple of days, I did want to indicate for the record the basis on which the states were finding a resolution of their
5 6 7 8 9 10 11 12	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including bur not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors; (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein; (d) interpret, implement and enforce the provisions of this order;	5 6 7 8 9 10 11 12	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege. THE COURT: Thank you. Ms. Cordry? MS. CORDY: Having come here and sat here through the last couple of days, I did want to indicate for the record the basis on which the states were finding a resolution of their objection. And I will be very brief, but I do want to, sort
5 6 7 8 9 10 11 12 13	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including but not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors; (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein; (d) interpret, implement and enforce the provisions of this order; (e) protect the Purchaser against any of the retained	5 6 7 8 9 10 11 12 13	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege. THE COURT: Thank you. Ms. Cordry? MS. CORDY: Having come here and sat here through the last couple of days, I did want to indicate for the record the basis on which the states were finding a resolution of their objection. And I will be very brief, but I do want to, sort of, lay out what is in here and what the basis was for pulling
5 6 7 8 9 10 11 12 13 14	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including but not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors; (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein; (d) interpret, implement and enforce the provisions of this order; (e) protect the Purchaser against any of the retained liabilities or the assertion of any lien, claim, encumbrance or	5 6 7 8 9 10 11 12 13 14	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege. THE COURT: Thank you. Ms. Cordry? MS. CORDY: Having come here and sat here through the last couple of days, I did want to indicate for the record the basis on which the states were finding a resolution of their objection. And I will be very brief, but I do want to, sort of, lay out what is in here and what the basis was for pulling what we had filed.
5 6 7 8 9 10 11 12 13 14 15	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including but not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors; (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein; (d) interpret, implement and enforce the provisions of this order; (e) protect the Purchaser against any of the retained liabilities or the assertion of any lien, claim, encumbrance or other interest of any kind or nature whatsoever against the	5 6 7 8 9 10 11 12 13 14 15	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege. THE COURT: Thank you. Ms. Cordry? MS. CORDY: Having come here and sat here through the last couple of days, I did want to indicate for the record the basis on which the states were finding a resolution of their objection. And I will be very brief, but I do want to, sort of, lay out what is in here and what the basis was for pulling what we had filed. Certainly this is an extraordinary case; I think
5 6 7 8 9 10 11 12 13 14 15 16	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including but not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors; (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein; (d) interpret, implement and enforce the provisions of this order; (e) protect the Purchaser against any of the retained liabilities or the assertion of any lien, claim, encumbrance or other interest of any kind or nature whatsoever against the Purchased Assets; and (f) resolve any disputes with respect to	5 6 7 8 9 10 11 12 13 14 15 16	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege. THE COURT: Thank you. Ms. Cordry? MS. CORDY: Having come here and sat here through the last couple of days, I did want to indicate for the record the basis on which the states were finding a resolution of their objection. And I will be very brief, but I do want to, sort of, lay out what is in here and what the basis was for pulling what we had filed. Certainly this is an extraordinary case; I think everyone agrees on that. On the other hand, in some ways it's
5 6 7 8 9 10 11 12 13 14 15 16 17	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including bur not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors; (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein; (d) interpret, implement and enforce the provisions of this order; (e) protect the Purchaser against any of the retained liabilities or the assertion of any lien, claim, encumbrance or other interest of any kind or nature whatsoever against the Purchased Assets; and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements.	5 6 7 8 9 10 11 12 13 14 15 16 17	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege. THE COURT: Thank you. Ms. Cordry? MS. CORDY: Having come here and sat here through the last couple of days, I did want to indicate for the record the basis on which the states were finding a resolution of their objection. And I will be very brief, but I do want to, sort of, lay out what is in here and what the basis was for pulling what we had filed. Certainly this is an extraordinary case; I think everyone agrees on that. On the other hand, in some ways it's also like every other Chapter 11 case in that it has to follow
5 6 7 8 9 10 11 12 13 14 15 16 17 18	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including but not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors; (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein; (d) interpret, implement and enforce the provisions of this order; (e) protect the Purchaser against any of the retained liabilities or the assertion of any lien, claim, encumbrance or other interest of any kind or nature whatsoever against the Purchased Assets; and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements. "The Court does not retain jurisdiction to hear	5 6 7 8 9 10 11 12 13 14 15 16 17 18	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege. THE COURT: Thank you. Ms. Cordry? MS. CORDY: Having come here and sat here through the last couple of days, I did want to indicate for the record the basis on which the states were finding a resolution of their objection. And I will be very brief, but I do want to, sort of, lay out what is in here and what the basis was for pulling what we had filed. Certainly this is an extraordinary case; I think everyone agrees on that. On the other hand, in some ways it's also like every other Chapter 11 case in that it has to follow the Bankruptcy Code. The Supreme Court has told us that the
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including but not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors; (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein; (d) interpret, implement and enforce the provisions of this order; (e) protect the Purchaser against any of the retained liabilities or the assertion of any lien, claim, encumbrance or other interest of any kind or nature whatsoever against the Purchased Assets; and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements. "The Court does not retain jurisdiction to hear disputes arising in connection with the application of the	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege. THE COURT: Thank you. Ms. Cordry? MS. CORDY: Having come here and sat here through the last couple of days, I did want to indicate for the record the basis on which the states were finding a resolution of their objection. And I will be very brief, but I do want to, sort of, lay out what is in here and what the basis was for pulling what we had filed. Certainly this is an extraordinary case; I think everyone agrees on that. On the other hand, in some ways it's also like every other Chapter 11 case in that it has to follow the Bankruptcy Code. The Supreme Court has told us that the uniformity clause sets aside bankruptcy from every other
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including but not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors; (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein; (d) interpret, implement and enforce the provisions of this order; (e) protect the Purchaser against any of the retained liabilities or the assertion of any lien, claim, encumbrance or other interest of any kind or nature whatsoever against the Purchased Assets; and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements. "The Court does not retain jurisdiction to hear disputes arising in connection with the application of the Participation Agreements, which disputes shall be adjudicated	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege. THE COURT: Thank you. Ms. Cordry? MS. CORDY: Having come here and sat here through the last couple of days, I did want to indicate for the record the basis on which the states were finding a resolution of their objection. And I will be very brief, but I do want to, sort of, lay out what is in here and what the basis was for pulling what we had filed. Certainly this is an extraordinary case; I think everyone agrees on that. On the other hand, in some ways it's also like every other Chapter 11 case in that it has to follow the Bankruptcy Code. The Supreme Court has told us that the uniformity clause sets aside bankruptcy from every other portion of Congress's powers. So it's for those reasons that
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including but not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors; (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein; (d) interpret, implement and enforce the provisions of this order; (e) protect the Purchaser against any of the retained liabilities or the assertion of any lien, claim, encumbrance or other interest of any kind or nature whatsoever against the Purchased Assets; and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements. "The Court does not retain jurisdiction to hear disputes arising in connection with the application of the Participation Agreements, which disputes shall be adjudicated as necessary under applicable state or federal law in any other	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege. THE COURT: Thank you. Ms. Cordry? MS. CORDY: Having come here and sat here through the last couple of days, I did want to indicate for the record the basis on which the states were finding a resolution of their objection. And I will be very brief, but I do want to, sort of, lay out what is in here and what the basis was for pulling what we had filed. Certainly this is an extraordinary case; I think everyone agrees on that. On the other hand, in some ways it's also like every other Chapter 11 case in that it has to follow the Bankruptcy Code. The Supreme Court has told us that the uniformity clause sets aside bankruptcy from every other portion of Congress's powers. So it's for those reasons that the states initially analyzed this case under their view of
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including but not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors; (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein; (d) interpret, implement and enforce the provisions of this order; (e) protect the Purchaser against any of the retained liabilities or the assertion of any lien, claim, encumbrance or other interest of any kind or nature whatsoever against the Purchased Assets; and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements. "The Court does not retain jurisdiction to hear disputes arising in connection with the application of the Participation Agreements, which disputes shall be adjudicated as necessary under applicable state or federal law in any other court or administrative agency of competent jurisdiction."	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege. THE COURT: Thank you. Ms. Cordry? MS. CORDY: Having come here and sat here through the last couple of days, I did want to indicate for the record the basis on which the states were finding a resolution of their objection. And I will be very brief, but I do want to, sort of, lay out what is in here and what the basis was for pulling what we had filed. Certainly this is an extraordinary case; I think everyone agrees on that. On the other hand, in some ways it's also like every other Chapter 11 case in that it has to follow the Bankruptcy Code. The Supreme Court has told us that the uniformity clause sets aside bankruptcy from every other portion of Congress's powers. So it's for those reasons that the states initially analyzed this case under their view of what the Bankruptcy Code says without a special exception for
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including bur not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors; (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein; (d) interpret, implement and enforce the provisions of this order; (e) protect the Purchaser against any of the retained liabilities or the assertion of any lien, claim, encumbrance or other interest of any kind or nature whatsoever against the Purchased Assets; and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements. "The Court does not retain jurisdiction to hear disputes arising in connection with the application of the Participation Agreements, which disputes shall be adjudicated as necessary under applicable state or federal law in any other court or administrative agency of competent jurisdiction." THE COURT: Okay, I'll try to again, Mr. Roy, did	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege. THE COURT: Thank you. Ms. Cordry? MS. CORDY: Having come here and sat here through the last couple of days, I did want to indicate for the record the basis on which the states were finding a resolution of their objection. And I will be very brief, but I do want to, sort of, lay out what is in here and what the basis was for pulling what we had filed. Certainly this is an extraordinary case; I think everyone agrees on that. On the other hand, in some ways it's also like every other Chapter 11 case in that it has to follow the Bankruptcy Code. The Supreme Court has told us that the uniformity clause sets aside bankruptcy from every other portion of Congress's powers. So it's for those reasons that the states initially analyzed this case under their view of what the Bankruptcy Code says without a special exception for the mega auto bankruptcy problems.
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	agreements executed in connection therewith, including the Deferred Termination Agreements in all respects, including bur not limited to retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors; (c) resolve any disputes arising under or related to the MPA, except as otherwise provided therein; (d) interpret, implement and enforce the provisions of this order; (e) protect the Purchaser against any of the retained liabilities or the assertion of any lien, claim, encumbrance or other interest of any kind or nature whatsoever against the Purchased Assets; and (f) resolve any disputes with respect to or concerning the Deferred Termination Agreements. "The Court does not retain jurisdiction to hear disputes arising in connection with the application of the Participation Agreements, which disputes shall be adjudicated as necessary under applicable state or federal law in any other court or administrative agency of competent jurisdiction." THE COURT: Okay, I'll try to again, Mr. Roy, did he get it right this time?	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	MR. ROY: Thank you so much. THE COURT: Thank you. MR. ROY: It's been a privilege. THE COURT: Thank you. Ms. Cordry? MS. CORDY: Having come here and sat here through the last couple of days, I did want to indicate for the record the basis on which the states were finding a resolution of their objection. And I will be very brief, but I do want to, sort of, lay out what is in here and what the basis was for pulling what we had filed. Certainly this is an extraordinary case; I think everyone agrees on that. On the other hand, in some ways it's also like every other Chapter 11 case in that it has to follow the Bankruptcy Code. The Supreme Court has told us that the uniformity clause sets aside bankruptcy from every other portion of Congress's powers. So it's for those reasons that the states initially analyzed this case under their view of what the Bankruptcy Code says without a special exception for the mega auto bankruptcy problems. We had a number of problems with the order with

212-267-6868

1	environmental law, other provisions. We had concerns with the	1	objections. That was he was standing there and you weren't,
2	substance of the terms in terms of what was being assumed, wha	t 2	but that was part of a dialogue to which you were also a part.
3	was not being assumed. The treatment of these dealer	3	MS. CORDY: Right. Yes, and that is part of the
4	agreements was a major issue for the states, and I'll get to	4	overall package that is here. He spoke to it simply because he
5	that in just a moment, and then some of the terms of the order	5	had the separate objection on it. But, yes, that is one of the
6	in terms of the way it was phrased about successor liability,	6	pieces that went into this overall deal here.
7	which was some of the questions I asked yesterday.	7	So we were very concerned about that treatment of
8	We have worked very hard since the beginning of the	8	assumed contracts, and that agreement works on that part. We
9	case with debtors' counsel initially, with Treasury counsel,	9	also wanted to be sure that lemon laws were covered under the
10	almost everybody in this room at some point or another, it	10	notion of warranty claims, but they did not specifically refer
11	feels like. And I think a great number of improvements have	11	to state lemon laws, and that coverage is being picked up.
12	been made in this agreement over that time period. The first	12	Privacy, we had no idea what they were going to do
13	was the assumption of the future product liability claims.	13	with privacy. We've read the consumer privacy ombudsman's
14	Obviously, we you know, in a perfect world, we would not be	14	report. We couldn't talk to them directly, but we did try to
15	distinguishing between those two categories, but certainly	15	give some input. And what I've seen from his report appears to
16	that's better than none of them. And it certainly goes a ways	16	be constructive and useful. And there is some language in the
17	to addressing issues that were raised by the state Attorney	17	agreement right now that was drafted without seeing his report.
18	Generals. And by the way, I am speaking strictly on behalf of	18	It's pretty much consistent with what the report recommends,
19	the forty-five-Attorney-General-objection that's there.	19	perhaps not completely consistent. That's, I think, up to Your
20	With respect to the dealers, you heard yesterday, one	20	Honor to decide with the debtor what they'll require for that.
21	set of dealers talked to you about the process of being	21	We had signed off on the other language before we saw what the
22	required to sign on to those. And there was a statement that	22	consumer privacy ombudsman said.
23	while 99.6 percent of the people signed it, so it must have	23	On taxes, we clarified that the taxes in the first-
24	been a great deal. I as a matter of reality, I think most	24	day order are all being assumed by the purchaser. We clarified
25	things that you get 99.6 percent of people signing on are	25	a number of other pieces of language; some of them are in with
	194		196
1	probably not the greatest deal in the world; they're just	1	the environmental piece.
2	better than something really awful. But we're leaving aside	2	THE COURT: Time out, Ms. Cordry.
3	that concern.	3	MS. CORDY: Yes.
4	There was a second concern that the ongoing terms of	4	THE COURT: I thought I authorized taxes to be paid
5	those agreements that we were being asked to sign had	5	under the first-day order.
6	provisions that could be substantively unlawful under state	6	MS. CORDY: Yes.
7	law. And we do not understand that anything that is said with	7	THE COURT: Your point being that, to the extent they
8	respect to rejection can carry over to the notion of saying	8	haven't been paid, they'll be assumed?
9	that if you assume a contract you can thereby assume some terms	9	MS. CORDY: Well, that the the assumption was
10	that violate state law on a going-forward basis, any more than	10	clarified, which was somewhat unclear in the order, that the
11	if someone could make you sign a contract that said I'll take	11	provision for assumption of taxes is congruent with the kind of
12	less than the minimum wage and then assume that contract and	12	taxes that were covered by the first-day order so that if they
13	make you take less than the minimum wage.	13	are the kind of taxes that were being picked up under the
14	So that was a concern on the dealer agreements. And	14	first-day order, they will be the kind of taxes that will be
15	what you just heard read into the record dealt with that by	15	assumed, either that there there may be some that have just
16	leaving us free to and the jurisdictional piece as well,	16	not been paid yet or a dispute or an audit, an ongoing
17	taking the jurisdiction to enforce ongoing agreements between	17	assessment, any of those kind
18	nondebtor parties, post-closing, that could not affect the	18	THE COURT: One way or another, they'll get paid
19	estate in trying to leave them in this bankruptcy court's	19	MS. CORDY: Right.
20	jurisdiction.	20	THE COURT: at some point in time?
21	THE COURT: Let me interrupt you	21	MS. CORDY: Right, and that so they're going to be
22	MS. CORDY: Sure.	22	assumed. And similarly with the environmental liabilities, we
l		23	clarified that the New GM intends to be fully liable for
23	THE COURT: for a second, Ms. Cordry. When Mr.	23	clarified that the New OWI intends to be fully hable for
23 24	THE COURT: for a second, Ms. Cordry. When Mr. Roy was standing up next to Mr. Karotkin, they were talking	23 24	environmental liabilities of its transferred facility.
24	Roy was standing up next to Mr. Karotkin, they were talking	24	environmental liabilities of its transferred facility.

212-267-6868

1	to us.	1	order in the form as modified, the order would say whatever it
2	The other piece we talked about, obviously, was the	2	says?
3	successor liability. And the basic construct we dealt with was	3	MR. KAROTKIN: Correct.
4	this notion that I raised yesterday of what is assuming you	4	THE COURT: Okay.
5	can sell free and clear of liability on a claim or on	5	MR. KAROTKIN: For example, to the extent she was
6	something, what is the scope of that? And we came to an	6	referring to how environmental laws are being treated under the
7	agreement that we would limit it to a bankruptcy claim, a 1015	7	order, they are being treated as they are being treated.
8	claim. So the language on that is all in the agreement.	8	THE COURT: You're saying the order has them in
9	On the TWA issue, I can only say our view remains as	9	support of sales.
10	to what it is of the proper construction of law. But we also	10	MR. KAROTKIN: Exactly, sir.
11	recognize that there's been a little water under the dam and a	11	THE COURT: And that what she's saying isn't like a
12	lot of people have structured deals based on what they believe	12	presidential signing statement or
13	the law to be, and certainly this case is an example of that.	13	MS. CORDY: I would stipulate to that, Your Honor.
14	So for all those reasons, after exhaustive, literally	14	If I get to be president, then I'll determine what kind of
15	of course, negotiations, we have reached agreement with the	15	authority I have at this point. But
16	debtor, with Treasury on the terms of the order that I have	16	THE COURT: Okay.
17	recom well, when we say "we", mostly me. I've recommended	<b>l</b> 17	MS. CORDY: I was simply attempting to deal with
18	to the AGs; I have talked to the staff, counsel, contacts, the	18	the fact that we did deal with issues regarding environmental
19	ones I could gather last night at 10:00. We have sent it	19	laws and made some improvements in that area that I think
20	around. We have made the request to all the Attorneys General	20	are
21	to sign off on this, which they started getting that request at	21	THE COURT: Okay.
22	about 9:30 this morning. As of now, I've been told there are	22	MS. CORDY: hopeful and satisfactory to my
23	forty-five the final total, I believe, was forty-five	23	clients. Thank you.
24	Attorney Generals on the brief. At this point I've been told,	24	THE COURT: All right. Fair enough.
25	I think, that the last count of approvals so far is twenty-	25	MR. KAROTKIN: Thank you, sir.
	198		200
1	seven. I'm reasonably optimistic that we will continue to get	1	THE COURT: To what extent do we have other things
2	the rest of them signed on over the course of the day or so.	2	that people want to note on the record?
3	At this point, my view would be I believe that we	3	Mr. Smolinsky, I see a few people coming up. You
4	have an agreement. I don't believe we're going to have dissent	4	want to, kind of, help coordinate that, if you can?
5	that would overturn the agreement, but the last position, I	5	MR. SMOLINSKY: Sure, Your Honor. Let me at least
6	understood, with the debtors and Treasury, was simply that if	6	try. Your Honor, there are approximately 600 objections
7	for any reason we if the other fifteen AGs come back and say	7	related to what I would call contract issues, and they continue
8	no, no, over our dead bodies, that we would just say the deal's	8	to come in. So I thought, to try to head off everyone coming
9	off, the order goes back to what you were doing before you had	9	up and making reservation of rights, that I would describe to
10	the agreement without us, and we'd just stand on our	10	Your Honor the process that we're undergoing and perhaps that
11	objections. But as of now, we think this agreement is going to	11	satisfies everyone's concerns, and we could make shorten the
12	hold and we think it is a preferable agreement for the Attorney	12	time here.
13	Generals. We also think it's preferable for all the other	13	Your Honor, in connection with the sale, the
14	parties as well in not having the Attorney Generals seek to	14	purchaser has identified over 700,000 contracts for probable
15	overturn this transaction.	15	assumption and assignment. We've done everything in our power
16	THE COURT: All right, thank you.	16	to manage the process focused on three goals: First, to have
17	Mr. Karotkin?	17	the ability to update the reconciliation process as new
18	MR. KAROTKIN: Thank you, Your Honor. With respec		invoices come in from the pre-petition and post-petition
19	to Ms. Cordry's colloquy and commentary, I don't know if that	19	period; two, allow the purchaser to continue its due diligence
20	was meant to be interpreting what the order said or	20	with respect to the contracts; and, finally, to try to not bog
21	embellishing what the order said. As far as we are concerned,	21	down this Court's docket with multiple objections.
22	the agreement we have reached is in the order. And we are not	22	The company, together with AlixPartners, developed a
23	necessarily agreeing that how she described it or how she	23	fully trackable system to allow counterparties to see online
24	interpreted it is accurate or inaccurate. It is what it is.	24	their contracts which are scheduled for assumption, as well as
25	THE COURT: If I approved the motion and entered the	25	backup on how cure amounts are derived.
	199		. 201

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

T

1	You've heard a little bit about the call center. The	1	schedule and then to provide Your Honor's chambers with a list
2	call centers set up in Warren, Michigan have been fielding	2	by docket number rather than alphabetically so that the matters
3	calls, have been proactively reaching out to all parties who	3	could be marked off calendar.
4	have filed objections, and have also handled over 6,600 calls	4	Your Honor, Schedule J-2 is a schedule of objections
5	from other parties that are making inquiries as to their	5	that have been limited to cure disputes, and they are subject
6	supplier agreements.	6	to adjournment. And we have included in the order a request
7	Your Honor, when we filed our initial reply last	7	for a hearing date around the third week of July for Your Honor
8	Friday, we attached to it a schedule of those parties that	8	to carry these objections while we continue to try to resolve
9	filed objections with respect to contract disputes. And on	9	them and get them off the Court's docket.
10	Monday when we filed our supplemental brief, we attached a new	v 10	We have been having open dialogues with each of these
11	Schedule J, which had three schedules in it, creatively named	11	parties; we have delivered documents to them. We have worked
12	J-1, J-2 and J-3.	12	with them on finalizing a list of contracts and cure amounts.
13	I just want to walk Your Honor through these	13	And we've dealt with a number of them in stipulations, which
14	schedules. And let me just update that, Monday night after we	14	I'll get to in a moment.
15	had made further progress on the contracts, we filed a	15	So the only changes to Schedule 2 is on page 2.
16	supplemental schedule and I think we made some significant	16	Behr-Hella Thermocontrol has filed a withdrawal, and that could
17	progress. And if Your Honor would allow, I'd like to hand up a	17	be moved to J-1, along with, on page 3, the Hewlett Packard
18	copy.	18	three objections can be moved to J-1 as well.
19	THE COURT: Sure.	19	Your Honor, Schedule J-3 is a schedule which has
20	MR. SMOLINSKY: I have taken the liberty of	20	gotten shorter and shorter, which deals with objections that we
21	highlighting for you the few changes that have been made since	21	have not been able to resolve, some of which we have been now
22	then. Your Honor, if you turn to Schedule J-1, which is about	22	able to resolve, and I just want to walk through a few of them
23	six pages long, that is a schedule of withdrawn objections.	23	and then we can give the other parties an opportunity to speak
24	Now, just to make clear for the record, that doesn't mean that	24	today if they still have ongoing objections. To the extent
24	each and every counterparty on the schedule has agreed that	25	that they don't, I would suggest that we move them to J-2 and
2.5	each and every counterparty on the schedule has agreed that 202	23	that mey don't, I would suggest that we move them to $3-2$ and $204$
	202		201
1	there are no reconciliation issues. Either they've been	1	adjourn them along with the others as a holding date while we
2	withdrawn because the reconciliation issues have been resolved	2	continue to reach out for them.
3	or they signed trade agreements which elected into the	3	So if you turn to
4	alternative dispute resolution to the extent a reasonable	4	THE COURT: I sense the way you did it, Mr.
5	resolution can't be obtained simply by talking to the call	5	Smolinsky, that these deal with something different than cure
6	center and working out their differences. And we've had	6	amounts?
7	significant progress there.	7	MR. SMOLINSKY: It's unclear, Your Honor. We've
8	The only changes I just want to note for the record,	8	looked at all of these objections and we believe that most of
9	on page 1, Cellco Partnership d/b/a Verizon Wireless is going	9	them, even though they may raise adequate protection
10	to be moved to J-2; the same for Fiat on page 2. On page 3,	10	adequate assurance issues, they I believe they're all
11	Hitachi Cable Indiana, Inc. and Hitachi, Limited will be moved		quintessentially cure objections, with the exceptions of the
12	to J-2. Isuzu Motors will be moved to J-2; LMC Phase II to	12	ones that I'm going to walk through.
13	phase (sic) 2. On page 4, Progressive Stamping Company, Inc.	13	THE COURT: Okay.
14	moved to J-2. On page 5, Interpublic Group of Companies Inc.	14	MR. SMOLINSKY: The first one that I'd like to speak
15	to page 2 to J-2, as well as Toyota Motor Sales U.S.A. And	15	about is Hertz Corporation. Your Honor will recall that Mr.
16	on the last page, the two Verizon contracts will be moved to	16	Henderson testified that some of the fleet customers are not
17	J-2.	17	purchasing vehicles from General Motors because they have
18	Other than that, Your Honor, we believe that the	18	issues, internal issues. Hertz is a prime example. They have
19	remaining objections can be marked off calendar.	19	securitizations. And if their contracts are not assumed by a
20	We have provided, in consultation with the creditors'	20	certain date, then they have to provide additional collateral
21	committee, to include in the order that if a contract was	21	into their securitizations, which is an anti-competitive issue
21	withdrawn and then there's still a basis for coming back to the	22	for them.
23	Court, that both parties can do so on no less than fifteen	23	So we have entered into discussions with Hertz. We
23	days' notice in case there are any further mistakes or	24	have agreed to assume their contract now with the understanding
24	omissions. What we'll propose at the end is to file a final	24	that they have no objection to the assignment of that contract
20	203	20	205

212-267-6868

1	to New GM upon the sale closing. They acknowledge in the	1	agreed to withdraw their objection and to appear on Schedule
2	stipulation they're not aware of any cure amounts that are	2	J-1 and defer into the alternative dispute resolution process
3	outstanding, and we do not believe that there are any either.	3	so that we don't have to deal with them further in the
4	We've discussed this with U.S. Treasury, we've discussed this	4	bankruptcy process.
5	with the committee, and they have no objection.	5	We have some additional stipulations, one with
6	THE COURT: Okay. Continue, please.	6	International Automotive Components Group, one with Dell and
7	MR. SMOLINSKY: Okay. Your Honor, the next contract,	7	one with Timken that likewise withdraw their objection, but
8	Kolbenschmidt Pierburg AG, that could now be moved to J-2. LB.		they have not agreed to the ADR process. They have agreed to
9	Realty Fund I think you heard from counsel to LBA this	9	work with us to try to reconcile, and if they can't reconcile
10	morning.	10	then we would use the procedure that I explained before that on
11	THE COURT: Mr. LeHane?	11	fifteen days' notice we can come back to Your Honor and
12	MR. SMOLINSKY: That's correct, Your Honor. And,	12	litigate the objection.
13	again, I could put it on the record, but I think you heard the	13	Your Honor, like Hertz, Avis is another fleet
14	agreement that we intend to assume at closing, to the extent	14	customer. They're having a similar issue, but they don't have
15	that we finish our amendment discussions, or modification	15	the same timing issues that Hertz has. So they've entered into
16	discussions, and the indemnities will follow through with	16	a stipulation, again, acknowledging that they're not aware of
17	respect to any claims that arise or become known after the	17	any cure amounts under the agreements. But we have agreed to
18	closing.	18	assume and assign those contracts upon the closing. So, unlike
19	Pratt & Miller Engineering & Fabrication can be moved	19	Hertz, which happens immediately, the Avis will happen upon the
20	to J-1. They withdrew their objection.	20	sale. Again, we shared that stipulation with the committee and
21	Royal Bank of Scotland, these contracts there are	21	the Treasury and they have no problem.
22	four contracts that relate to the Lordstown plant. Subject to	22	Cigna, Your Honor, I think, we talked about earlier.
23	closing, GM has agreed to assume those contracts and we agreed	23	We continue to work with Cigna to try to get their comfort
24	to work cooperatively with RBS to make sure that we deal with	24	level up on the assignment of those employee benefit-related
25	any transfer documents that are necessary and any third-party	25	contracts. And, again, we wouldn't expect to be back before
	206		208
1	consents.	1	Your Honor unless there's a problem in assigning those
2	Last one, Trafasee (ph.) Marketplaces Inc., that	2	contracts.
3	could be moved to J-2 as well.	3	Equipment lessors. I just want to put on the record
4	So, Your Honor, we did our best in these schedules to	4	that Manufacturers and Traders Company, as well as Wells Fargo
5	reflect the desire and intention of the parties. We're also	5	Bank, have equipment leases with the company. They've filed
6	working with the committee to add language to the order to make	6	objections. There are additional indentured trustees related
7	it clear as to what the cure resolution process is and to	7	to those that have objections. And we've agreed to put on the
8	preserve everyone's rights while we work it out.	8	record that all those contracts are still in the undetermined
9	We're not currently intending to bar any reasonable	9	bucket, meaning that they haven't been noticed out for
10	late objections. We understand the process was quick.	10	assumption and assignment. Everyone reserves their rights. We
11	We're ultimately our goal is to try to reconcile all the	11	reserve the right to assume and assign those contracts. They
12	claims to the satisfaction of all parties. Of course, if	12	reserve the right to object. And we're going to work with them
12 13	claims to the satisfaction of all parties. Of course, if there's an unreasonable delay, then we'll bring it to Your	12 13	reserve the right to object. And we're going to work with them over the next week to enter into an adequate protection
	<b>^</b>		
13	there's an unreasonable delay, then we'll bring it to Your	13	over the next week to enter into an adequate protection
13 14	there's an unreasonable delay, then we'll bring it to Your Honor.	13 14	over the next week to enter into an adequate protection stipulation with respect to the use of that equipment as we go
13 14 15	there's an unreasonable delay, then we'll bring it to Your Honor. We intend to send notice; we propose in our order	13 14 15	over the next week to enter into an adequate protection stipulation with respect to the use of that equipment as we go through the transition of closing the sale. So we'll be back
13 14 15 16	there's an unreasonable delay, then we'll bring it to Your Honor. We intend to send notice; we propose in our order within two business days of the entry of the order. We would	13 14 15 16	over the next week to enter into an adequate protection stipulation with respect to the use of that equipment as we go through the transition of closing the sale. So we'll be back before Your Honor on that.
13 14 15 16 17	there's an unreasonable delay, then we'll bring it to Your Honor. We intend to send notice; we propose in our order within two business days of the entry of the order. We would send out notice to each of the parties in here notifying them	13 14 15 16 17	over the next week to enter into an adequate protection stipulation with respect to the use of that equipment as we go through the transition of closing the sale. So we'll be back before Your Honor on that. Your Honor, I think that's the end. Of course,
13 14 15 16 17 18	there's an unreasonable delay, then we'll bring it to Your Honor. We intend to send notice; we propose in our order within two business days of the entry of the order. We would send out notice to each of the parties in here notifying them of the adjourn date for their objection or, if their objection	13 14 15 16 17 18	over the next week to enter into an adequate protection stipulation with respect to the use of that equipment as we go through the transition of closing the sale. So we'll be back before Your Honor on that. Your Honor, I think that's the end. Of course, people may want to make statements, and I'm happy to come back
13 14 15 16 17 18 19	there's an unreasonable delay, then we'll bring it to Your Honor. We intend to send notice; we propose in our order within two business days of the entry of the order. We would send out notice to each of the parties in here notifying them of the adjourn date for their objection or, if their objection has been withdrawn, notifying them as to why it was withdrawn	13 14 15 16 17 18 19	over the next week to enter into an adequate protection stipulation with respect to the use of that equipment as we go through the transition of closing the sale. So we'll be back before Your Honor on that. Your Honor, I think that's the end. Of course, people may want to make statements, and I'm happy to come back and explain any clarifications that are necessary.
13 14 15 16 17 18 19 20	there's an unreasonable delay, then we'll bring it to Your Honor. We intend to send notice; we propose in our order within two business days of the entry of the order. We would send out notice to each of the parties in here notifying them of the adjourn date for their objection or, if their objection has been withdrawn, notifying them as to why it was withdrawn and giving them the opportunity to come back and explain if	13 14 15 16 17 18 19 20	over the next week to enter into an adequate protection stipulation with respect to the use of that equipment as we go through the transition of closing the sale. So we'll be back before Your Honor on that. Your Honor, I think that's the end. Of course, people may want to make statements, and I'm happy to come back and explain any clarifications that are necessary. THE COURT: Okay.
13 14 15 16 17 18 19 20 21	there's an unreasonable delay, then we'll bring it to Your Honor. We intend to send notice; we propose in our order within two business days of the entry of the order. We would send out notice to each of the parties in here notifying them of the adjourn date for their objection or, if their objection has been withdrawn, notifying them as to why it was withdrawn and giving them the opportunity to come back and explain if there was an error.	13 14 15 16 17 18 19 20 21	over the next week to enter into an adequate protection stipulation with respect to the use of that equipment as we go through the transition of closing the sale. So we'll be back before Your Honor on that. Your Honor, I think that's the end. Of course, people may want to make statements, and I'm happy to come back and explain any clarifications that are necessary. THE COURT: Okay. People can now come on up, and those who I sent back
13 14 15 16 17 18 19 20 21 22	there's an unreasonable delay, then we'll bring it to Your Honor. We intend to send notice; we propose in our order within two business days of the entry of the order. We would send out notice to each of the parties in here notifying them of the adjourn date for their objection or, if their objection has been withdrawn, notifying them as to why it was withdrawn and giving them the opportunity to come back and explain if there was an error. Turning to stipulations and many of these	13 14 15 16 17 18 19 20 21 22	over the next week to enter into an adequate protection stipulation with respect to the use of that equipment as we go through the transition of closing the sale. So we'll be back before Your Honor on that. Your Honor, I think that's the end. Of course, people may want to make statements, and I'm happy to come back and explain any clarifications that are necessary. THE COURT: Okay. People can now come on up, and those who I sent back can now come up again.
13 14 15 16 17 18 19 20 21 22 23	there's an unreasonable delay, then we'll bring it to Your Honor. We intend to send notice; we propose in our order within two business days of the entry of the order. We would send out notice to each of the parties in here notifying them of the adjourn date for their objection or, if their objection has been withdrawn, notifying them as to why it was withdrawn and giving them the opportunity to come back and explain if there was an error. Turning to stipulations and many of these stipulations, I don't believe, require the signature of Your	13 14 15 16 17 18 19 20 21 22 23	over the next week to enter into an adequate protection stipulation with respect to the use of that equipment as we go through the transition of closing the sale. So we'll be back before Your Honor, I think that's the end. Of course, people may want to make statements, and I'm happy to come back and explain any clarifications that are necessary. THE COURT: Okay. People can now come on up, and those who I sent back can now come up again. Go ahead.
13 14 15 16 17 18 19 20 21 22 23 24	there's an unreasonable delay, then we'll bring it to Your Honor. We intend to send notice; we propose in our order within two business days of the entry of the order. We would send out notice to each of the parties in here notifying them of the adjourn date for their objection or, if their objection has been withdrawn, notifying them as to why it was withdrawn and giving them the opportunity to come back and explain if there was an error. Turning to stipulations and many of these stipulations, I don't believe, require the signature of Your Honor; we're simply to going to file them we have received	13 14 15 16 17 18 19 20 21 22 23 24	over the next week to enter into an adequate protection stipulation with respect to the use of that equipment as we go through the transition of closing the sale. So we'll be back before Your Honor on that. Your Honor, I think that's the end. Of course, people may want to make statements, and I'm happy to come back and explain any clarifications that are necessary. THE COURT: Okay. People can now come on up, and those who I sent back can now come up again. Go ahead. MR. BACON: Good afternoon, Your Honor. Doug Bacon

212-267-6868

1	yesterday's hearing and this morning and tendered a proposed	1	NUMMI. NUMMI is a joint venture between Toyota and GM. V
2	stipulation and order that has been underway for about the last	2	had we received a notice to assume and assign. Based on the
3	five days, about twenty hours a day. And Mr. Weiss, who had to	3	notice and based on the Web site, we simply can't tell what
4	depart but left his colleague here and his special counsel to	4	contracts GM is talking about. We're trying to work it out. I
5	the debtor, we have been successful in getting the creditors'	5	believe I thought I spoke to Mr. Smolinsky earlier. I
6	committee's support, or lack of objection.	6	thought we were going to have a stipulation, basically push
7	Mr. Mayer this is the stipulation that Mr. Mayer	7	this over, give the parties a chance to figure out which
8	confirmed that indeed they're fine with and Treasury's counsel	8	contracts they're talking about and then mark this down for
9	is not opposed to. And we this bears the signature of the	9	something later in July.
10	debtors' special counsel and me as counsel for GE. Mr. Weiss	10	THE COURT: I think Mr. Smolinsky's being pulled in
11	explained it to some degree earlier. We can certainly go into	11	more than one direction at the same time.
12	more detail. There's a great deal of money involved and	12	MR. SMOLINSKY: Your Honor, I believe we've been
13	hundreds of millions of dollars' worth of equipment, which is	13	having communications with Foley & Lardner, who are
14	why both sides have put a lot of energy into this.	14	representing Toyota in this matter. And we've agreed that
15	We tendered this earlier today, Your Honor. And	15	we're going to work together to resolve all these contracts.
16	since then, the only change that has been made is to change the	16	MR. DEUTSCHE: Yeah I represent NUMMI and,
17	name of the purchaser. And I'm hoping Your Honor, under the	17	obviously, my clients instructed us to get resolution. I don't
18	circumstances, will just indulge us in interlineation.	18	represent Toyota
19	THE COURT: I would if it weren't for the fact that	19	THE COURT: Who does Foley represent?
20	it has to be electronically entered. I guess it can be	20	MR. DEUTSCHE: I believe the Toyota part of NUMMI.
21	scanned. Otherwise, if I could ask somebody to do you have	21	THE COURT: And who are the agreements with?
22	a floppy disk with the underlying document?	22	MR. DEUTSCHE: I believe with NUMMI. But, yeah, I'm
23	MR. BACON: I can arrange to have that down here this	23	sure they're contracts
24	afternoon, Your Honor.	24	MR. SMOLINSKY: We'd be happy to involve them in the
25	THE COURT: Can you have it e-mailed to my chambers?	25	discussions.
	210		212
1	MR. RACON, Easily Your Hanor	1	THE COURT: Vach why don't you just turn it into a
2	MR. BACON: Easily, Your Honor.	2	THE COURT: Yeah, why don't you just turn it into a
	THE COURT: Okay. My law clerk can help you as to	3	three-way conversation so nobody's toes get stepped on.
3	how to do that. And I'm glad it's just as well that a new	4	MR. SMOLINSKY: Certainly makes sense, Your Honor.
4	one's coming, Mr. Bacon, because I think you did hand me up		THE COURT: Okay.
5	something, or did you?	5	MR. DEUTSCHE: Thank you, Your Honor.
6	UNIDENTIFIED SPEAKER: Yes.	6 7	THE COURT: All right.
7	MR. BACON: We did.		MR. QUIGLEY: Good afternoon, Your Honor. Sean
8	THE COURT: I don't know if you saw how much paper	8	Quigley from Lowenstein Sandler on behalf of Group 1 Automoti
9	was on this thing just	9	Inc., a company owning approximately seven dealerships in
10	MR. BACON: I understand, Judge.	10	Texas. Your Honor, we filed a limited cure objection.
11	THE COURT: So e-mail it when it's finalized to the	11	Subsequently, however, we recently learned from the debtors
12	Gerber chambers. Charlie will give you the exact e-mail	12	that the Group 1 dealers were sent either participation
13	address. And on the transmission for the e-mail, note that	13	agreements or wind-down agreements. Certainly, we don't object
			to the sale, Your Honor, but
14	this is the one that Gerber said that he would enter today.	14	
14 15	And we'll take care of it today.	15	THE COURT: Some have one type and some got the
14 15 16	And we'll take care of it today. MR. BACON: Thank you, Judge. Thank you very much.	15 16	THE COURT: Some have one type and some got the other?
14 15 16 17	And we'll take care of it today. MR. BACON: Thank you, Judge. Thank you very much. May I approach Charlie?	15 16 17	THE COURT: Some have one type and some got the other? MR. QUIGLEY: Correct, Judge. Certainly, we don't
14 15 16 17 18	And we'll take care of it today. MR. BACON: Thank you, Judge. Thank you very much. May I approach Charlie? THE COURT: Yes.	15 16 17 18	THE COURT: Some have one type and some got the other? MR. QUIGLEY: Correct, Judge. Certainly, we don't object to the sale, but to the extent there are any cure
14 15 16 17 18 19	And we'll take care of it today. MR. BACON: Thank you, Judge. Thank you very much. May I approach Charlie? THE COURT: Yes. MR. BACON: Thank you.	15 16 17 18 19	THE COURT: Some have one type and some got the other? MR. QUIGLEY: Correct, Judge. Certainly, we don't object to the sale, but to the extent there are any cure amounts or other payments due under these agreements, we simpl
14 15 16 17 18 19 20	And we'll take care of it today. MR. BACON: Thank you, Judge. Thank you very much. May I approach Charlie? THE COURT: Yes. MR. BACON: Thank you. THE COURT: Who's on deck?	15 16 17 18 19 20	THE COURT: Some have one type and some got the other? MR. QUIGLEY: Correct, Judge. Certainly, we don't object to the sale, but to the extent there are any cure
14 15 16 17 18 19	<ul> <li>And we'll take care of it today.</li> <li>MR. BACON: Thank you, Judge. Thank you very much.</li> <li>May I approach Charlie?</li> <li>THE COURT: Yes.</li> <li>MR. BACON: Thank you.</li> <li>THE COURT: Who's on deck?</li> <li>MR. DUETCHE: I think I am, Your Honor.</li> </ul>	15 16 17 18 19	THE COURT: Some have one type and some got the other? MR. QUIGLEY: Correct, Judge. Certainly, we don't object to the sale, but to the extent there are any cure amounts or other payments due under these agreements, we simple
14 15 16 17 18 19 20	And we'll take care of it today. MR. BACON: Thank you, Judge. Thank you very much. May I approach Charlie? THE COURT: Yes. MR. BACON: Thank you. THE COURT: Who's on deck?	15 16 17 18 19 20	THE COURT: Some have one type and some got the other? MR. QUIGLEY: Correct, Judge. Certainly, we don't object to the sale, but to the extent there are any cure amounts or other payments due under these agreements, we simp want to reserve our rights.
14 15 16 17 18 19 20 21	<ul> <li>And we'll take care of it today.</li> <li>MR. BACON: Thank you, Judge. Thank you very much.</li> <li>May I approach Charlie?</li> <li>THE COURT: Yes.</li> <li>MR. BACON: Thank you.</li> <li>THE COURT: Who's on deck?</li> <li>MR. DUETCHE: I think I am, Your Honor.</li> </ul>	15 16 17 18 19 20 21 22	THE COURT: Some have one type and some got the other? MR. QUIGLEY: Correct, Judge. Certainly, we don't object to the sale, but to the extent there are any cure amounts or other payments due under these agreements, we simply want to reserve our rights. THE COURT: Okay.
14 15 16 17 18 19 20 21 22	<ul> <li>And we'll take care of it today.</li> <li>MR. BACON: Thank you, Judge. Thank you very much.</li> <li>May I approach Charlie?</li> <li>THE COURT: Yes.</li> <li>MR. BACON: Thank you.</li> <li>THE COURT: Who's on deck?</li> <li>MR. DUETCHE: I think I am, Your Honor.</li> <li>THE COURT: Sure. Come on up, please.</li> </ul>	15 16 17 18 19 20 21 22	THE COURT: Some have one type and some got the other? MR. QUIGLEY: Correct, Judge. Certainly, we don't object to the sale, but to the extent there are any cure amounts or other payments due under these agreements, we simple want to reserve our rights. THE COURT: Okay. Would it help, folks, if I said that, unless there's
14 15 16 17 18 19 20 21 22 23	<ul> <li>And we'll take care of it today.</li> <li>MR. BACON: Thank you, Judge. Thank you very much.</li> <li>May I approach Charlie?</li> <li>THE COURT: Yes.</li> <li>MR. BACON: Thank you.</li> <li>THE COURT: Who's on deck?</li> <li>MR. DUETCHE: I think I am, Your Honor.</li> <li>THE COURT: Sure. Come on up, please.</li> <li>MR. DEUTSCHE: Good afternoon, Your Honor. Benjamin</li> </ul>	15 16 17 18 19 20 21 22 22 23	THE COURT: Some have one type and some got the other? MR. QUIGLEY: Correct, Judge. Certainly, we don't object to the sale, but to the extent there are any cure amounts or other payments due under these agreements, we simply want to reserve our rights. THE COURT: Okay. Would it help, folks, if I said that, unless there's some reason why I shouldn't, Mr. Smolinsky or Mr. Schwartz,

212-267-6868

1       Got an affirmative nod from the government.       1       or adequate assurance-related limited objection, for the         2       Mr. Smolinsky, that's okay with you too?       avoidance of doubt, simply seeking language in the sale or         3       MR. SMOLINSKY: We have no problem, Your Honor.       artifying the setoff and recoupment rights of nondebtor         4       THE COURT: Mr. Sullivan?       contracts, similar to language that was included in the         6       to. you certainly have one, Mr. Quigley.       related to those nonassigned contracts would stay with the         7       MR. QUIGLEY: Thank you, Your Honor. James Sullivar       related to those nonassigned contracts would stay with the         9       MR. SULLIVAN: Thank you, Your Honor. First,       11       reviewing the MPA provisions with debtors' counsel and in         11       Industries International Inc. Two things, Your Honor. First,       11       reviewing the MPA provisions with debtors' counsel, we a         12       Inda some communications with counsel for the debtor. We were       12       confirmed in that understanding and prepared to withdraw         13       actually argue anything. Assuming that the language of the       15       Mr. Smolinsky?         14       to perhaps send or comment on the form of order that is       Frankly, I really didn't understand it but on this point,         15       finally submitted to Your Honor.       14
3       MR. SMOLINSKY: We have no problem, Your Honor.       3       clarifying the setoff and recoupment rights of nondebtor         4       THE COURT: Okay, good. So anybody who wants to just       4       carifying the setoff and recoupment rights of nondebtor         5       take a reservation of rights doesn't have to, unless they want       6       contracts, similar to language that was included in the         6       to. You certainly have one, Mr. Quigley.       7       And our understanding of the MPA is that receivable         7       MR, QUIGLEY: Thank you, Judge.       7       And our understanding of the MPA is that receivable         8       THE COURT: Mr. Sullivan?       7       And our understanding of the MPA is that receivable         9       MR. SULLIVAN: Thank you, Your Honor. James Sullivar       10       betors and, consequently, setoff and recoupment rights we         11       Industries International Inc. Two things, Your Honor. First,       11       11       reviewing the MPA provisions with debtors' counsel, and in the atmuderstanding and prepared to withdraw objection.         14       sale order, and that's the reason why I didn't come up and actually argue anything. Assuming that the language of the active reating any objection. I just wanted to reserve our right       10       MR. SMOLINSKY: Your Honor, I just wanted to reserve our right         15       finally submitted to Your Honor.       11       rethe was as as been represented to us, we wou
4       THE COURT: Okay, good. So anybody who wants to just 5       4       executory contract parties for nonassumed and assigned contracts, similar to language that was included in the Chrysler order for the same purpose.         7       MR. QUIGLEY: Thank you, Judge.       6         8       THE COURT: Mr. Sullivan?       6         9       MR. SULLIVAN: Thank you, Your Honor. James Sullivar       7         10       of Arent Fox, counsel for the Timken Company and Superior       10         11       Industries International Inc. Two things, Your Honor. First,       11         12       I had some communications with counsel for the debtor. We were 13       10         14       sale order, and that's the reason why I didn't come up and actually argue anything. Assuming that the language of the 14       11         15       be pursuing any objection. I just wanted to reserve our right 16       16       MR. SMOLINSKY: Your Honor, I just wanted to 17         16       be ther get your comments in on the form of order that is 19       11       11         19       better get your comments in on the form of the order before the 20       21         21       the changes have already been included, although I've nots 21       21         22       MR. SULLIVAN: Your Honor, as far as I know, I think 22       21         23       now comfortable that the contract protects his client's rights 23
5       take a reservation of rights doesn't have to, unless they want       5       contracts, similar to language that was included in the         6       to. You certainly have one, Mr. Quigley,       7       MR. QUIGLEY: Thank you, Judge.       7         8       THE COURT: Mr. Sullivan?       7       And our understanding of the MPA is that receivable         9       of Arent Fox, counsel for the Timken Company and Superior       10       be unimpaired. In discussion with debtors' counsel, and in the understanding and prepared to withdraw         11       Industries International Inc. Two things, Your Honor. James Sullivar       10       be unimpaired. In discussion with debtors' counsel, do in that understanding and prepared to withdraw         12       I had some communications with counsel for the debtor. We were       12       confirmed in that understanding and prepared to withdraw         13       actually argue anything. Assuming that the language of the       13       THE COURT: Okay. Pause, please, Mr. Beeler.         14       sale order remains as has been represented to us, we would not       16       MR. SMOLINSKY: Your Honor, I just wanted to reserve our right         16       THE COURT: That's a big problem, Mr. Sullivan. You       10       be ursuing any objection. I just wanted to reserve our right         17       be there get your comments in on the form of the order before the       17       on this. I reviewed the language. I didn't understand is bujert
6       to. You certainly have one, Mr. Quigley.       6       Chrysler order for the same purpose.         7       MR. QUIGLEY: Thank you, Judge.       7       And our understanding of the MPA is that receivable         8       THE COURT: Mr. Sullivan?       8       related to those nonassigned contracts would stay with the         9       MR. SULLIVAN: Thank you, Your Honor. James Sullivar       10         10       of Arent Fox, counsel for the Timken Company and Superior       10         11       Industries International Inc. Two things, Your Honor. First,       11         12       I had some communications with counsel for the debtor. We were       12         13       actually argue anything. Assuming that the language added to the       13         14       sale order, and that's the reason why I didn't come up and       14         15       sale order remains as has been represented to us, we would not       16         16       be parking any objection. I just wanted to reserve our right       16         17       be parking any objection. I just wanted to reserve our right       17         18       frankly, I really didn't understand it but on this point,         19       but what the MPA says, and I'm only paraphrasing, is that         20       THE COURT: That's a big problem, Mr. Sullivan. You       20         21
7       MR. QUIGLEY: Thank you, Judge.       7       And our understanding of the MPA is that receivable related to those nonassigned contracts would stay with the debtors and, consequently, setoff and recoupment rights were debtors in the Course of Arent Fox, counsel for the Timken Company and Superior       10       related to those nonassigned contracts would stay with the debtors and, consequently, setoff and recoupment rights were debtors in the course of the debtor is again to the debtor. We were all or get the debtor to agree to some language added to the asle order, and that's the reason why I didn't come up and actually argue anything. Assuming that the language of the sale order remains as has been represented to us, we would not finally submitted to Your Honor.       10       THE COURT: Okay. Pause, please, Mr. Beeler.         10       be pursuing any objection. I just wanted to reserve our right finally submitted to Your Honor.       10       on this. I reviewed the language in the Chrysler order.         11       THE COURT: That's a big problem, Mr. Sullivan. You better get your comments in on the form of the order before the purposed form of order is sent to me, because I can't have for the order.       10       paraphrase it in the order or change the subject matter of the contract by adding language to the order.         12       MR. SULLIVAN: Your Honor, as far as I know, I think able counsel for the debtor has not been willing to or the curent form of order to all the parties.       1       now comfortable that the contract protects his client's rights and perioder.         13       the changes have already been included, although I've not
8       THE COURT: Mr. Sullivan?       8       related to those nonassigned contracts would stay with the         9       MR. SULLIVAN: Thank you, Your Honor. James Sullivar       9       debtors and, consequently, setoff and recoupment rights w         10       of Arent Fox, counsel for the Timken Company and Superior       10       be unimpaired. In discussion with debtors' counsel and in         11       Industries International Inc. Two things, Your Honor. First,       11       reviewing the MPA provisions with debtors' counsel, we at         12       I had some communications with counsel for the debtor. We were       12       confirmed in that understanding and prepared to withdraw         13       able to get the debtor to agree to some language added to the       13       objection.         14       sale order, and that's the reason why I didn't come up and       14       THE COURT: Okay. Pause, please, Mr. Beeler.         15       scatually argue anything. Assuming that the language of the       15       Mr. SMOLINSKY: Your Honor, I just wanted to to reserve our right         16       be pursuing any objection. I just wanted to reserve our right       17       on this. I reviewed the language in the Chrysler order.         18       finally submitted to Your Honor.       19       but what the MPA says, and I'm only paraphrasing, is that         20       THE COURT: That's a big problem, Mr. Sullivan. You       20       counsel
9       MR. SULLIVAN: Thank you, Your Honor. James Sullivar       9       debtors and, consequently, setoff and recoupment rights w         10       of Arent Fox, counsel for the Timken Company and Superior       10         11       Industries International Inc. Two things, Your Honor. First,       11       reviewing the MPA provisions with debtors' counsel and in         12       I had some communications with counsel for the debtor. We were       12       confirmed in that understanding and prepared to withdraw         13       able to get the debtor to agree to some language added to the       13       objection.         14       sale order, and that's the reason why I didn't come up and       14       THE COURT: Okay. Pause, please, Mr. Beeler.         16       MR. SMOLINSKY: Your Honor, I just wanted to reserve our right       16       MR. SMOLINSKY: Your Honor, I just wanted to to         16       be praps send or comment on the form of order that is       18       Frankly, I really didn't understand it but on this point,         10       better get your comments in on the form of the order before the       12       going to NewCo, are excluded assets, assets which aren't         21       better get your comments in on the form of the order before the       21       going to NewCo, are excluded assets, assets which aren't         22       modes of parties waiting for somebody to comment on the form       23       paraphrasing in th
10       of Arent Fox, counsel for the Timken Company and Superior       10         11       Industries International Inc. Two things, Your Honor. First,       11         12       I had some communications with counsel for the debtor. We were       12         13       able to get the debtor to agree to some language added to the       13         14       sale order, and that's the reason why I didn't come up and       14         15       actually argue anything. Assuming that the language of the       15         16       sale order remains as has been represented to us, we would not       16         17       be pursuing any objection. I just wanted to reserve our right       16         19       finally submitted to Your Honor.       17         20       THE COURT: That's a big problem, Mr. Sullivan. You       10         21       better get your comments in on the form of the order before the       10         22       proposed form of order is sent to me, because I can't have       24         23       MR. SULLIVAN: Your Honor, as far as I know, I think       21         24       the changes have already been included, although I've not been       1         25       MR. SULLIVAN: Your Honor, as far as I know, I think       21         26       THE COURT: I would agree upon the language, Mr.       3 <tr< td=""></tr<>
11Industries International Inc. Two things, Your Honor. First, 1211reviewing the MPA provisions with debtors' counsel, we a confirmed in that understanding and prepared to withdraw objection.12I had some communications with counsel for the debtor. We were able to get the debtor to agree to some language added to the sale order, and that's the reason why I didn't come up and 1414reviewing the MPA provisions with debtors' counsel, we a confirmed in that understanding and prepared to withdraw objection.14sale order, and that's the reason why I didn't come up and actually argue anything. Assuming that the language of the sale order remains as has been represented to us, we would not to perhaps send or comment on the form of order that is finally submitted to Your Honor.16MR. SMOLINSKY: Your Honor, I just wanted to the on this. I reviewed the language in the Chrysler order.19finally submitted to Your Honor.19but what the MPA says, and I'm only paraphrasing, is that receivables related to excluded assets, assets which aren't going to NewCo, are excluded assets, assets which aren't going to NewCo, are excluded assets, assets which aren't going to NewCo, are excluded assets, assets themselves. And so counsel to simply rely on that language. I didn't want to paraphrase it in the order or change the subject matter of th contract by adding language to the order.21the changes have already been included, although I've not been a able counsel for the debtor has not been willing to circulate the current form of order to all the parties.12the changes have already been included, although I've not been a did counsel for the debtor has not been willing to circulate the current form of order
12I had some communications with counsel for the debtor. We were12confirmed in that understanding and prepared to withdraw13able to get the debtor to agree to some language added to the13objection.14sale order, and that's the reason why I didn't come up and14THE COURT: Okay. Pause, please, Mr. Beeler.15actually argue anything. Assuming that the language of the15Mr. Smolinsky?16sale order remains as has been represented to us, we would not16MR. SMOLINSKY: Your Honor, I just wanted to teserve our right17be pursuing any objection. I just wanted to reserve our right17on this. I reviewed the language in the Chrysler order.18to perhaps send or comment on the form of order that is18Frankly, I really didn't understand it but on this point,19finally submitted to Your Honor.19but what the MPA says, and I'm only paraphrasing, is that20THE COURT: That's a big problem, Mr. Sullivan. You2021better get your comments in on the form of the order before the2122proposed form of order is sent to me, because I can't have2223hundreds of parties waiting for somebody to comment on the form2324of the order.24contract by adding language to the order.25MR. SULLIVAN: Your Honor, as far as I know, I think 221424the changes have already been included, although I've not been125able counsel for the debtor has not been willing to226circulate the current form of
13       able to get the debtor to agree to some language added to the       13       objection.         14       sale order, and that's the reason why I didn't come up and       14       THE COURT: Okay. Pause, please, Mr. Beeler.         15       actually argue anything. Assuming that the language of the       15       Mr. Smolinsky?         16       sale order remains as has been represented to us, we would not       16       MR. SMOLINSKY: Your Honor, I just wanted to the form of order that is         17       be pursuing any objection. I just wanted to reserve our right       17       on this. I reviewed the language in the Chrysler order.         18       to perhaps send or comment on the form of order that is       18       Frankly, I really didn't understand it but on this point,         19       finally submitted to Your Honor.       19       but what the MPA says, and I'm only paraphrasing, is that         20       THE COURT: That's a big problem, Mr. Sullivan. You       20       receivables related to excluded assets, assets which aren't         21       better get your comments in on the form of the order before the       21       going to NewCo, are excluded assets, themselves. And so         22       proposed form of order is sent to me, because I can't have       22       counsel to simply rely on that language. I didn't want to         23       hundreds of parties waiting for somebody to comment on the form       2
14sale order, and that's the reason why I didn't come up and14THE COURT: Okay. Pause, please, Mr. Beeler.15actually argue anything. Assuming that the language of the15Mr. Smolinsky?16sale order remains as has been represented to us, we would not16MR. SMOLINSKY: Your Honor, I just wanted to to17be pursuing any objection. I just wanted to reserve our right17on this. I reviewed the language in the Chrysler order.18to perhaps send or comment on the form of order that is18Frankly, I really didn't understand it but on this point,20THE COURT: That's a big problem, Mr. Sullivan. You20receivables related to excluded assets, assets which aren't21better get your comments in on the form of the order before the21going to NewCo, are excluded assets themselves. And so22proposed form of order is sent to me, because I can't have22counsel to simply rely on that language. I didn't want to23hundreds of parties waiting for somebody to comment on the form23paraphrase it in the order or change the subject matter of th24of the order.2421125MR. SULLIVAN: Your Honor, as far as I know, I think25But I think that he has reviewed the contract and is2able counsel for the debtor has not been willing to1now comfortable that the contract protects his client's rights3circulate the current form of order to all the parties.3Anything further, Mr. Beeler?4THE COURT: I would agree upon the language, Mr.5THE COURT: Ok
15actually argue anything. Assuming that the language of the15Mr. Smolinsky?16sale order remains as has been represented to us, we would not16MR. SMOLINSKY: Your Honor, I just wanted to the17be pursuing any objection. I just wanted to reserve our right16MR. SMOLINSKY: Your Honor, I just wanted to the18to perhaps send or comment on the form of order that is18Frankly, I really didn't understand it but on this point,19finally submitted to Your Honor.19but what the MPA says, and I'm only paraphrasing, is that20THE COURT: That's a big problem, Mr. Sullivan. You20receivables related to excluded assets, assets which aren't21better get your comments in on the form of the order before the21going to NewCo, are excluded assets themselves. And so22proposed form of order is sent to me, because I can't have22counsel to simply rely on that language. I didn't want to23hundreds of parties waiting for somebody to comment on the form23paraphrase it in the order or change the subject matter of the24of the order.24242425MR. SULLIVAN: Your Honor, as far as I know, I think25But I think that he has reviewed the contract and is2able counsel for the debtor has not been willing to2rHE COURT: All right.3circulate the current form of order to all the parties.3Anything further, Mr. Beeler?4THE COURT: I would agree upon the language, Mr.4MR. BEELER: No, that's fair enough.5Sullivan
16sale order remains as has been represented to us, we would not16MR. SMOLINSKY: Your Honor, I just wanted to to17be pursuing any objection. I just wanted to reserve our right17on this. I reviewed the language in the Chrysler order.18to perhaps send or comment on the form of order that is18Frankly, I really didn't understand it but on this point,19finally submitted to Your Honor.19but what the MPA says, and I'm only paraphrasing, is that20THE COURT: That's a big problem, Mr. Sullivan. You20receivables related to excluded assets, assets which aren't21better get your comments in on the form of the order before the21going to NewCo, are excluded assets, assets themselves. And so22proposed form of order is sent to me, because I can't have23hundreds of parties waiting for somebody to comment on the form24of the order.23paraphrase it in the order or change the subject matter of th25MR. SULLIVAN: Your Honor, as far as I know, I think25But I think that he has reviewed the contract and is2121421the changes have already been included, although I've not been12able counsel for the debtor has not been willing to33circulate the current form of order to all the parties.34THE COURT: I would agree upon the language, Mr.45Sullivan, but I think I made my position on that clear.55THE COURT: Okay, good.
17be pursuing any objection. I just wanted to reserve our right17on this. I reviewed the language in the Chrysler order.18to perhaps send or comment on the form of order that is17on this. I reviewed the language in the Chrysler order.19finally submitted to Your Honor.18Frankly, I really didn't understand it but on this point,20THE COURT: That's a big problem, Mr. Sullivan. You20receivables related to excluded assets, assets which aren't21better get your comments in on the form of the order before the21going to NewCo, are excluded assets, assets themselves. And so22proposed form of order is sent to me, because I can't have21counsel to simply rely on that language. I didn't want to23hundreds of parties waiting for somebody to comment on the form23paraphrase it in the order or change the subject matter of the24of the order.24contract by adding language to the order.25MR. SULLIVAN: Your Honor, as far as I know, I think25But I think that he has reviewed the contract and is2able counsel for the debtor has not been willing to1now comfortable that the contract protects his client's rights2circulate the current form of order to all the parties.3Anything further, Mr. Beeler?4THE COURT: I would agree upon the language, Mr.5THE COURT: Okay, good.
18       to perhaps send or comment on the form of order that is       18       Frankly, I really didn't understand it but on this point,         19       finally submitted to Your Honor.       19       but what the MPA says, and I'm only paraphrasing, is that         20       THE COURT: That's a big problem, Mr. Sullivan. You       19       but what the MPA says, and I'm only paraphrasing, is that         21       better get your comments in on the form of the order before the       20       receivables related to excluded assets, assets which aren't         23       hundreds of parties waiting for somebody to comment on the form       21       going to NewCo, are excluded assets, themselves. And so         24       of the order.       23       paraphrase it in the order or change the subject matter of the         25       MR. SULLIVAN: Your Honor, as far as I know, I think       25       But I think that he has reviewed the contract and is         2       able counsel for the debtor has not been willing to       1       now comfortable that the contract protects his client's rights         3       circulate the current form of order to all the parties.       3       Anything further, Mr. Beeler?         4       THE COURT: I would agree upon the language, Mr.       5       THE COURT: Okay, good.
19finally submitted to Your Honor.1920THE COURT: That's a big problem, Mr. Sullivan. You1921better get your comments in on the form of the order before the2022proposed form of order is sent to me, because I can't have2123hundreds of parties waiting for somebody to comment on the form2224of the order.2325MR. SULLIVAN: Your Honor, as far as I know, I think2526But I think that he has reviewed the contract and is21122the changes have already been included, although I've not been2able counsel for the debtor has not been willing to3circulate the current form of order to all the parties.4THE COURT: I would agree upon the language, Mr.5Sullivan, but I think I made my position on that clear.
20       THE COURT: That's a big problem, Mr. Sullivan. You       20       receivables related to excluded assets, assets which aren't         21       better get your comments in on the form of the order before the       21       going to NewCo, are excluded assets, assets which aren't         22       proposed form of order is sent to me, because I can't have       21       going to NewCo, are excluded assets, assets which aren't         23       hundreds of parties waiting for somebody to comment on the form       22       receivables related to excluded assets, themselves. And so         24       of the order.       23       paraphrase it in the order or change the subject matter of th         25       MR. SULLIVAN: Your Honor, as far as I know, I think       25       But I think that he has reviewed the contract and is         21 4       21       24       24         1       the changes have already been included, although I've not been       1       now comfortable that the contract protects his client's rights         2       able counsel for the debtor has not been willing to       3       Anything further, Mr. Beeler?         3       THE COURT: I would agree upon the language, Mr.       5       THE COURT: Okay, good.         5       Sullivan, but I think I made my position on that clear.       5       THE COURT: Okay, good.
20       THE COURT: That's a big problem, Mr. Sullivan. You       20       receivables related to excluded assets, assets which aren't         21       better get your comments in on the form of the order before the       21       going to NewCo, are excluded assets themselves. And so         22       proposed form of order is sent to me, because I can't have       21       going to NewCo, are excluded assets themselves. And so         23       hundreds of parties waiting for somebody to comment on the form       23       paraphrase it in the order or change the subject matter of the order.         24       of the order.       24       contract by adding language to the order.         25       MR. SULLIVAN: Your Honor, as far as I know, I think       25       But I think that he has reviewed the contract and is         2       1       the changes have already been included, although I've not been       1       now comfortable that the contract protects his client's rights         2       able counsel for the debtor has not been willing to       1       now comfortable that the contract protects his client's rights         3       circulate the current form of order to all the parties.       3       Anything further, Mr. Beeler?         4       THE COURT: I would agree upon the language, Mr.       5       THE COURT: Okay, good.
21       better get your comments in on the form of the order before the       21       going to NewCo, are excluded assets themselves. And so         22       proposed form of order is sent to me, because I can't have       22       counsel to simply rely on that language. I didn't want to         23       hundreds of parties waiting for somebody to comment on the form       23       paraphrase it in the order or change the subject matter of the         24       of the order.       24       contract by adding language to the order.         25       MR. SULLIVAN: Your Honor, as far as I know, I think       25       But I think that he has reviewed the contract and is         21       able counsel for the debtor has not been willing to       1       now comfortable that the contract protects his client's rights         3       circulate the current form of order to all the parties.       3       Anything further, Mr. Beeler?         4       THE COURT: I would agree upon the language, Mr.       5       THE COURT: Okay, good.
23       hundreds of parties waiting for somebody to comment on the form       23       paraphrase it in the order or change the subject matter of the contract by adding language to the order.         24       of the order.       24       contract by adding language to the order.         25       MR. SULLIVAN: Your Honor, as far as I know, I think       25       But I think that he has reviewed the contract and is         1       the changes have already been included, although I've not been       1       now comfortable that the contract protects his client's rights         2       able counsel for the debtor has not been willing to       1       now comfortable that the contract protects his client's rights         3       circulate the current form of order to all the parties.       3       Anything further, Mr. Beeler?         4       THE COURT: I would agree upon the language, Mr.       5       THE COURT: Okay, good.
23       hundreds of parties waiting for somebody to comment on the form       23       paraphrase it in the order or change the subject matter of the order.         24       of the order.       24       contract by adding language to the order.         25       MR. SULLIVAN: Your Honor, as far as I know, I think       25       But I think that he has reviewed the contract and is         214       1       the changes have already been included, although I've not been       1       now comfortable that the contract protects his client's rights         2       able counsel for the debtor has not been willing to       2       THE COURT: All right.         3       circulate the current form of order to all the parties.       3       Anything further, Mr. Beeler?         4       THE COURT: I would agree upon the language, Mr.       5       THE COURT: Okay, good.
25       MR. SULLIVAN: Your Honor, as far as I know, I think       25       But I think that he has reviewed the contract and is         1       the changes have already been included, although I've not been       1       now comfortable that the contract protects his client's rights         2       able counsel for the debtor has not been willing to       1       now comfortable that the contract protects his client's rights         3       circulate the current form of order to all the parties.       3       Anything further, Mr. Beeler?         4       THE COURT: I would agree upon the language, Mr.       5       THE COURT: Okay, good.
214       2         1       the changes have already been included, although I've not been       1       now comfortable that the contract protects his client's rights         2       able counsel for the debtor has not been willing to       2       THE COURT: All right.         3       circulate the current form of order to all the parties.       3       Anything further, Mr. Beeler?         4       THE COURT: I would agree upon the language, Mr.       4       MR. BEELER: No, that's fair enough.         5       Sullivan, but I think I made my position on that clear.       5       THE COURT: Okay, good.
1       the changes have already been included, although I've not been       1       now comfortable that the contract protects his client's rights         2       able counsel for the debtor has not been willing to       2       THE COURT: All right.         3       circulate the current form of order to all the parties.       3       Anything further, Mr. Beeler?         4       THE COURT: I would agree upon the language, Mr.       4       MR. BEELER: No, that's fair enough.         5       Sullivan, but I think I made my position on that clear.       5       THE COURT: Okay, good.
2       able counsel for the debtor has not been willing to       2       THE COURT: All right.         3       circulate the current form of order to all the parties.       3       Anything further, Mr. Beeler?         4       THE COURT: I would agree upon the language, Mr.       4       MR. BEELER: No, that's fair enough.         5       Sullivan, but I think I made my position on that clear.       5       THE COURT: Okay, good.
2       able counsel for the debtor has not been willing to       2       THE COURT: All right.         3       circulate the current form of order to all the parties.       3       Anything further, Mr. Beeler?         4       THE COURT: I would agree upon the language, Mr.       4       MR. BEELER: No, that's fair enough.         5       Sullivan, but I think I made my position on that clear.       5       THE COURT: Okay, good.
3       circulate the current form of order to all the parties.       3       Anything further, Mr. Beeler?         4       THE COURT: I would agree upon the language, Mr.       4       MR. BEELER: No, that's fair enough.         5       Sullivan, but I think I made my position on that clear.       5       THE COURT: Okay, good.
4       THE COURT: I would agree upon the language, Mr.       4       MR. BEELER: No, that's fair enough.         5       Sullivan, but I think I made my position on that clear.       5       THE COURT: Okay, good.
5 Sullivan, but I think I made my position on that clear. 5 THE COURT: Okay, good.
6 MR SULLIVAN: Okay I'll discuss it with counsel for 6 MR BEFLER: Thank you
7 GM. 7 THE COURT: Mr. Brozman?
8 THE COURT: Okay. 8 MR. BROZMAN: Thank you, Your Honor, and good
9 MR. SULLIVAN: The second thing, I just wanted to 9 afternoon. Andrew Brozman, Clifford Chance, for the Roya
10 correct something. I think Mr. Smolinsky made a comment on the 10 of Scotland, ABN AMRO and RBS Citizens. Your Honor,
11 record about the Timken Company, about the ADR procedure. I 11 agreement that I think we've arrived at with the debtors
12 don't believe that they've opted out of that procedure. I 12 involves a structured lease transaction for the supply of
13 believe that they are in fact agreed to that procedure. So 13 energy to the Lordstown, Ohio plant. The record should not
14       I don't think that needs any further comment.         14       the exact contracts that the debtors have agreed to assume an another sector.
15 MR. SMOLINSKY: Your Honor, I think I said that the 3 15 assign, since the Web sites did not correctly list them and I'd
parties that have not agreed to the ADR are subject to separate like to be clear on that. There is a lease dated July 17, 2003
17stipulations from the 120 that did.17between ICX Corporation, which is an affiliate of RBS Citiz
18     THE COURT: Okay. All right. Thank you.     18     as assignee of Kensington Capital Corp. and General Motor
19     Next.       19     There is a tripartite agreement of the same date among
20 MR. BEELER: Good afternoon. Martin Beeler of 20 Lordstown Energy LLC, ICX, again as assignee of Kensing
21Covington & Burling, on behalf of Union Pacific.21General Motors, together with the two sets of schedules
22THE COURT: Okay, Mr. Beeler.22pertinent thereto.
23 MR. BEELER: Union Pacific provides rail 23 We have agreed to the assumption and the assignment
transportation services to the debtors under various executory 24 There is no dispute, to my knowledge, raised by the debtor v
25 contracts. We filed a limited objection to the sale, noncure 25 respect to cure amounts, if any. And the debtors, since this
215

212-267-6868

-			
1	is a structured lease transaction, have agreed with us to grant	1	THE COURT: These are executory contract objections?
2	us further assurances in the filing of safe harbor documents in	2	MR. SMOLINSKY: Cure objections, sorry.
3	connection with the transfer of the assets.	3	THE COURT: Cure? Okay.
4	And I think that accurately states our agreement, and	4	MR. SMOLINSKY: Thank you.
5	I appreciate Your Honor's time.	5	MR. KANZA: Good afternoon, Your Honor. Ken Kansa o
6	THE COURT: Okay.	6	Sidley Austin on behalf of the TPC lender group. We have
7	Mr. Smolinsky, do you need to be heard on what Mr.	7	agreed language for the order with the debtors and the
8	Brozman just said?	8	purchaser that resolves the TPC lenders' objections. And so on
9	MR. SMOLINSKY: I agree, Your Honor.	9	reliance on that language, we withdraw the objection.
10	THE COURT: Okay. Fair enough.	10	THE COURT: Okay.
11	Who's next? Ms. Taylor?	11	Anybody else?
12	MS. TAYLOR: Yes. Judge, I just wanted to report	12	Going once. All right, I see no response.
13	back Susan Taylor from the Attorney General's Office that		MR. SMOLINSKY: Your Honor, we've been working on a
14	we accept Your Honor's offer for a reservation of rights. And	14	term sheet for a resolution of the Michigan workers'
15	I want it to be clear that New York's objection had two parts:	15	compensation issues. I think everyone is agreed in principle.
16	the part we discussed this morning, and it appears that	16	We just revised the term sheet over at Kinko's. And we would
17	acceptable language may be being inserted in the final order.	17	just need everyone to sign off, but we think that everyone is
18	But I don't currently have authority from my client to withdraw		in agreement on the terms.
19	our objection to that portion.	19	MS. PRZEKOP-SHAW: Good afternoon, Your Honor. M
20	And in addition, in our papers we submitted we have a	20	name is Susan Przekop-Shaw. I'm an assistant attorney general
21	successor liability part of our argument turns on successor	21	for the state of Michigan.
22	liability. That part we didn't argue because it has been very	22	THE COURT: Forgive me again. You're last name,
23	competently argued. And I just wanted to be clear that we are	23	please?
24	not withdrawing the objection as to that portion either and it	24	MS. PRZEKOP-SHAW: Przekop-Shaw.
25	is now before the Court.	25	THE COURT: Okay.
	218		220
1	THE COURT: Okay.	1	
			MS. PKZEKOP-SHAW: It's spelled P as in Peter, K-Z-E-
2		2	MS. PRZEKOP-SHAW: It's spelled P as in Peter, R-Z-E- K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of
2 3	MS. TAYLOR: Thank you very much.	2 3	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of
	MS. TAYLOR: Thank you very much. THE COURT: Thank you.		K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the
3	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody?	3	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds
3 4	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley?	3 4 5	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in
3 4 5 6	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear	3 4 5	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing
3 4 5	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear Gottlieb on behalf of the UAW. This is not with respect to an	3 4 5 7 6	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised
3 4 5 6 7	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear, Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier.	3 4 5 7 6 7	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between
3 4 5 7 8	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear Gottlieb on behalf of the UAW. This is not with respect to an	3 4 5 7 7 8	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised
3 4 5 7 8 9	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our	3 4 5 7 8 9	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the
3 4 5 7 8 9 10	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our designations with respect to depositions that we also needed to	3 4 5 7 8 9 10 11	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the Treasury in regards to resolving this workers' compensation
3 4 5 7 8 9 10 11	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our designations with respect to depositions that we also needed to submit marked copies separately to the Court. So I just have	3 4 5 7 8 9 10 11	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the Treasury in regards to resolving this workers' compensation issue. And these discussions culminated in the terms that were
3 4 5 7 8 9 10 11 12	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear, Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our designations with respect to depositions that we also needed to submit marked copies separately to the Court. So I just have them here. We submitted them online before noon, but we have the marked ones here, so I'd like to just hand them up.	3 4 5 7 8 9 10 11 ; 12 13	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the Treasury in regards to resolving this workers' compensation issue. And these discussions culminated in the terms that were necessary for the Michigan Workers' Compensation Agency
3 4 5 6 7 8 9 10 11 12 13	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our designations with respect to depositions that we also needed to submit marked copies separately to the Court. So I just have them here. We submitted them online before noon, but we have	3 4 5 7 8 9 10 11 ; 12 13	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the Treasury in regards to resolving this workers' compensation issue. And these discussions culminated in the terms that were necessary for the Michigan Workers' Compensation Agency director to grant NGMCO self-insured status as an employer in
3 4 5 6 7 8 9 10 11 12 13 14	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our designations with respect to depositions that we also needed to submit marked copies separately to the Court. So I just have them here. We submitted them online before noon, but we have the marked ones here, so I'd like to just hand them up. THE COURT: That's not a problem. You can give them to Charlie.	3 4 5 7 6 7 8 9 10 11 ; 12 13 14	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the Treasury in regards to resolving this workers' compensation issue. And these discussions culminated in the terms that were necessary for the Michigan Workers' Compensation Agency director to grant NGMCO self-insured status as an employer in Michigan when it begins its operations.
3 4 5 6 7 8 9 10 11 12 13 14 15	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our designations with respect to depositions that we also needed to submit marked copies separately to the Court. So I just have them here. We submitted them online before noon, but we have the marked ones here, so I'd like to just hand them up. THE COURT: That's not a problem. You can give them	3 4 5 7 8 9 10 11 ; 12 13 14 15	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the Treasury in regards to resolving this workers' compensation issue. And these discussions culminated in the terms that were necessary for the Michigan Workers' Compensation Agency director to grant NGMCO self-insured status as an employer in Michigan when it begins its operations. What's left is that there's as Mr. Smolinsky
3 4 5 6 7 8 9 10 11 12 13 14 15 16	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our designations with respect to depositions that we also needed to submit marked copies separately to the Court. So I just have them here. We submitted them online before noon, but we have the marked ones here, so I'd like to just hand them up. THE COURT: That's not a problem. You can give them to Charlie. MR. BROMLEY: Thank you very much. THE COURT: I appreciate that.	3 4 5 7 8 9 10 11 ; 12 13 14 15 16	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the Treasury in regards to resolving this workers' compensation issue. And these discussions culminated in the terms that were necessary for the Michigan Workers' Compensation Agency director to grant NGMCO self-insured status as an employer in Michigan when it begins its operations. What's left is that there's as Mr. Smolinsky indicated, that there's ongoing steps being taken to
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear. Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our designations with respect to depositions that we also needed to submit marked copies separately to the Court. So I just have them here. We submitted them online before noon, but we have the marked ones here, so I'd like to just hand them up. THE COURT: That's not a problem. You can give them to Charlie. MR. BROMLEY: Thank you very much. THE COURT: I appreciate that. Okay, to what extent do we have anything else, folks?	3 4 5 7 8 9 10 11 ; 12 13 14 15 16 17	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the Treasury in regards to resolving this workers' compensation issue. And these discussions culminated in the terms that were necessary for the Michigan Workers' Compensation Agency director to grant NGMCO self-insured status as an employer in Michigan when it begins its operations. What's left is that there's as Mr. Smolinsky indicated, that there's ongoing steps being taken to incorporate those terms into a binding agreement that the appropriate parties, after they are identified, can sign on
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear. Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our designations with respect to depositions that we also needed to submit marked copies separately to the Court. So I just have them here. We submitted them online before noon, but we have the marked ones here, so I'd like to just hand them up. THE COURT: That's not a problem. You can give them to Charlie. MR. BROMLEY: Thank you very much. THE COURT: I appreciate that. Okay, to what extent do we have anything else, folks? All right, I think I thought we were done but I see some	3 4 5 7 8 9 10 11 2 12 13 14 15 16 17 18	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the Treasury in regards to resolving this workers' compensation issue. And these discussions culminated in the terms that were necessary for the Michigan Workers' Compensation Agency director to grant NGMCO self-insured status as an employer in Michigan when it begins its operations. What's left is that there's as Mr. Smolinsky indicated, that there's ongoing steps being taken to incorporate those terms into a binding agreement that the appropriate parties, after they are identified, can sign on behalf of NGMCO.
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our designations with respect to depositions that we also needed to submit marked copies separately to the Court. So I just have them here. We submitted them online before noon, but we have the marked ones here, so I'd like to just hand them up. THE COURT: That's not a problem. You can give them to Charlie. MR. BROMLEY: Thank you very much. THE COURT: I appreciate that. Okay, to what extent do we have anything else, folks? All right, I think I thought we were done but I see some folks have now come back into the courtroom.	3 4 5 7 8 9 10 11 ; 12 13 14 15 16 17 18 19 20	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the Treasury in regards to resolving this workers' compensation issue. And these discussions culminated in the terms that were necessary for the Michigan Workers' Compensation Agency director to grant NGMCO self-insured status as an employer in Michigan when it begins its operations. What's left is that there's as Mr. Smolinsky indicated, that there's ongoing steps being taken to incorporate those terms into a binding agreement that the appropriate parties, after they are identified, can sign on behalf of NGMCO. The representation was made today that such an
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our designations with respect to depositions that we also needed to submit marked copies separately to the Court. So I just have them here. We submitted them online before noon, but we have the marked ones here, so I'd like to just hand them up. THE COURT: That's not a problem. You can give them to Charlie. MR. BROMLEY: Thank you very much. THE COURT: I appreciate that. Okay, to what extent do we have anything else, folks? All right, I think I thought we were done but I see some folks have now come back into the courtroom. MR. SMOLINSKY: Your Honor, just I'm not sure I	3 4 5 7 8 9 10 11 ; 12 13 14 15 16 17 18 19 20 21	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the Treasury in regards to resolving this workers' compensation issue. And these discussions culminated in the terms that were necessary for the Michigan Workers' Compensation Agency director to grant NGMCO self-insured status as an employer in Michigan when it begins its operations. What's left is that there's as Mr. Smolinsky indicated, that there's ongoing steps being taken to incorporate those terms into a binding agreement that the appropriate parties, after they are identified, can sign on behalf of NGMCO. The representation was made today that such an agreement will be finalized and signed at the end of today.
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our designations with respect to depositions that we also needed to submit marked copies separately to the Court. So I just have them here. We submitted them online before noon, but we have the marked ones here, so I'd like to just hand them up. THE COURT: That's not a problem. You can give them to Charlie. MR. BROMLEY: Thank you very much. THE COURT: I appreciate that. Okay, to what extent do we have anything else, folks? All right, I think I thought we were done but I see some folks have now come back into the courtroom. MR. SMOLINSKY: Your Honor, just I'm not sure I said it, so I wanted to make clear on the record. There have	3 4 5 7 8 9 10 11 2 12 13 14 15 16 17 18 19 20 21 22	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the Treasury in regards to resolving this workers' compensation issue. And these discussions culminated in the terms that were necessary for the Michigan Workers' Compensation Agency director to grant NGMCO self-insured status as an employer in Michigan when it begins its operations. What's left is that there's as Mr. Smolinsky indicated, that there's ongoing steps being taken to incorporate those terms into a binding agreement that the appropriate parties, after they are identified, can sign on behalf of NGMCO. The representation was made today that such an agreement will be finalized and signed at the end of today. And on that basis, we feel that that addresses a major concern
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our designations with respect to depositions that we also needed to submit marked copies separately to the Court. So I just have them here. We submitted them online before noon, but we have the marked ones here, so I'd like to just hand them up. THE COURT: That's not a problem. You can give them to Charlie. MR. BROMLEY: Thank you very much. THE COURT: I appreciate that. Okay, to what extent do we have anything else, folks? All right, I think I thought we were done but I see some folks have now come back into the courtroom. MR. SMOLINSKY: Your Honor, just I'm not sure I said it, so I wanted to make clear on the record. There have been a number of objections that have been filed since we filed	3 4 5 7 8 9 10 11 ; 12 13 14 15 16 17 18 19 20 21 22 23	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the Treasury in regards to resolving this workers' compensation issue. And these discussions culminated in the terms that were necessary for the Michigan Workers' Compensation Agency director to grant NGMCO self-insured status as an employer in Michigan when it begins its operations. What's left is that there's as Mr. Smolinsky indicated, that there's ongoing steps being taken to incorporate those terms into a binding agreement that the appropriate parties, after they are identified, can sign on behalf of NGMCO. The representation was made today that such an agreement will be finalized and signed at the end of today. And on that basis, we feel that that addresses a major concern for Michigan, who really wants to have a seamless transition
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our designations with respect to depositions that we also needed to submit marked copies separately to the Court. So I just have them here. We submitted them online before noon, but we have the marked ones here, so I'd like to just hand them up. THE COURT: That's not a problem. You can give them to Charlie. MR. BROMLEY: Thank you very much. THE COURT: I appreciate that. Okay, to what extent do we have anything else, folks? All right, I think I thought we were done but I see some folks have now come back into the courtroom. MR. SMOLINSKY: Your Honor, just I'm not sure I said it, so I wanted to make clear on the record. There have been a number of objections that have been filed since we filed our last reply. We would propose to just carry those along	3 4 5 7 8 9 10 11 2 12 13 14 15 16 17 18 19 20 21 22	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the Treasury in regards to resolving this workers' compensation issue. And these discussions culminated in the terms that were necessary for the Michigan Workers' Compensation Agency director to grant NGMCO self-insured status as an employer in Michigan when it begins its operations. What's left is that there's as Mr. Smolinsky indicated, that there's ongoing steps being taken to incorporate those terms into a binding agreement that the appropriate parties, after they are identified, can sign on behalf of NGMCO. The representation was made today that such an agreement will be finalized and signed at the end of today. And on that basis, we feel that that addresses a major concern for Michigan, who really wants to have a seamless transition for GMCO to come into there.
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	MS. TAYLOR: Thank you very much. THE COURT: Thank you. Did I take care of everybody? Mr. Bromley? MR. BROMLEY: Your Honor, James Bromley of Clear Gottlieb on behalf of the UAW. This is not with respect to an objection by any stretch; this is just a cleanup from earlier. I had not realized that when we were submitting our designations with respect to depositions that we also needed to submit marked copies separately to the Court. So I just have them here. We submitted them online before noon, but we have the marked ones here, so I'd like to just hand them up. THE COURT: That's not a problem. You can give them to Charlie. MR. BROMLEY: Thank you very much. THE COURT: I appreciate that. Okay, to what extent do we have anything else, folks? All right, I think I thought we were done but I see some folks have now come back into the courtroom. MR. SMOLINSKY: Your Honor, just I'm not sure I said it, so I wanted to make clear on the record. There have been a number of objections that have been filed since we filed	3 4 5 7 8 9 10 11 2 13 14 15 16 17 18 19 20 21 22 23 24	K-O-P, hyphen, S-H-A-W. On behalf of I'm here on behalf of the Attorney General of Michigan, Mike Cox, who represents the Michigan Workers' Compensation Agency and the Funds Administration. And we were compelled to file an objection in this matter to resolve the issue of New NGMCO's ongoing workers' compensation obligations in Michigan. And as promised by NGMCO's counsel yesterday, negotiations were held between the State of Michigan and, in fact, they were pursued by the Treasury in regards to resolving this workers' compensation issue. And these discussions culminated in the terms that were necessary for the Michigan Workers' Compensation Agency director to grant NGMCO self-insured status as an employer in Michigan when it begins its operations. What's left is that there's as Mr. Smolinsky indicated, that there's ongoing steps being taken to incorporate those terms into a binding agreement that the appropriate parties, after they are identified, can sign on behalf of NGMCO. The representation was made today that such an agreement will be finalized and signed at the end of today. And on that basis, we feel that that addresses a major concern for Michigan, who really wants to have a seamless transition

212-267-6868

1	presented based upon the proposed order that was filed.	1	MR. JONES: Thank you.
2	Paragraph 52 on the new one that Ms. Cordry worked with on	2	THE COURT: All right I'm sorry, go ahead.
3	behalf with counsel to culminate in has a paragraph that	3	MS. PRZEKOP-SHAW: No, thank you.
4	discusses NGMCO's assumption of these workers' compensation	4	THE COURT: Thank you.
5	obligations. And we have been advised by Old GM's counsel that	5	Mr. Schmidt?
6	they will appropriately amend the master sale and purchase	6	MR. SCHMIDT: Yes, Your Honor. And I apologize, on
7	order to reflect that provision.	7	point harking back to the TPC matter that you heard a few
8	And we also observed that proposed order paragraph	8	minutes ago. I just received a note from one of my colleagues
9	41, which was dealing with preventing a state to essentially	9	that we hadn't seen that language in the order yet, and we'd
10	implement its statutory and regulatory system, that this	10	just like to take a few minutes to look at it.
11	provision will not apply if there's a stipulation on the record	11	THE COURT: Okay. Can somebody get the creditors'
12	that it will not apply to the circumstances. And here, the	12	committee the language they need to satisfy themselves?
13	Michigan Workers' Compensation Agency	13	MR. SCHMIDT: Thank you, Your Honor.
14	THE COURT: Time out. What do you mean by that, that	14	THE COURT: Sure.
15	if there's an individual stip it'll trump the moot stip?	15	All right, what else do we have, folks?
16	MS. PRZEKOP-SHAW: From my understanding of paragraph	16	Mr. Karotkin?
17	41, as provided, that effective upon the closing and except as	17	MR. KAROTKIN: Your Honor, I think, as to the sale
18	may be otherwise provided by stipulation filed with or	18	motion, there is nothing else, unless I'm mistaken.
19	announced to the Court with respect to a specific matter, that	19	THE COURT: I have one or two things. I'm not going
20	that provision would and the following terms would not	20	to prejudge the motion. But I gather you have been, and may
21	apply. And in regards to that provision, Michigan Workers'	21	even now still be, doing a lot of work on the order that you
22	Compensation Agency and the Funds Administration, in order to	22	would want me to enter, if I approved it, which, among other
23	operate its regulatory scheme and enforce the self-insured	23	things, requires you to implement a lot of understandings that
24	process in Michigan, will need to have that stipulation made on	24	you have been working on even up to this minute. Am I correct
25	the record, and I understand counsel are prepared to do so	25	in assuming that there is going to be a revised proposed order
	222		224
1	to be	1	
1	today.	1 2	that's going to be sent to my chambers sometime when you've
2 3	MR. SMOLINSKY: Your Honor, I think the agreement, with respect to paragraph 41, and just to make sure that we're	3	been able to embody all of your deals, Mr
4		4	MR. KAROTKIN: Yes, sir.
	all clear, is that the stipulation that we're entering into		THE COURT: Do you have some sense as to how long
5 6	allows the Workers' Compensation Board to do their business, to	) 5 6	it's going to take you to believe me, you don't have to
7	actually take the permit, the application that's proposed to		worry about it not getting here in time if it's going to take
8	them, to make sure they have all the documents available and to	8	more than twenty-four hours, but or even more, but what's
° 9	grant their license and then to regulate New GM going forward. And so the agreement that we reached is that that paragraph	9	your sense as to how long it's going to take you to embody all of your stuff so that something comes to me?
10	will not interfere with the Workers' Compensation Board	10	MR. KAROTKIN: I think, actually, we've made a lot of
11	exercising their regulatory duties.	11	progress. It's our intention to go back tonight, revise it,
12		12	
12	Is that accurate? MS. PRZEKOP-SHAW: In regard yes.	12	circulate it to the parties this evening and hopefully get their comments tomorrow morning, and hopefully get it to you
14		14	
14 15	In that regards, to its ongoing regulatory obligations to meet the Workers' Compensation Agency's the	14	either sometime tomorrow night or Saturday, if that's fine with
16	acts requirements and the rules that apply to that.	16	you. THE COURT: Yeah, that'll be fine.
17	THE COURT: Mr. Jones, you heading up?	10	Now, to what extent do parties have transcripts
18	MR. JONES: Yep. Yes, Your Honor. Thank you, Your	18	paper transcripts of the last three days?
10	Honor. I just need to note, the Treasury fully agrees to the	19	MR. KAROTKIN: Excuse me, sir.
20	agreement as with the agreement as described. I just do	20	(Pause)
20	need to note for everyone that the signatory we need for the	20	(Pause) MR. KAROTKIN: We only have June 30 in the afternoon
21		21	There was the problem in the morning with the microphones. W
22	actual stipulation may not be available today, although we're	22	
23	trying to get that person. Failing that, we expect the person to sign tomorrow.	23 24	don't have the other two days, but we're arranging to get those
24 25	-	24 25	as soon as possible. THE COURT: Those have been ordered?
20	THE COURT: Okay.	20	THE COURT. THOse have been ordered?
	223		225

212-267-6868

1	MD KADOTKINI Vee	1	Anna desine from the analitemal committee to be bound
1	MR. KAROTKIN: Yes.	1 2	Any desire from the creditors' committee to be heard on this?
2	Have they been ordered?	3	
3 4	Yes.	4	All right. MR. KAROTKIN: Now, if I
	THE COURT: On expedited MR. KAROTKIN: Yes, sir.	5	THE COURT: Normally I think the deadline for
5			2
6	THE COURT: request? Okay. As soon as you or any		objections has passed, but considering the short notice, is
7	of your colleagues by that I mean the Treasury, creditors'	7	there anybody who wants to be heard in the way of objection to
8	committee, other parties-in-interest, anybody gets them, I	8	that settlement?
9	would like to have them e-mailed to the chambers e-mail	9 10	Record will reflect no response.
10	address.		MR. KAROTKIN: If I could interrupt for one second?
11	MR. KAROTKIN: Yes, sir.	11	THE COURT: Yes.
12	THE COURT: All right. I think that takes care of	12	MR. KAROTKIN: I'm sorry. If Your Honor's inclined
13	the housekeeping matters I had, Mr. Karotkin. Do you have	13	to grant the relief in the motion, I would suggest that we
14	other stuff?	14	don't have a proposed form of order with us. It was the
15	MR. KAROTKIN: There are two other items on the	15	form that we had was incorrect in a few respects, and we
16	calendar for this afternoon.	16	haven't had time to change it. My suggestion is if we could
17	THE COURT: Go ahead.	17	send it down to chambers over the next day or so.
18	MR. KAROTKIN: I believe the first item, Your Honor,	18	THE COURT: I'm going to approve the motion, and your
19	relates to a motion by the debtors seeking authority and	19	mechanics are okay with me, Mr. Karotkin. When you do that, I
20	approval of certain settlement with four different unions.	20	want your either your letter transmittal or your e-mail
21	This was noticed on shortened time pursuant to an order of you		message accompanying any attached proposed order to be able to
22	court.	22	give me a representation of counsel for all of the objected
23	This motion, Your Honor, involves a settlement with	23	unions and the creditors' committee and the U.S. government are
24	four of what, over the last few days, you've come to know as	24	satisfied with the form of the order as consistent with
25	the splinter unions. They	25	reflecting the deal as everybody understands it to be.
	226		228
1	THE COURT: These are both non-UAW and	1	MR. KAROTKIN: Very well, sir.
1 2	THE COURT: These are both non-UAW and MR. KAROTKIN: Non-I	1 2	MR. KAROTKIN: Very well, sir. THE COURT: Okay. Thank you.
	MR. KAROTKIN: Non-I		MR. KAROTKIN: Very well, sir. THE COURT: Okay. Thank you. What else do we have?
2		2	THE COURT: Okay. Thank you.
2 3	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for	2 3	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the
2 3 4	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third.	2 3 4	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based
2 3 4 5	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They	2 3 4 5 6	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that,
2 3 4 5 6	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There	2 3 4 5 6	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that
2 3 4 5 6 7	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion,	2 3 4 5 6 7	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that
2 3 4 5 6 7 8	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically	2 3 4 5 6 7 8	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although
2 4 5 7 8 9	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114	2 3 4 5 6 7 8 9	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that
2 3 6 7 8 9	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114 representative of the covered groups, as defined in the	2 3 4 5 6 7 8 9 10	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although there is an agreement in principle as to the terms and provisions of the wind-down facility. Of course, the amount of
2 3 4 5 6 7 8 9 10 11	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114 representative of the covered groups, as defined in the settlement agreements, have agreed to the retiree the	2 3 4 5 6 7 8 9 10 11	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although there is an agreement in principle as to the terms and
2 3 4 5 6 7 8 9 10 11 12	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114 representative of the covered groups, as defined in the settlement agreements, have agreed to the retiree the modified retiree benefits that, again, you heard about over the	2 3 4 5 6 7 8 9 10 11 12	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although there is an agreement in principle as to the terms and provisions of the wind-down facility. Of course, the amount of the wind-down facility, as Your Honor heard this morning, would
2 3 4 5 6 7 8 9 10 11 12 13	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114 representative of the covered groups, as defined in the settlement agreements, have agreed to the retiree the	2 3 4 5 6 7 8 9 10 11 12 13	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although there is an agreement in principle as to the terms and provisions of the wind-down facility. Of course, the amount of the wind-down facility, as Your Honor heard this morning, would be 1.175 billion dollars.
2 3 4 5 6 7 8 9 10 11 12 13 14	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114 representative of the covered groups, as defined in the settlement agreements, have agreed to the retiree the modified retiree benefits that, again, you heard about over the last few days, of the same nature that were offered to salaried employees and the same that were offered to the objecting	2 3 4 5 6 7 8 9 10 11 12 13 14 15	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although there is an agreement in principle as to the terms and provisions of the wind-down facility. Of course, the amount of the wind-down facility, as Your Honor heard this morning, would be 1.175 billion dollars. I think all of the substantive terms have been agreed to. The document has not yet been finalized. We do have a
2 3 4 5 6 7 8 9 10 11 12 13 14 15	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114 representative of the covered groups, as defined in the settlement agreements, have agreed to the retiree the modified retiree benefits that, again, you heard about over the last few days, of the same nature that were offered to salaried employees and the same that were offered to the objecting parties as well.	2 3 4 5 6 7 8 9 10 11 12 13 14	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although there is an agreement in principle as to the terms and provisions of the wind-down facility. Of course, the amount of the wind-down facility, as Your Honor heard this morning, would be 1.175 billion dollars. I think all of the substantive terms have been agreed to. The document has not yet been finalized. We do have a proposed order that we will be in a position to submit later
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114 representative of the covered groups, as defined in the settlement agreements, have agreed to the retiree the modified retiree benefits that, again, you heard about over the last few days, of the same nature that were offered to salaried employees and the same that were offered to the objecting parties as well. But these four unions have agreed to that. Two of	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although there is an agreement in principle as to the terms and provisions of the wind-down facility. Of course, the amount of the wind-down facility, as Your Honor heard this morning, would be 1.175 billion dollars. I think all of the substantive terms have been agreed to. The document has not yet been finalized. We do have a proposed order that we will be in a position to submit later today or early tomorrow, which, as I understand it the terms
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114 representative of the covered groups, as defined in the settlement agreements, have agreed to the retiree the modified retiree benefits that, again, you heard about over the last few days, of the same nature that were offered to salaried employees and the same that were offered to the objecting parties as well. But these four unions have agreed to that. Two of the unions have that have the active employees have also	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although there is an agreement in principle as to the terms and provisions of the wind-down facility. Of course, the amount of the wind-down facility, as Your Honor heard this morning, would be 1.175 billion dollars. I think all of the substantive terms have been agreed to. The document has not yet been finalized. We do have a proposed order that we will be in a position to submit later today or early tomorrow, which, as I understand it the terms of which have been substantially agreed to by both the debtors,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114 representative of the covered groups, as defined in the settlement agreements, have agreed to the retiree the modified retiree benefits that, again, you heard about over the last few days, of the same nature that were offered to salaried employees and the same that were offered to the objecting parties as well. But these four unions have agreed to that. Two of the unions have that have the active employees have also the debtor has also agreed to modify collective bargaining	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although there is an agreement in principle as to the terms and provisions of the wind-down facility. Of course, the amount of the wind-down facility, as Your Honor heard this morning, would be 1.175 billion dollars. I think all of the substantive terms have been agreed to. The document has not yet been finalized. We do have a proposed order that we will be in a position to submit later today or early tomorrow, which, as I understand it the terms of which have been substantially agreed to by both the debtors, the U.S. Treasury, the creditors' committee and the Paul Weiss
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114 representative of the covered groups, as defined in the settlement agreements, have agreed to the retiree the modified retiree benefits that, again, you heard about over the last few days, of the same nature that were offered to salaried employees and the same that were offered to the objecting parties as well. But these four unions have agreed to that. Two of the unions have that have the active employees have also the debtor has also agreed to modify collective bargaining agreements with those two unions. And all of this is	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although there is an agreement in principle as to the terms and provisions of the wind-down facility. Of course, the amount of the wind-down facility, as Your Honor heard this morning, would be 1.175 billion dollars. I think all of the substantive terms have been agreed to. The document has not yet been finalized. We do have a proposed order that we will be in a position to submit later today or early tomorrow, which, as I understand it the terms of which have been substantially agreed to by both the debtors, the U.S. Treasury, the creditors' committee and the Paul Weiss firm representing the ad hoc committee of bondholders.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114 representative of the covered groups, as defined in the settlement agreements, have agreed to the retiree the modified retiree benefits that, again, you heard about over the last few days, of the same nature that were offered to salaried employees and the same that were offered to the objecting parties as well. But these four unions have agreed to that. Two of the unions have that have the active employees have also the debtor has also agreed to modify collective bargaining agreements with those two unions. And all of this is conditioned on approval and consummation of the sale.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although there is an agreement in principle as to the terms and provisions of the wind-down facility. Of course, the amount of the wind-down facility, as Your Honor heard this morning, would be 1.175 billion dollars. I think all of the substantive terms have been agreed to. The document has not yet been finalized. We do have a proposed order that we will be in a position to submit later today or early tomorrow, which, as I understand it the terms of which have been substantially agreed to by both the debtors, the U.S. Treasury, the creditors' committee and the Paul Weiss firm representing the ad hoc committee of bondholders. I don't there was some suggestion, Your Honor,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114 representative of the covered groups, as defined in the settlement agreements, have agreed to the retiree the modified retiree benefits that, again, you heard about over the last few days, of the same nature that were offered to salaried employees and the same that were offered to the objecting parties as well. But these four unions have agreed to that. Two of the unions have that have the active employees have also the debtor has also agreed to modify collective bargaining agreements with those two unions. And all of this is conditioned on approval and consummation of the sale. And, again, like the UAW, in connection with each of	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although there is an agreement in principle as to the terms and provisions of the wind-down facility. Of course, the amount of the wind-down facility, as Your Honor heard this morning, would be 1.175 billion dollars. I think all of the substantive terms have been agreed to. The document has not yet been finalized. We do have a proposed order that we will be in a position to submit later today or early tomorrow, which, as I understand it the terms of which have been substantially agreed to by both the debtors, the U.S. Treasury, the creditors' committee and the Paul Weiss firm representing the ad hoc committee of bondholders. I don't there was some suggestion, Your Honor, that if we could take a short recess, perhaps we might even
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114 representative of the covered groups, as defined in the settlement agreements, have agreed to the retiree the modified retiree benefits that, again, you heard about over the last few days, of the same nature that were offered to salaried employees and the same that were offered to the objecting parties as well. But these four unions have agreed to that. Two of the unions have that have the active employees have also the debtor has also agreed to modify collective bargaining agreements with those two unions. And all of this is conditioned on approval and consummation of the sale. And, again, like the UAW, in connection with each of these agreements, they've agreed to waive their claims for the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although there is an agreement in principle as to the terms and provisions of the wind-down facility. Of course, the amount of the wind-down facility, as Your Honor heard this morning, would be 1.175 billion dollars. I think all of the substantive terms have been agreed to. The document has not yet been finalized. We do have a proposed order that we will be in a position to submit later today or early tomorrow, which, as I understand it the terms of which have been substantially agreed to by both the debtors, the U.S. Treasury, the creditors' committee and the Paul Weiss firm representing the ad hoc committee of bondholders. I don't there was some suggestion, Your Honor, that if we could take a short recess, perhaps we might even have a form of document down here. But
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114 representative of the covered groups, as defined in the settlement agreements, have agreed to the retiree the modified retiree benefits that, again, you heard about over the last few days, of the same nature that were offered to salaried employees and the same that were offered to the objecting parties as well. But these four unions have agreed to that. Two of the unions have that have the active employees have also the debtor has also agreed to modify collective bargaining agreements with those two unions. And all of this is conditioned on approval and consummation of the sale. And, again, like the UAW, in connection with each of these agreements, they've agreed to waive their claims for the retiree health and life benefits as against the debtor company.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although there is an agreement in principle as to the terms and provisions of the wind-down facility. Of course, the amount of the wind-down facility, as Your Honor heard this morning, would be 1.175 billion dollars. I think all of the substantive terms have been agreed to. The document has not yet been finalized. We do have a proposed order that we will be in a position to submit later today or early tomorrow, which, as I understand it the terms of which have been substantially agreed to by both the debtors, the U.S. Treasury, the creditors' committee and the Paul Weiss firm representing the ad hoc committee of bondholders. I don't there was some suggestion, Your Honor, that if we could take a short recess, perhaps we might even have a form of document down here. But THE COURT: That's not necessarily a problem, but
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	MR. KAROTKIN: Non-I THE COURT: nonobjecting unions, or at least for not presently objecting unions, not the IUE steelworkers, and I forgot the third. MR. KAROTKIN: Correct. That's correct. They encompass about 1,050 retirees and 150 active employees. There are four different settlement agreements annexed to the motion, each of which is substantially identical. And they basically provide, Your Honor, that the unions, as the 1114 representative of the covered groups, as defined in the settlement agreements, have agreed to the retiree the modified retiree benefits that, again, you heard about over the last few days, of the same nature that were offered to salaried employees and the same that were offered to the objecting parties as well. But these four unions have agreed to that. Two of the unions have that have the active employees have also the debtor has also agreed to modify collective bargaining agreements with those two unions. And all of this is conditioned on approval and consummation of the sale. And, again, like the UAW, in connection with each of these agreements, they've agreed to waive their claims for the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	THE COURT: Okay. Thank you. What else do we have? MR. KAROTKIN: The other item on the calendar is the approval of the wind-down facility. Now, I think that, based on the current state of play and all the negotiations that, again, you heard about earlier today with respect to that facility, I think the current state we're in right now is that the document is still in somewhat of a state of flux, although there is an agreement in principle as to the terms and provisions of the wind-down facility. Of course, the amount of the wind-down facility, as Your Honor heard this morning, would be 1.175 billion dollars. I think all of the substantive terms have been agreed to. The document has not yet been finalized. We do have a proposed order that we will be in a position to submit later today or early tomorrow, which, as I understand it the terms of which have been substantially agreed to by both the debtors, the U.S. Treasury, the creditors' committee and the Paul Weiss firm representing the ad hoc committee of bondholders. I don't there was some suggestion, Your Honor, that if we could take a short recess, perhaps we might even have a form of document down here. But

212-267-6868

3Ms. Caton?3I'm sure I don't have the detailed4MS. CATON: Good afternoon, Your Honor. Amy Caton4parties do, but certainly the condition5from Kramer Levin Naftalis & Frankel, on behalf of the5Okay, anything else from6creditors' committee. The wind-down credit facility has been6MS. CATON: No, Your7a the product of a lot of negotiation by the creditors'7THE COURT: Okay, M8committee. This is a very important document to us because8of you want to comment?9it's going to govern how these estates run after the sale9MR. SCHWARTZ: Not10closes.10accurate description in that we11I believe we are satisfied largely with the1112resolution on the credit facility and the loan that Treasury is1213making. And there are a few nits that we still had to the1314credit agreement, but I think those will be worked out.1415The one substantive comment that we have to the form1516of order that we're still trying to work out is corporate1617governance and how Old GM will be governed after the sale1718closes and the board leaves. I believe we have a proposal1819right now on the table, which is that two there will be a1920reditors' committee, nominated by the creditors' committee,2121creditors' committee, nominated by the creditors' committee,21	ncepts are fine with me. n your perspective, Ms. Caton? r Honor. fr. Schwartz or Mr. Jones, either t particularly. I think that was an were comfortable with what was re have since been some proposals well as the form of the order. t. bing anywhere this afternoon, leard, whether you're going to ne anytime that quickly. I read my mind. It's kind of like 'Honor, since everyone pretty nce, that rather than sticking
3Ms. Caton?3I'm sure I don't have the detail4MS. CATON: Good afternoon, Your Honor. Amy Caton4parties do, but certainly the con5from Kramer Levin Naftalis & Frankel, on behalf of the5Okay, anything else from6creditors' committee. The wind-down credit facility has been6MS. CATON: No, Your7a the product of a lot of negotiation by the creditors'7THE COURT: Okay, M8committee. This is a very important document to us because8of you want to comment?9it's going to govern how these estates run after the sale9MR. SCHWARTZ: Not10closes.10accurate description in that we11I believe we are satisfied largely with the11announced this morning. Ther12resolution on the credit facility and the loan that Treasury is12that we're working through, as13making. And there are a few nits that we still had to the13THE COURT: All right14credit agreement, but I think those will be worked out.14Mr. Karotkin, I'm not go15The one substantive comment that we have to the form15but I'm not sure, from what I h16of order that we're still trying to work out is corporate16have an order that's ready for r17governance and how Old GM will be governed after the sale17MR. KAROTKIN: You18closes and the board leaves. I believe we have a proposal18what you say. I suggest, Your19right now on the table, which is that two the	ed understanding that the ncepts are fine with me. n your perspective, Ms. Caton? r Honor. fr. Schwartz or Mr. Jones, either t particularly. I think that was an e were comfortable with what was re have since been some proposal well as the form of the order. t. bing anywhere this afternoon, teard, whether you're going to ne anytime that quickly. I read my mind. It's kind of like 'Honor, since everyone pretty nce, that rather than sticking
4MS. CATON: Good afternoon, Your Honor. Amy Caton4parties do, but certainly the cord5from Kramer Levin Naftalis & Frankel, on behalf of the5Okay, anything else from6creditors' committee. The wind-down credit facility has been6MS. CATON: No, Your7a the product of a lot of negotiation by the creditors'7THE COURT: Okay, M8committee. This is a very important document to us because8of you want to comment?9it's going to govern how these estates run after the sale9MR. SCHWARTZ: Not10closes.10accurate description in that we11I believe we are satisfied largely with the11announced this morning. Ther12resolution on the credit facility and the loan that Treasury is12that we're working through, as13making. And there are a few nits that we still had to the13THE COURT: All right14credit agreement, but I think those will be worked out.14Mr. Karotkin, I'm not got15The one substantive comment that we have to the form15but I'm not sure, from what I h16of order that we're still trying to work out is corporate16have an order that's ready for r17governance and how Old GM will be governed after the sale19much has agreed on the substat20five-member board, two members of which will be proposed by the20around, we'd just submit an ord21creditors' committee, nominated by the creditors' committee,21circulated it.22	ncepts are fine with me. n your perspective, Ms. Caton? r Honor. fr. Schwartz or Mr. Jones, either t particularly. I think that was an were comfortable with what was re have since been some proposal well as the form of the order. t. bing anywhere this afternoon, teard, whether you're going to ne anytime that quickly. I read my mind. It's kind of like 'Honor, since everyone pretty nce, that rather than sticking
5from Kramer Levin Naftalis & Frankel, on behalf of the creditors' committee. The wind-down credit facility has been a the product of a lot of negotiation by the creditors'5Okay, anything else from MS. CATON: No, Your THE COURT: Okay, M8committee. This is a very important document to us because 98of you want to comment?9it's going to govern how these estates run after the sale closes.9MR. SCHWARTZ: Not accurate description in that we announced this morning. Ther that we're working through, as making. And there are a few nits that we still had to the tredit agreement, but I think those will be worked out.11THE COURT: All right dwr. Karotkin, I'm not go16of order that we're still trying to work out is corporate to of order that we're still trying to work out is corporate16have an order that's ready for r much has agreed on the substant around, we'd just submit an order tright now on the table, which is that two there will be a tright now on the table, which is that two there will be a tright now on the table, which is that two there will be a tright now on the table, which will be proposed by the to reditors' committee, nominated by the creditors' committee, tright now on the table, nominated by the creditors' committee, tright now on the table, nominated by the creditors' committee, tright now on the table, nominated by the creditors' committee, tright now on the table, nominated by the creditors' committee, tright now on the table, nominated by the creditors' committee, tright now on the table, nominated by the creditors' committee, tright now on the table, nominated by the creditors' committee, tright now on the table, nominated by the creditors' committee, tright now on the table, nominated	n your perspective, Ms. Caton? r Honor. fr. Schwartz or Mr. Jones, either t particularly. I think that was an were comfortable with what was re have since been some proposal well as the form of the order. t. bing anywhere this afternoon, teard, whether you're going to ne anytime that quickly. I read my mind. It's kind of like 'Honor, since everyone pretty nce, that rather than sticking
6creditors' committee. The wind-down credit facility has been a the product of a lot of negotiation by the creditors'6MS. CATON: No, Your THE COURT: Okay, M7a the product of a lot of negotiation by the creditors'7THE COURT: Okay, M8committee. This is a very important document to us because8of you want to comment?9it's going to govern how these estates run after the sale9MR. SCHWARTZ: Not10closes.10accurate description in that we11I believe we are satisfied largely with the11announced this morning. Ther12resolution on the credit facility and the loan that Treasury is12that we're working through, as13making. And there are a few nits that we still had to the13THE COURT: All right14credit agreement, but I think those will be worked out.14Mr. Karotkin, I'm not go15The one substantive comment that we have to the form15but I'm not sure, from what I h16of order that we're still trying to work out is corporate16have an order that's ready for r17governance and how Old GM will be governed after the sale17MR. KAROTKIN: You18closes and the board leaves. I believe we have a proposal18what you say. I suggest, Your19right now on the table, which is that two there will be a19much has agreed on the substa20five-member board, two members of which will be proposed by the20circulated it.21creditors' committee, nominated by the c	r Honor. fr. Schwartz or Mr. Jones, either t particularly. I think that was an were comfortable with what was re have since been some proposal well as the form of the order. t. bing anywhere this afternoon, werd, whether you're going to ne anytime that quickly. read my mind. It's kind of like 'Honor, since everyone pretty nce, that rather than sticking
7a the product of a lot of negotiation by the creditors'7THE COURT: Okay, M8committee. This is a very important document to us because8of you want to comment?9it's going to govern how these estates run after the sale9MR. SCHWARTZ: Not10closes.10accurate description in that we11I believe we are satisfied largely with the11announced this morning. Ther12resolution on the credit facility and the loan that Treasury is12that we're working through, as13making. And there are a few nits that we still had to the13THE COURT: All right14credit agreement, but I think those will be worked out.14Mr. Karotkin, I'm not go15The one substantive comment that we have to the form15but I'm not sure, from what I h16of order that we're still trying to work out is corporate16have an order that's ready for r17governance and how Old GM will be governed after the sale17MR. KAROTKIN: You18closes and the board leaves. I believe we have a proposal18what you say. I suggest, Your19right now on the table, which is that two there will be a19much has agreed on the substa20creditors' committee, nominated by the creditors' committee,21circulated it.23THE COURT: Time out, Ms. Caton.23to be the same. When I get it states	fr. Schwartz or Mr. Jones, either t particularly. I think that was an e were comfortable with what was re have since been some proposal well as the form of the order. t. bing anywhere this afternoon, ueard, whether you're going to me anytime that quickly. I read my mind. It's kind of like 'Honor, since everyone pretty ince, that rather than sticking
8committee. This is a very important document to us because8of you want to comment?9it's going to govern how these estates run after the sale9MR. SCHWARTZ: Not10closes.10accurate description in that we11I believe we are satisfied largely with the11announced this morning. Ther12resolution on the credit facility and the loan that Treasury is12that we're working through, as13making. And there are a few nits that we still had to the13THE COURT: All right14credit agreement, but I think those will be worked out.14Mr. Karotkin, I'm not go15The one substantive comment that we have to the form15but I'm not sure, from what I h16of order that we're still trying to work out is corporate16have an order that's ready for r17governance and how Old GM will be governed after the sale17MR. KAROTKIN: You18closes and the board leaves. I believe we have a proposal18what you say. I suggest, Your19right now on the table, which is that two there will be a19much has agreed on the substat20five-member board, two members of which will be proposed by the20circulated it.21creditors' committee, nominated by the creditors' committee,21circulated it.23THE COURT: Time out, Ms. Caton.23to be the same. When I get it set	t particularly. I think that was an were comfortable with what was re have since been some proposal well as the form of the order. t. bing anywhere this afternoon, leard, whether you're going to me anytime that quickly. I read my mind. It's kind of like Honor, since everyone pretty ince, that rather than sticking
9it's going to govern how these estates run after the sale9MR. SCHWARTZ: Not10closes.10accurate description in that we11I believe we are satisfied largely with the11announced this morning. Ther12resolution on the credit facility and the loan that Treasury is12that we're working through, as13making. And there are a few nits that we still had to the13THE COURT: All right14credit agreement, but I think those will be worked out.14Mr. Karotkin, I'm not go15The one substantive comment that we have to the form15but I'm not sure, from what I h16of order that we're still trying to work out is corporate16have an order that's ready for r17governance and how Old GM will be governed after the sale17MR. KAROTKIN: You18closes and the board leaves. I believe we have a proposal18what you say. I suggest, Your19right now on the table, which is that two there will be a19much has agreed on the substat20five-member board, two members of which will be proposed by the20around, we'd just submit an order21creditors' committee, nominated by the creditors' committee,21THE COURT: That's age23THE COURT: Time out, Ms. Caton.23to be the same. When I get it stop	were comfortable with what was re have since been some proposal well as the form of the order. t. bing anywhere this afternoon, teard, whether you're going to ne anytime that quickly. I read my mind. It's kind of like 'Honor, since everyone pretty nce, that rather than sticking
10closes.10accurate description in that we11I believe we are satisfied largely with the11announced this morning. Ther12resolution on the credit facility and the loan that Treasury is12that we're working through, as13making. And there are a few nits that we still had to the13THE COURT: All right14credit agreement, but I think those will be worked out.14Mr. Karotkin, I'm not go15The one substantive comment that we have to the form15but I'm not sure, from what I h16of order that we're still trying to work out is corporate16have an order that's ready for r17governance and how Old GM will be governed after the sale17MR. KAROTKIN: You18closes and the board leaves. I believe we have a proposal18what you say. I suggest, Your19right now on the table, which is that two there will be a19much has agreed on the substat20five-member board, two members of which will be proposed by the20around, we'd just submit an order21creditors' committee, nominated by the creditors' committee,21circulated it.23THE COURT: Time out, Ms. Caton.23to be the same. When I get it set	were comfortable with what was re have since been some proposal well as the form of the order. t. bing anywhere this afternoon, teard, whether you're going to ne anytime that quickly. I read my mind. It's kind of like 'Honor, since everyone pretty nce, that rather than sticking
11I believe we are satisfied largely with the11announced this morning. Ther12resolution on the credit facility and the loan that Treasury is12that we're working through, as13making. And there are a few nits that we still had to the13THE COURT: All right14credit agreement, but I think those will be worked out.14Mr. Karotkin, I'm not go15The one substantive comment that we have to the form15but I'm not sure, from what I h16of order that we're still trying to work out is corporate16have an order that's ready for r17governance and how Old GM will be governed after the sale17MR. KAROTKIN: You18closes and the board leaves. I believe we have a proposal18what you say. I suggest, Your19right now on the table, which is that two there will be a19much has agreed on the substa20five-member board, two members of which will be proposed by the20around, we'd just submit an order21creditors' committee, nominated by the creditors' committee,21THE COURT: That's ag23THE COURT: Time out, Ms. Caton.23to be the same. When I get it set	re have since been some proposal well as the form of the order. t. bing anywhere this afternoon, teard, whether you're going to ne anytime that quickly. I read my mind. It's kind of like 'Honor, since everyone pretty nce, that rather than sticking
12resolution on the credit facility and the loan that Treasury is12that we're working through, as13making. And there are a few nits that we still had to the13THE COURT: All right14credit agreement, but I think those will be worked out.14Mr. Karotkin, I'm not go15The one substantive comment that we have to the form15but I'm not sure, from what I h16of order that we're still trying to work out is corporate16have an order that's ready for r17governance and how Old GM will be governed after the sale17MR. KAROTKIN: You18closes and the board leaves. I believe we have a proposal18what you say. I suggest, Your19right now on the table, which is that two there will be a19much has agreed on the substa20five-member board, two members of which will be proposed by the20around, we'd just submit an order21creditors' committee, nominated by the creditors' committee,21THE COURT: That's ag23THE COURT: Time out, Ms. Caton.23to be the same. When I get it set	well as the form of the order. t. bing anywhere this afternoon, weard, whether you're going to me anytime that quickly. I read my mind. It's kind of like Honor, since everyone pretty nce, that rather than sticking
13making. And there are a few nits that we still had to the13THE COURT: All right14credit agreement, but I think those will be worked out.14Mr. Karotkin, I'm not go15The one substantive comment that we have to the form15but I'm not sure, from what I h16of order that we're still trying to work out is corporate16have an order that's ready for r17governance and how Old GM will be governed after the sale17MR. KAROTKIN: You18closes and the board leaves. I believe we have a proposal18what you say. I suggest, Your19right now on the table, which is that two there will be a19much has agreed on the substa20five-member board, two members of which will be proposed by the20around, we'd just submit an order21creditors' committee, nominated by the creditors' committee,21circulated it.23THE COURT: Time out, Ms. Caton.23to be the same. When I get it stop	t. bing anywhere this afternoon, leard, whether you're going to ne anytime that quickly. I read my mind. It's kind of like Honor, since everyone pretty nce, that rather than sticking
14credit agreement, but I think those will be worked out.14Mr. Karotkin, I'm not go15The one substantive comment that we have to the form15but I'm not sure, from what I h16of order that we're still trying to work out is corporate16have an order that's ready for r17governance and how Old GM will be governed after the sale17MR. KAROTKIN: You18closes and the board leaves. I believe we have a proposal18what you say. I suggest, Your19right now on the table, which is that two there will be a19much has agreed on the substat20five-member board, two members of which will be proposed by the20around, we'd just submit an order21creditors' committee, nominated by the creditors' committee,21circulated it.23THE COURT: Time out, Ms. Caton.23to be the same. When I get it stat	bing anywhere this afternoon, leard, whether you're going to ne anytime that quickly. I read my mind. It's kind of like Honor, since everyone pretty ince, that rather than sticking
15The one substantive comment that we have to the form15but I'm not sure, from what I h16of order that we're still trying to work out is corporate16have an order that's ready for r17governance and how Old GM will be governed after the sale17MR. KAROTKIN: You18closes and the board leaves. I believe we have a proposal18what you say. I suggest, Your19right now on the table, which is that two there will be a19much has agreed on the substa20five-member board, two members of which will be proposed by the20around, we'd just submit an order21creditors' committee, nominated by the creditors' committee,21circulated it.23THE COURT: Time out, Ms. Caton.23to be the same. When I get it stat	heard, whether you're going to ne anytime that quickly. It read my mind. It's kind of like Honor, since everyone pretty nce, that rather than sticking
16of order that we're still trying to work out is corporate16have an order that's ready for r17governance and how Old GM will be governed after the sale17MR. KAROTKIN: You18closes and the board leaves. I believe we have a proposal18what you say. I suggest, Your19right now on the table, which is that two there will be a19much has agreed on the substa20five-member board, two members of which will be proposed by the20around, we'd just submit an order that's ready for r21creditors' committee, nominated by the creditors' committee,21circulated it.23THE COURT: Time out, Ms. Caton.23to be the same. When I get it st	ne anytime that quickly. read my mind. It's kind of like Honor, since everyone pretty nce, that rather than sticking
17governance and how Old GM will be governed after the sale17MR. KAROTKIN: You18closes and the board leaves. I believe we have a proposal18what you say. I suggest, Your19right now on the table, which is that two there will be a19much has agreed on the substa20five-member board, two members of which will be proposed by the20around, we'd just submit an ord21creditors' committee, nominated by the creditors' committee,21circulated it.23THE COURT: Time out, Ms. Caton.23to be the same. When I get it same.	read my mind. It's kind of like Honor, since everyone pretty nce, that rather than sticking
18closes and the board leaves. I believe we have a proposal18what you say. I suggest, Your19right now on the table, which is that two there will be a19much has agreed on the substa20five-member board, two members of which will be proposed by the20around, we'd just submit an ord21creditors' committee, nominated by the creditors' committee,21circulated it.22and basically go through the same board approval.22THE COURT: That's age23THE COURT: Time out, Ms. Caton.23to be the same. When I get it same.	Honor, since everyone pretty nce, that rather than sticking
19right now on the table, which is that two there will be a19much has agreed on the substa20five-member board, two members of which will be proposed by the20around, we'd just submit an ord21creditors' committee, nominated by the creditors' committee,21circulated it.22and basically go through the same board approval.22THE COURT: That's ag23THE COURT: Time out, Ms. Caton.23to be the same. When I get it same.	nce, that rather than sticking
20five-member board, two members of which will be proposed by the creditors' committee, nominated by the creditors' committee, and basically go through the same board approval.21around, we'd just submit an ord circulated it.21and basically go through the same board approval.22THE COURT: That's ag to be the same. When I get it st23THE COURT: Time out, Ms. Caton.23to be the same. When I get it st	
21creditors' committee, nominated by the creditors' committee,21circulated it.22and basically go through the same board approval.22THE COURT: That's ag23THE COURT: Time out, Ms. Caton.23to be the same. When I get it s	der to Your Honor after we've
22and basically go through the same board approval.22THE COURT: That's ag23THE COURT: Time out, Ms. Caton.23to be the same. When I get it same.	
23THE COURT: Time out, Ms. Caton.23to be the same. When I get it s	
	greeable. And the drill is going
24 MS. CATON: Yes. 24 representation from whoever's	sent to me, I need a
	sending it to me that it's been
25 THE COURT: Is this an evolution since what I heard 25 run past the people who are the	e principal ones who need to be
230	232
	1 15 1 50
1 this morning on that? I thought I heard of a three-person 1 heard on it; I think that's Treasu	ry and creditors' committee
2 board, and now it sounds like it's up to five. 2 and the estate and Canada.	
3 MS. CATON: Yes. Yes, Your Honor, it is. 3 UNIDENTIFIED SPEAK	ER: Yes, Your Honor.
4 MR. ECKSTEIN: There has been developments 4 THE COURT: Right.	
	our folks putting money in
6 MR. ECKSTEIN: There has been evolution. A lot of 6 this deal too?	
r · · · · · · · · · · · · · · · · · · ·	nor, Canada is not actually
8 to deal with changes as they've been evolving. 8 funding this. But since it does of	
9 THE COURT: I understand. Okay. 9 existing DIP facility, it's conditi	
10 MS. CATON: I apologize. I forgot about the 10 allowing the closing to happen.	That's why we are concerned.
11   representations that were made this morning.   11   THE COURT: Sure.	
12 THE COURT: No, that's fine. I am really trying to 12 Okay. Mr. Rosenberg?	
	od afternoon, Your Honor. Andrey
	d, Wharton & Garrison, on behalf
15definitely shows you're paying attention.15of the ad hoc bondholders. I did	•
16 THE COURT: Is this like the guy who gets credit for 16 the second person or so to speak	-
17having given another litigant an idea, or17intend to be just the last person	-
18 MS. CATON: Your Honor, I believe that the proposal 18 I guess that's the way I just w	
	ho needed to be served or passed b
20 Weil, but we still need and the debtors, but we still need 20 in terms of the documents, the F	-
21 Treasury's acceptance of that, and that's what we're waiting 21 also been involved in looking at	
	We just want to make sure also
23 With that, I believe that we'll be prepared to have 23 that we're staying in the loop an	d are going to see all drafts
24 the order entered. And if Your Honor has any questions about 24 of those documents.	
25the credit facility, we or Weil or anyone is happy to answer25THE COURT: By all me	ans.
231	233

212-267-6868

1       Okay, Mr. Karotkin, I'm going to look to you to focus       1         2       more than I focused on who needs to look at the paper you send       2       C E R T I F I C A T I O N         3       me.       3         4       MR. KAROTKIN: Yes, sir.       4       I, Lisa Bar-Leib, certify that the foregoing transcription true and accurate record of the proceedings.         5       THE COURT: And if you can give me a representation       5         6       both that you've gotten the okays and that you've consulted       6         7       everybody who has expressed the interest or need to be       7         8       consulted, that'll be good enough for me.       8         9       MR. SMOLINSKY: Thank you, sir.       9         10       THE COURT: Okay.       10         11       And to what extent do we have anything else?       11	-486)
3       me.       3         4       MR. KAROTKIN: Yes, sir.       4       I, Lisa Bar-Leib, certify that the foregoing transcriptoring true and accurate record of the proceedings.         5       THE COURT: And if you can give me a representation       5       true and accurate record of the proceedings.         6       both that you've gotten the okays and that you've consulted       6       7         7       everybody who has expressed the interest or need to be       7         8       consulted, that'll be good enough for me.       8       LISA BAR-LEIB         9       MR. SMOLINSKY: Thank you, sir.       9       AAERT Certified Electronic Transcriber (CET**D         10       THE COURT: Okay.       10         11       And to what extent do we have anything else?       11       Also transcribed by: Clara Rubin (CET**D-491)	-486)
4MR. KAROTKIN: Yes, sir.4I, Lisa Bar-Leib, certify that the foregoing transcription5THE COURT: And if you can give me a representation5true and accurate record of the proceedings.6both that you've gotten the okays and that you've consulted67everybody who has expressed the interest or need to be78consulted, that'll be good enough for me.8LISA BAR-LEIB9MR. SMOLINSKY: Thank you, sir.9AAERT Certified Electronic Transcriber (CET**E)10THE COURT: Okay.1011And to what extent do we have anything else?11Also transcribed by:Clara Rubin (CET**D-491)	-486)
5       THE COURT: And if you can give me a representation       5       true and accurate record of the proceedings.         6       both that you've gotten the okays and that you've consulted       6       6         7       everybody who has expressed the interest or need to be       7       7         8       consulted, that'll be good enough for me.       8       LISA BAR-LEIB         9       MR. SMOLINSKY: Thank you, sir.       9       AAERT Certified Electronic Transcriber (CET**E         10       THE COURT: Okay.       10         11       And to what extent do we have anything else?       11       Also transcribed by: Clara Rubin (CET**D-491)	-486)
6       both that you've gotten the okays and that you've consulted       6         7       everybody who has expressed the interest or need to be       7         8       consulted, that'll be good enough for me.       8       LISA BAR-LEIB         9       MR. SMOLINSKY: Thank you, sir.       9       AAERT Certified Electronic Transcriber (CET**E         10       THE COURT: Okay.       10         11       And to what extent do we have anything else?       11	
7       everybody who has expressed the interest or need to be       7         8       consulted, that'll be good enough for me.       8       LISA BAR-LEIB         9       MR. SMOLINSKY: Thank you, sir.       9       AAERT Certified Electronic Transcriber (CET*ED         10       THE COURT: Okay.       10         11       And to what extent do we have anything else?       11       Also transcribed by: Clara Rubin (CET**D-491)	
8       consulted, that'll be good enough for me.       8       LISA BAR-LEIB         9       MR. SMOLINSKY: Thank you, sir.       9       AAERT Certified Electronic Transcriber (CET**D         10       THE COURT: Okay.       10         11       And to what extent do we have anything else?       11       Also transcribed by: Clara Rubin (CET**D-491)	
9       MR. SMOLINSKY: Thank you, sir.       9       AAERT Certified Electronic Transcriber (CET**E         10       THE COURT: Okay.       10         11       And to what extent do we have anything else?       11       Also transcribed by: Clara Rubin (CET**D-491)	
10     THE COURT: Okay.     10       11     And to what extent do we have anything else?     11       11     Also transcribed by:     Clara Rubin (CET**D-491)	
11       And to what extent do we have anything else?       11       Also transcribed by: Clara Rubin (CET**D-491)	
12 All right, I think we're done. 12 Penina Wolicki	
13     And you can get me your proposed orders by e-mail.     13     Esther Accardi (CET**D-485)	
14 I'm going to ask Mr. Pollack, Charlie, to hang around in case 14	
15 anybody needs details of e-mail addresses and things of that 15 Veritext LLC	
16   sort.     16   200 Old Country Road	
10   10   200 Oil County Road     17   We're adjourned. Thank you.   17   Suite 580	
18     MR. SMOLINSKY: Thank you, sir.     18     Mineola, NY 11501	
21 21	
22 22	
23 23	
24 24	
25 25	26
234 2	36
1 INDEX	
2	
3 RULINGS	
4 DESCRIPTION PAGE LINE	
5 Motion to authorize/Motion of the debtors 162 15	
6 for entry of order authorizing and	
7 approving settlement agreements with	
8 certain unions, approved	
9	
10	
11	
12	
13	
14	
15	
16	
17	
19	
20	
21	
22	
23	
24	
25	
235	

	Page 237
	raye 237
Adam 4:23 41:1	administration 103:17
add 79:22 85:24,25	160:10 221:5 222:22
112:22 136:11 192:12	administrative 64:20
207:6	71:9 114:13,21 126:4
added 66:18 115:8	127:5 158:5 191:22
166:14 214:13	administratively 137:24
addendum 143:5	admitted 121:1
addendums 127:6	<b>adopt</b> 162:6
adding 141:3 183:5	adopted 139:7 140:11
216:24	162:15
<b>Addison</b> 15:18 38:4,6	adoption 163:1
addition 77:1 82:15	<b>ADR</b> 208:8 215:11,16

ADR 208:8 215:11,16 Adult 12:20 advanced 102:10 advances 119:9 adversary 129:6 **advice** 175:17 180:25 180:9,14 183:5 188:14 advise 39:15 40:15 advised 42:17 222:5 address 55:3 69:8 75:21 **advisors** 53:17 58:13 72:1 109:2,2,3 175:17 advocate 59:22 advocated 102:10 **advocates** 17:6 106:3 advocating 100:13 Aerospace 9:4 **affect** 105:20 115:12 addresses 189:14 221:22 195:18 affidavit 56:14 **affiliate** 217:17 **affiliated** 6:5 38:3 Affiliates 11:12 affirmative 214:1 adequately 74:21 93:12 **affirmed** 139:8,10 162:8 affirming 157:8 **AFL-CIO** 9:5 **afternoon** 122:2 145:8 209:24 210:24 211:23 213:7 215:20 217:9 220:5.19 225:21 226:16 230:4 232:14 233:13 AG 206:8 agency 19:20 26:14 135:2 191:22 221:4,12 222:13.22 **Agency's** 223:15 aggregate 107:13

accorded 52:5

118:1.4

131:23

218:4

account 129:14 164:17

accounting 117:14,15

accounts 129:8,9 131:22

accurate 45:23 78:18,21

181:8 199:24 223:12

accurately 77:25 121:1

232:10 236:5

**accused** 136:24

accusing 127:21

achieves 137:13

achieving 157:21

121:3.7

173:3

ACS 38:3

163:21

163:19

227:18

acknowledge 206:1

acquire 71:8 82:10

154:13 171:5

acquirer 152:9

acknowledges 97:16

acknowledging 208:16

acquired 81:10 149:24

acquiring 82:5 184:13

**act** 55:11 83:10 156:23

action 17:4 83:25 160:1

actions 61:1,3 138:16,17

141:22 158:23 159:11

169:20,20 170:2 173:1

178:10 182:22 227:7

167:6 169:23 223:22

ad 18:4 19:12 20:19 21:3

22:17 109:3.4 177:19

180:13 229:20 233:15

acquisition 163:6,7

acted 182:5 187:25

acting 63:17 156:6

160:5.16 161:19

active 144:14 147:4

acts 118:4 223:16

actual 125:3 148:16

achievable 137:20

achieve 53:1,3 137:19

A

**abandoning** 55:1 64:16

**ability** 44:21 61:20 74:2

97:11 110:18 114:21

166:22 179:11 183:24

79:24 102:4,23 113:18

115:5,14 150:15

192:12,23 201:17

**able** 41:23 51:10 61:21

133:2 156:5 166:7

214:13 215:2 225:2

**ably** 82:24 83:2 140:16

**absolutely** 41:15 61:12

**accelerated** 50:22 51:22

52:4 53:20 58:12 59:4

173:15 218:17 231:19

179:6 204:21,22

**abled** 139:18 164:3

**ABN** 9:13 217:10

**absolute** 163:17

97:9 142:25

**abuse** 160:18

**accede** 62:11

73:2 177:2

218:14

159:6

228:21

160:24

accept 73:8 164:16

acceptable 104:14

acceptance 231:21

access 76:15 110:6

accompanied 72:19

accompanying 81:1

accomplish 46:13 96:6

accomplished 163:14

Accident 157:25 158:4

Accepting 190:5

Accardi 236:13

abundantly 185:8

**absence** 49:6 54:10

228:21

140:16

157:5

**AAERT** 236:9

abandon 66:2

abilities 114:19

103:4 123:25 139:24

143:20 144:1 152:21

additional 66:18 70:20

103:7 132:18 151:14

205:20 208:5 209:6

75:22 83:20 94:19

211:13 226:10

93:19 94:11

234:15

132:16 134:23 140:15

142:4 176:2 189:8,25

addressed 74:16 75:22

addressing 43:1 194:17

74:18 76:5 98:18,20

100:21,21 205:9,10

209:13 216:1

Adhesives 23:19

adjacent 114:11

adjourned 234:17

adjudicate 91:14

adjustment 92:23

adjustments 61:2

administers 126:4

191:20

129:13

adjournment 204:6

adjudicated 190:12

adjourn 205:1 207:18

**adhere** 69:15

**ADINA** 17:10

adequate 44:20 45:1

170:3 218:20

#### aggregating 108:9 181:10 190:4,6,11 137:4,17 174:15 annexed 227:8 **ago** 40:12 57:6 67:15 191:5.6.17.20 194:4 178:18 186:20 187:16 **announce** 188:11.14 118:6 224:8 195:5,14,17 202:6 187:17 203:4 208:2 announced 116:19 Agosto 10:4 203:3 208:17 212:21 alternatives 51:16 58:10 222:19 232:11 agree 59:2 60:18 61:7,9 62:13 175:14,16 213:13,13,19 227:8,12 Ansaldo 18:3 answer 48:6 70:14 71:5 62:12 70:21 87:1 88:12 227:20,23 235:7 187:24 124:25 128:19 133:25 agrees 45:4 193:16 **ALYSSA** 18:9 75:4 92:18 105:22 223:19 176:18 180:10 214:13 amend 2:8 222:6 131:1 133:16 135:5 215:4 218:9 **Agricultural** 9:4 amended 67:5 231:25 agreeable 232:22 AGs 198:18 199:7 **amendment** 44:24 45:22 answered 64:10 **agreed** 45:2,7,10,11 ahead 81:23 122:16 84:15 121:20 206:15 answers 127:16 135:4 58:15 103:8 104:11,12 209:23 224:2 226:17 **ANTHONY 20:16** amendments 67:4,7,9 150:3 171:11 202:25 **ahs** 130:10 68:2 127:6 142:24 anti-competitive 205:21 **al** 1:8 10:4.5 23:18 36:12 143:7 191:3 **anybody** 40:8 45:14 205:24 206:23,23 208:1,8,8,17 209:7 **alas** 168:21 **America** 6:6 9:4 24:4 74:24 134:3 175:8 212:14 215:13,16 Albany 21:22 33:21 161:23 184:19 186:23 214:4 220:11 American 80:24 217:14,23 218:1 220:7 **alike** 55:12 226:8 228:7 234:15 220:15 227:12,17,19,23 Alix 103:20 104:10 Americans 108:2 anytime 115:9 232:16 229:14,18 232:19 **Americas** 4:19 18:13 **APA** 129:11,20 AlixPartners 103:17 agreeing 61:19 86:14 201:22 19:13 20:5 apart 113:8 127:21 199:23 **ALLARD** 24:3 **amount** 54:3 102:25 apologies 94:23 **apologize** 94:8 102:22 **agreement** 42:14 45:25 allege 82:1 103:3 116:25 119:13 64:19 66:21 67:5,11,21 **alleged** 91:12 124:5,7,18 125:1,8 224:6 231:10 68:3,11 69:2,2 77:14 allegedly 88:10 142:6 171:15 229:11 apologizing 75:23 77:15 78:3 90:18,19 alleges 188:3 amounts 49:11 201:25 apology 92:8 **ALLISON** 17:11 204:12 205:6 206:2 **apparently** 55:24 78:24 91:2 92:23 103:4,19 104:14,19 105:9,19 **allocated** 48:15 53:5,7 208:17 213:19 217:25 **appeal** 139:5 159:3 166:13 167:19 116:12,13 117:10 124:14 **ample** 164:20 118:7,9 122:10,18 **allocating** 48:9 52:20 amplification 105:3 Appeals 141:19 165:1 126:17 127:9,22 allocation 52:25 73:5,15 amplified 105:2 appear 42:4 208:1 allocations 70:2 72:18 **AMRO** 9:13 217:10 128:15,17 131:3 133:1 **APPEARANCES** 24:2 141:10,22 142:5,10,11 73:7 Amy 102:21 230:4 **appeared** 109:11 126:19 142:14,15,21,25 143:2 allow 52:19 63:23 146:6 **analogy** 163:24 appearing 162:5 143:8,21,22,22 144:2,3 **analysis** 49:18 85:6 **appears** 46:9 74:1 152:13 171:14 179:24 144:5,9 146:15 153:24 188:4,6 201:19,23 88:22 140:11 162:6 113:14 114:5.15 143:2 154:1 155:13,14 172:2 202:17 184:23 143:6 149:3 196:15 allowable 167:14 218:16 172:24 179:1 181:13 analytically 166:10 **allowed** 80:5 124:8 155:8 190:8 192:4 194:12 **analyze** 53:18 92:16 applaud 94:19 **applicable** 90:22 123:6 196:8,17 198:7,8,15 165:21 171:17 117:22 199:4,5,10,11,12,22 allowing 233:10 analyzed 53:17 193:21 139:2 148:5 190:10 191:21 206:14 217:11,19 allows 53:25 223:5 Anderson 54:25 218:4 220:18 221:17 **alluded** 157:12.13 **ANDREA** 19:25 applicant 168:2 221:21 223:2,9,20,20 179:17 **Andrew** 9:18 19:16 application 103:21 162:14 167:25 174:16 229:10 230:14 233:22 alongside 110:13 217:9 233:13 agreements 2:4 50:19,20 alphabetically 204:2 Angeles 11:17 28:14 191:19 223:6 51:19 66:20 67:3 70:25 alterative 174:15 **ANKER** 23:15 applications 177:15 104:5.20 128:13.21 alternative 50:6 53:9 **Ann** 12:6 **applied** 166:6 **applies** 77:8 117:20 131:25 144:6 172:22 57:23 58:8,9 110:20 Anna 102:20

<b>apply</b> 55:7 121:13,21	74:22 93:8 94:16	arranging 225:23	149:7,10 150:3 151:3
122:25 160:9 165:14	114:23 121:20 214:15	<b>arrived</b> 39:11 44:23	151:10 154:13,19
222:11,12,21 223:16	218:22	217:11	162:17,20,23 167:5
applying 158:7	<b>argued</b> 55:18 63:16	articles 56:24	170:25 171:5,22,23
appoint 100:4	66:11 71:3,23 74:21	<b>articulated</b> 48:19 113:11	172:1 173:21 176:11
appointment 176:25	82:18,19,24 83:3,8,13	125:15 148:6 185:9	179:5,7,16,20 181:10
177:18	83:15 84:14 86:25 87:1	187:21	181:22 185:24 186:1,9
<b>appreciate</b> 72:2 105:14	88:13 95:6 139:4	articulating 54:18	186:15,22,24,25 188:4
218:5 219:17	148:16 155:8 156:4	articulation 110:25	191:8,16 216:20,20,21
<b>approach</b> 41:25 46:24	157:14 218:23	<b>asbestos</b> 95:10 97:1,6	218:3
89:11 211:17	arguendo 128:8	98:5,25 100:11,12,24	assign 40:3 126:9,25
appropriate 61:3,4	<b>argues</b> 149:8,15	100:25 106:1 154:7,8	127:12 128:6,11
132:14 160:12,17	<b>arguing</b> 63:18 87:2	165:3,7,20 166:5,8,10	130:14 208:18 209:11
165:22 190:6,12	88:12 139:19 171:20	167:1,10,13 183:17	212:2 217:15
221:18	<b>argument</b> 47:9,20 58:2	asbestos-driven 97:7	assigned 129:18 143:23
appropriately 222:6	59:22 62:2 68:7 75:1	100:17	146:13 216:4
<b>approval</b> 66:19 69:3	76:8,19 83:14 84:6	ascertain 99:20 188:17	assignee 217:18,20
96:14 127:8 163:15	85:21 86:24 87:2	ascertained 99:16	assigning 209:1
164:5 166:15 173:14	115:18,21 116:21	<b>aside</b> 50:12 51:2 97:3	assignment 68:10 126:17
173:17 226:20 227:21	119:23 121:25 123:10	110:4,5 121:23 167:5	127:9 128:7 131:2
229:5 230:22	123:11,13 125:17	189:1 193:19 195:2	201:15 205:25 208:24
approvals 129:9 198:25	141:9,16 154:6,23	<b>asked</b> 43:13 49:15 58:14	209:10 217:23
<b>approve</b> 40:7 64:9 66:12	155:10 156:13,25	96:21 98:21,22 100:4	assist 170:19
66:22 68:24 81:25	161:7 162:15 164:18	132:11 134:24 135:3	<b>assistance</b> 43:25 140:17
126:16 130:3 131:2	165:4 166:13 168:18	135:14 155:12 176:1	assistant 6:19 19:25
145:3 188:6 228:18	168:23 173:25 175:4	189:21 192:19 194:7	21:17,24 113:5 220:20
<b>approved</b> 51:20 64:5	176:3 180:17,24 182:9	195:5 216:21	ASSOCIATES 16:11
67:9 144:3 148:14	182:9,11,14,17 183:8	asking 74:20 146:5	<b>Association</b> 16:20 17:5
150:18 151:12 153:12	188:13 218:21	176:14 192:17	20:4 112:16,17 132:23
153:25 180:12 183:2	<b>arguments</b> 46:17 52:4	<b>asks</b> 138:18,21	assuage 168:20
183:22 185:25 190:5	55:14 69:14 73:8 75:12	<b>aspect</b> 185:7	<b>assume</b> 40:1,3 44:1 45:2
199:25 224:22 235:8	83:14 84:17 102:10	assembly 39:22 80:11,12	45:2,4,12 77:24 122:9
approves 39:24	134:8,9 139:6,15	80:12,18	125:5 126:9,25 127:11
<b>approving</b> 2:3 60:20	145:11,13,13 163:20	asserted 56:1 59:14	127:24,24 128:6,10
118:10 123:2 235:7	176:1 177:1 181:6	74:25	130:14 133:16 149:8
approximate 108:6	183:16	assertion 191:14	154:11,13 163:11
147:4	arisen 95:20	asserts 73:24	167:18 171:5 172:5
approximately 85:22	<b>arising</b> 191:10,19	assessment 197:17	173:5 192:25 195:9,9
86:1,3 119:10 170:7	<b>Arlington</b> 36:12,15	<b>asset</b> 49:10 68:3,15 103:4	195:12 205:24 206:14
172:12 201:6 207:25	<b>arms</b> 106:10 151:19	103:8 110:9 137:9	206:23 208:18 209:11
213:9	<b>arm's</b> 49:5	186:15	212:2 217:14
<b>April</b> 180:3	<b>ARNALL</b> 24:12	assets 47:12 48:7 49:15	assumed 129:18 143:23
arbitrary 73:20	<b>ARONCHICK 32:2</b>	49:21,22 52:21 53:19	194:2,3 196:8,24 197:8
Arbor 12:6	<b>arose</b> 157:24	54:22 55:16,22 57:13	197:15,22 205:19
<b>area</b> 128:2 154:16	arrange 210:23	70:23 78:2 80:21 81:16	<b>assumes</b> 48:22,23,24
200:19	arrangement 73:11 82:4	83:11 96:1,1 97:17	assuming 40:22 42:2
Arent 6:2 214:10	126:10	136:25 137:14 139:13	46:1 86:13 105:5
<b>argue</b> 48:17 58:7 68:2	arrangements 144:22	145:20 146:20 148:9	122:18 128:8 131:18
	1	I	I

r			iuge zit
154.9 162.21 171.16	25.2 12 26.12 27.2 12	avontion 59.10	84:8 93:16 99:17 129:7
154:8 162:21 171:16 198:4 214:15 224:25	25:3,12 26:13 27:3,12 28:3,11 29:3,14 30:3	<b>aversion</b> 58:10 <b>Avis</b> 208:13,19	129:9 131:22,23 158:1
assumption 45:3 68:10	31:3,13 32:3,13 33:3	avoid 73:4,6,19 82:20	163:22,23,23 206:21
122:21 126:16 127:8			209:5 217:9
	33:11,19 34:3,12 35:3	<b>avoidance</b> 61:1,3 158:23	
128:7 131:2 154:20	35:12 36:3,12 37:3,11	159:11 216:2	bankruptcies 177:12
194:13 197:9,11	38:3,12 132:23 133:4 198:20	AVRAM 9:9	<b>bankruptcy</b> 1:2,14,24
201:15,24 209:10		award 72:22	2:6,7 47:16 52:18 53:3
217:23 222:4	Attorney's 5:12	aware 70:8 131:14	55:8 56:19 57:7,11,18
assurance 44:20 45:1	attributable 57:8,11	141:16 206:2 208:16	61:24 74:9 81:2 98:16
65:15 205:10	AT&T 153:2	awesome 147:2 181:2	113:25 135:8,19 136:3
assurances 132:4 218:2	audience 107:7	awful 178:7 195:2	137:5,12 138:1 139:17
assurance-related 216:1	<b>audit</b> 197:16	<b>a)a</b> 51:18	148:20 149:3,19,21
<b>assured</b> 46:20	AUSA 5:17,18	<b>a.m</b> 101:22,22	150:11 152:8 155:1,6
assures 126:10	Austin 6:17 27:15	B	155:10 157:4,18,20,23
Atlanta 24:16	123:16 220:6	<b>b</b> 1:22 3:20 12:8 31:17	158:3,22 159:2,4 160:4
Atlantic 31:3,14	authority 61:23 62:22	<b>b</b> 1:22 3:20 12:8 31:17 33:15 142:23 191:8	160:8,10,21,22,22,24
attached 77:4,6 202:8,10	89:8 115:13 148:18,19		161:17,21 162:25
228:21	161:17 164:24 171:25	<b>BABETTE</b> 9:25	164:21,22,22 165:1
attempt 63:13 74:1	190:24 200:15 218:18	<b>back</b> 60:19 61:11,21	173:20,22 175:9,20,20
82:14 113:14 126:9	226:19	62:22 63:20 67:19	177:14 178:12 184:9
attempted 56:10 58:13	authorization 129:9	70:17 71:2 73:17 77:12	193:18,19,22,23 195:19
66:7 81:16 82:10	authorizations 129:12	83:24 86:2,4 88:7	198:7 208:4
128:25	authorize 48:18 159:25	101:21 105:17 131:21	banks 172:19
attempting 82:13 164:1	authorized 83:9,16,16,17	132:6 133:24 151:25	bar 207:9
180:14 200:17	84:7,11 139:22 140:18	154:2 168:13 174:24	<b>BARBARA</b> 13:17
attempts 69:13	141:22 197:4	175:6 181:14 199:7,9	BARCLAYS 13:19
attended 111:5,8	authorize/Motion 235:5	203:22 207:20 208:11	<b>bargain</b> 146:10 169:18
attention 80:7 93:20	authorizing 2:3 83:23	208:25 209:15,18,21	<b>bargaining</b> 66:20 67:3,5
109:6 114:14 158:12	235:6	218:13 219:20 224:7	67:21 68:3,10 142:5,10
169:14 231:13,15	<b>auto</b> 7:10,17 9:21 17:4,4	225:11	142:11,13,14,21,25
attest 40:25	193:23	backed 71:1	143:2,7,22 144:9
<b>attorney</b> 6:13,19 15:19	automatically 121:15	backstopping 57:9	153:24 154:1 155:11
21:11,17,20,24 22:3,7	<b>automobile</b> 9:3 20:3 62:6	backup 201:25	172:2,22 176:10 180:7
25:2,11 26:2,12 27:2,4	112:16,17	<b>Bacon</b> 15:16 40:25 41:4	227:19
27:11 35:11 90:3 113:5	<b>automotive</b> 6:5 32:13	209:24,24 210:23	BARKASY 21:8
116:9,17 132:11 185:3	63:5 146:22 148:10	211:1,4,7,10,16,19	<b>BARR</b> 23:24
189:14 194:17 198:24	154:4,5 179:23 208:6	bad 58:5 81:18 82:15	<b>BARRY</b> 20:24
199:12,14 218:13	213:8	83:18 84:12,13,17	Bar-Leib 2:25 236:4,8
220:20 221:3	<b>available</b> 51:18 103:2,6	138:10 177:25 182:4	<b>based</b> 39:14 57:23 62:5
<b>attorneys</b> 3:4 4:18 6:3	103:10 109:8,10	188:3	104:20 109:8,10 110:7
7:3,10,17 8:3,11 9:3,13	110:22 165:12 223:7	Badgley 91:3	151:1 157:16 158:23
9:21 10:3,13 11:3,11	223:22	<b>Baker</b> 122:3	161:16 198:12 212:2,3
12:3,11,19 13:3,11,20	<b>avenue</b> 3:5,17 4:4,12,19	balancing 54:18	222:1 229:5
14:3,12 15:3,10 16:3	7:4 8:4 11:5 13:4 14:5	ballpark 68:13 69:19	<b>basic</b> 68:19 183:18 198:3
16:12,20 17:3,14 18:3	16:14 18:5,13 19:4,13	banc 158:17,19,20 159:9	<b>basically</b> 42:23 75:20
18:12,20 19:3,12 20:3	20:5 23:12 28:4 29:5	159:10,12,13,18	76:13 83:5 125:7 161:8
20:11,19 21:3 22:10,17	31:4,14 33:4,12 34:13	<b>BANDA</b> 36:17	170:11 171:20 173:1
23:3,11,18 24:4,13	37:4 148:1	bank 7:3 9:13,14 12:12	176:16 177:10 212:6
	I	l	I

	1	1	-
227:9 230:22	215:13 225:5 226:18	<b>Bik</b> 122:2	<b>bond</b> 81:9,9 169:7,8
<b>basis</b> 49:10,11 57:6 73:3	230:11,18 231:18,23	<b>Bill</b> 151:5	bondholder 49:23
92:23 97:17,23 103:14	<b>believes</b> 108:14 128:20	billed 45:9	108:11,15 109:3 117:2
136:10 155:10 157:9	128:21	billing 61:24	117:4 120:6
159:5 177:2 182:17	<b>Bell</b> 31:3	<b>billion</b> 63:24,25 68:14	bondholders 18:12,20
190:12 193:11,13	<b>belongs</b> 48:14 72:14	69:19,20,22 70:7,7,9,12	19:3,12 47:8,23 48:11
195:10 203:22 221:22	<b>bench</b> 41:25 61:5 89:11	70:16,16,17,18 84:4	50:21 71:22 81:9
<b>bear</b> 79:9 104:24 105:1	162:2	85:8,10,13,18,22 86:1,4	107:25 108:8,8,10,24
bears 210:9	<b>bend</b> 48:25	86:4,6,9,10,21,21,22	109:4,7,12,20 110:21
Beaver 32:14	beneficiaries 148:3	87:3,6,8,8,10,10,11,12	110:23 111:4,7,9
Beavertown 80:17	beneficiary 143:21	87:13,14,14,17,17,18	118:22 120:11,12,14,16
Becker 6:5	benefit 19:19 23:11	103:3 107:14 108:9	120:18,19,21 121:16,19
<b>Beeler</b> 11:8 215:20,20,22	127:7 129:15 155:9	111:10 119:8,11,16,19	147:6 175:6 183:7
215:23 216:14 217:3,4	171:8 172:15,16,21	119:20,21 120:17	229:20 233:15
217:6	173:16,16 179:22	151:23 183:6 229:13	bondholder's 88:21
beginning 194:8	187:14	billions 85:24	bondholding 108:1,7
<b>begins</b> 221:14	<b>benefits</b> 62:7 126:5,11	<b>binary</b> 108:21	bondholdings 107:13
<b>behalf</b> 6:14 40:11 44:16	132:6 151:23 154:10	<b>binding</b> 67:22 124:18,19	<b>bonds</b> 77:8,9 85:21 87:15
93:14 95:11 102:13	169:1,25 170:6,9,10,13	157:2,2 221:17	111:22 116:25
107:25,25 108:12	170:16,20 171:3 172:9	<b>binds</b> 64:16	<b>book</b> 142:24,24 143:6
109:7 110:16,17 111:2	227:13,24	BINGHAM 7:2	<b>borne</b> 180:16
111:3,10 116:9 122:3	benefit-related 208:24	<b>bit</b> 77:22 128:2 202:1	<b>borrowed</b> 120:16 155:14
123:16 125:22 141:5	Benjamin 211:23	<b>Black</b> 43:19	borrowing 117:24
142:2 144:12 145:9	Berlingieri 10:5	<b>Blanc</b> 80:17	Boshoku 6:6
187:19 194:18 211:24	Bernstein 16:11,18 89:4	blank 78:23,23 80:3	<b>Boston</b> 31:15
213:8 215:21 219:7	89:5,10,13,19,24 90:5	blindly 55:8	<b>bottom</b> 186:19
220:6 221:2,2,19 222:3	90:17 91:18,20,24 92:2	<b>block</b> 4:2,10 50:10	<b>bought</b> 116:25
230:5 233:14	92:10,18 93:3 135:9,24	Bloomfield 33:13	Boulevard 36:13
behemoth 152:10	136:4,10	blueprint 62:23	<b>bounds</b> 95:17
Behr-Hella 204:16	Bernstein's 136:13 183:8	<b>bluff</b> 62:18 63:21 138:9	<b>BOVE</b> 10:12
<b>belief</b> 59:14 64:21	<b>Berwyn</b> 36:4,6	174:24 181:1	Bowling 1:15
125:15	<b>best</b> 48:7 53:19 82:8	<b>bluffed</b> 147:21	<b>Box</b> 6:16 25:5 27:5
beliefs 64:14	109:12 138:20 170:25	<b>bluffing</b> 62:8,14 147:15	BOYDSTON 31:8
<b>believe</b> 40:5,14 42:13	176:11 207:4	147:22 175:1	brake 167:12
44:22 52:12 59:23	<b>better</b> 57:17 68:7 69:8	<b>bluffs</b> 61:24	<b>brand</b> 56:16
60:11 64:9 66:1,1 76:5	75:3 92:5 186:3 194:16	<b>Blvd</b> 15:20 22:11	BRANDON 36:11
76:18,21 77:2,12 81:1	195:2 214:21	board 49:18 53:18 58:15	brands 187:12
81:18,19 82:2 83:21,23	<b>beyond</b> 65:2,11,15 95:20	104:9,16,16 152:22	BRANZBURG 15:2
88:3 89:19 103:18	97:19 134:10 138:8	153:3,4 175:13,14,18	breach 62:16 120:6
119:14 130:16 141:8	156:6	175:19,21 187:22	138:21 141:12 147:16
156:24 157:11 160:3	<b>bid</b> 70:6,6,9 84:3 85:13	223:5,10 230:18,20,22	163:7,18
161:12,24 162:1	85:17 119:13 150:4	231:2	breached 120:8 141:21
166:11,24 180:5,6,10	151:10 154:19 179:2	<b>Bob</b> 102:22,22	break 40:15 188:10
180:24 185:8 189:6	bidders 49:16	<b>bodies</b> 199:8	Bressler 20:24 43:7
192:2,22 198:12,23	<b>BIDDLE</b> 12:10	body 112:15	148:15 149:15,18
199:3,4 203:18 205:8	bids 70:8	bog 201:20	153:11
205:10 206:3 207:23	big 32:14 109:22 119:12	Boggs 18:11,19 19:2 47:7	BRIAN 5:9 15:7 28:7
212:5,12,20,22 215:12	148:12 214:20	BOLTON 38:11	<b>brief</b> 55:4 65:10 69:14
	1	1	1

<b>F</b>			Fage 242
74:25 84:14 89:5 115:1	117:25 126:23 130:21	Campbell 10:4	156:9,11 157:21 158:1
115:2,3 121:1,2,3,4,6	144:25 148:6,8 150:24	Campus 80:14	158:2,4,13,15,16,17
123:12 193:12 198:24	151:1,9,13 152:9,9,12	<b>Canada</b> 23:3 141:6,6	159:3,6,6,9,14,23
202:10	152:13,24 153:14,20	233:2,7	161:20,23,23 162:10
briefing 47:13	155:7,23 157:18	<b>Canada's</b> 141:4	163:10 164:24,25
briefly 39:20 75:23	171:23 176:10 185:8	<b>Canadian</b> 69:23 73:12	173:10,21 174:18
83:21 112:24	187:21,22 207:16	candidly 164:10	177:1,5,5 178:7,13
briefs 50:17 119:3	223:5	CANFIELD 34:2	180:20 183:5,11 185:9
bright 130:4	businesses 155:8	capable 134:8,9	185:10,11,17,22 187:20
bring 61:1 80:7 119:17	businessman 118:11,18	capacity 108:11	193:15,17,21 194:9
207:13	busy 41:9	capital 15:10 118:24	198:13 203:24 234:14
brings 61:25	<b>Buttita</b> 8:3,11 95:12	119:1,6 149:22 209:25	cases 50:13 52:8 58:22
broad 15:4 35:14 98:22	<b>buttoned</b> 106:12	217:18	62:23 90:11,13,23
114:1 167:18 184:10	buy 49:21,22 53:23 84:8	capitol 21:21 74:10	97:15,16,22 113:23
185:3	84:8 88:11 138:24	capitulate 62:12	115:3 145:15 151:15
Broadway 6:8 16:4 22:4	178:24 179:14	<b>CAPLIN</b> 8:2,10	152:8 157:18 158:13
23:4 29:15 33:20 63:9	buyer 101:2 138:24	<b>car</b> 53:24 63:6	165:24 176:16 177:14
BROG 20:2	buying 179:20 187:1	card 155:13	178:12 180:1 182:8
BROMBERG 22:16	bypass 50:4	care 48:9 87:13 189:5	Casey 6:19 116:8
<b>Bromley</b> 9:10 134:21	bypassing 69:12	192:20 193:1 211:15	case-by-case 190:12
141:25 142:1,1 145:5	<b>B-A-D-G-L-E-Y</b> 91:5	219:4 226:12	<b>cash</b> 69:10 171:16
219:5,6,6,16	<b>B.R</b> 135:13 149:20	carefully 64:13 108:17	185:14
<b>Brook</b> 16:16	150:10	144:21 176:2	Cassatt 36:5
brought 139:12 145:10		<b>CARL</b> 34:17	Castings 80:13
174:13,14,24	C	carries 161:9	catastrophic 174:23
<b>BROWN</b> 30:11	<b>c</b> 3:2 8:8 10:18 35:18	carry 160:13 195:8	<b>catch</b> 189:15
Brozman 9:18 217:7,8,9	39:1 77:3 191:10 236:2	204:8 219:24	categories 120:12 194:15
218:8	236:2	carry-through 94:12	category 113:10
<b>Bryan</b> 22:18	<b>CA</b> 11:17 25:6 28:14	cars 179:12	Caton 102:21 230:3,4,4
<b>bucket</b> 209:9	29:17 35:6	<b>case</b> 1:4 16:3 22:10 41:6	230:23,24 231:3,10,14
<b>bucks</b> 68:14 69:19,22	Cable 203:11	41:7 47:12,14 49:7,20	231:18 232:5,6
<b>budget</b> 102:15,24 109:25	Cadillac 187:13	50:12 52:7,24 54:9,15	cause 45:20 51:21 68:17
110:1,2,6,8 184:22	<b>cadre</b> 164:3	55:13,20 56:8,9 57:23	causes 160:5
185:1	Cadwalader 7:9,16	58:5 59:6,13 60:24	<b>cease</b> 147:1 170:10
<b>Buick</b> 187:13	140:18 175:7,10	62:21 63:4 65:10 66:3	CECCOTTI 9:25
<b>Building</b> 3:16 10:14 11:4	CALANESE 29:9	69:25 71:21 73:21 74:8	<b>ceded</b> 142:3
21:12 26:4	calculation 87:9	81:13 90:23 91:3,6	<b>CELESTE</b> 21:17
<b>bullet</b> 169:17	calculations 85:9,12	94:5 95:23,24 97:6,7	<b>Cellco</b> 203:9
<b>burden</b> 161:25	<b>calendar</b> 45:19 203:19	99:18 100:15,17 101:1	<b>center</b> 7:11 14:21 17:3
burdens 47:10	204:3 226:16 229:4	103:14 107:15,17,20,21	17:15 29:4 30:12 80:11
Bureau 122:3	<b>California</b> 25:2,3,4	107:24 108:13 109:6	80:12,12,17,17,18
Burling 11:2 215:21	<b>call</b> 61:24 62:18 63:20	109:18 111:7 117:21	202:1 203:6
Burton 37:3	69:10 186:13,14 201:7	118:15 119:17 120:2	centers 202:2
<b>business</b> 44:23,23 48:19	202:1,2 203:5	125:9,10 127:25	central 47:14 99:17
48:19 50:23 54:19	Callan 10:3	137:22,23 139:21,24	cents 87:18,22,23 88:1
55:15 57:12,16,21 58:5	<b>called</b> 156:10	141:19 146:13 149:1	<b>CEO</b> 65:14 152:5 153:2
59:12,12,14,16,23 63:2	<b>calling</b> 73:3	149:21,21 150:2,8,10	certain 2:4 43:8,9 74:21
73:13 88:10,16 96:2,3	calls 138:9 202:3,4	150:11,23 155:19	82:17 93:15 102:10
	1	1	1

		_	
103:19 112:12 124:18	176:17,19,21,22,22,23	126:22,25 127:7,11	claimant 100:11
138:25 146:5 205:20	178:12 180:14,20	129:10,13,18 131:3,14	<b>claimants</b> 10:3 17:3 48:2
226:20 233:9 235:8	193:17	131:18,18,21,24 132:5	98:13,14,19 99:2,3,10
certainly 50:17 95:2,19	character 94:4,19	208:22,23	99:15 100:13,21,24,25
97:19 128:23 134:6	characterize 124:2	<b>CIGNA's</b> 126:7 127:4	101:4,4 149:13 165:4,7
164:25 176:12 193:15	characterized 59:16	<b>Circle</b> 8:12	165:20,22,25 166:10,25
194:15,16 198:13	<b>Charlie</b> 211:12,17	<b>circuit</b> 54:17,23 55:6	167:1,4 183:17
210:11 213:3,13,17	219:15 234:14	91:3,6 135:20,20 139:3	claiming 125:8
214:6 232:4	<b>CHARTERED</b> 8:2,10	139:9,16,19 141:19	<b>claims</b> 48:2 49:12 88:5,6
certainty 179:15	Chateaugay 135:19	154:25 155:3,21,21,22	88:7 91:15 95:17,18
certifications 181:9	check 52:13 69:20,21	155:23 156:7,12,18,22	97:17,21 98:6,7 104:22
Certified 236:9	74:4	157:1,4,8,8,10 158:16	104:25 105:1 108:15
certify 236:4	<b>checked</b> 66:25	159:3,5,13,24 160:7	125:2 129:15,15,22,22
certiorari 168:5	checking 51:14	161:16 162:8,12 163:2	129:22,25 130:5,6,8,20
<b>CET</b> 236:9,11,13	<b>Cheema</b> 122:2,2,6,17	164:25 166:12 168:14	139:11,12 148:16
<b>cetera</b> 154:3 158:25	123:8	182:14 185:12,23	150:5 161:3,3,6 162:18
172:21	<b>Chemical</b> 16:12 141:17	circuitwide 156:19	162:18,22 165:21
<b>Chadwick</b> 10:5 19:8	cherry 32:5 80:17	Circuit's 139:8	167:14 183:4,4 184:23
<b>chair</b> 108:19	127:21	circulate 215:3 225:12	184:24 185:1 194:13
<b>chairman</b> 107:18 153:2	cherry-pick 72:12	circulated 115:7 232:21	196:10 206:17 207:12
challenge 83:22	<b>Chevrolet</b> 112:7 187:13	circulation 99:13 175:11	227:23
challenged 69:9 150:5,6	<b>Chicago</b> 4:13 10:8 15:14	circumstances 54:9	<b>Clara</b> 35:2,3 236:11
challenging 62:19	25:14 30:6 37:15	62:21 66:15 73:24 82:3	clarification 95:14
chambers 5:14 41:13	155:22	109:11 173:12 210:18	114:17 126:24 141:23
204:1 210:25 211:12	<b>Chief</b> 19:25	222:12	clarifications 209:19
225:1 226:9 228:17	chiefly 151:2	circumvent 47:17 50:4	clarified 196:23,24
<b>chance</b> 9:12 134:2 150:9	<b>choice</b> 48:24 49:6 53:11	184:12	197:10,23
188:16 212:7 217:9	59:24 60:6,15 62:19	citation 90:12,12	clarifies 131:4
230:1	63:15 108:21	cite 52:8 114:10 141:15	clarify 141:7
<b>chances</b> 101:5 179:13,14	<b>CHON</b> 32:18	158:12	clarifying 75:11 122:11
<b>change</b> 144:19,21 155:14	<b>choose</b> 48:4 59:25 72:10	cited 54:23 55:18 90:23	122:12 216:3
210:16,16 216:23	73:10	97:22 115:3 157:17	clarity 95:2 193:25
228:16 233:8	<b>chose</b> 43:11 72:10 76:4	158:13	<b>class</b> 16:3 22:10 71:12,18
<b>changed</b> 104:24 114:4	91:13	<b>cites</b> 148:17	80:7 108:7
<b>changes</b> 143:5 202:21	<b>chosen</b> 50:7 60:2 76:2	Citibank 163:25	classes 80:6
203:8 204:15 215:1	<b>Christian</b> 14:8 111:14,16	Citigroup 14:21	clause 81:4,6 121:12,20
231:8	111:19,20	citing 99:16 159:23	193:19
<b>channeling</b> 165:16 166:3	<b>Chrysler</b> 54:10,13 62:1,1	<b>Citizen</b> 17:2,6	clauses 181:7
<b>chaos</b> 178:15	62:22,25 63:12 71:21	<b>Citizens</b> 9:13 217:10,17	<b>CLE</b> 175:8
<b>Chapter</b> 47:16 48:1,4,13	74:6 95:23,25 99:7	<b>civil</b> 91:8 92:21	cleanup 219:8
49:24 50:4,7,12 51:13	118:15 121:11 139:4	<b>claim</b> 53:2 86:20,22	<b>clear</b> 49:17 56:3 57:20
54:4,7 55:22,23 56:5	139:10 140:6,9,11	95:19 98:11,15 99:4,23	64:25 65:8,16 71:20
56:25 57:25 58:1,18	143:12,14 157:9	124:8,15,15 125:1,2,3	80:21 85:1 88:19 97:17
60:9 61:18 63:21 72:10	161:20 163:3 164:24	125:11,13 130:2,12,13	97:20 100:11,16
72:11,11,13,16,25 74:2	165:15 167:19 174:5	130:13 135:18 136:2,7	103:13 107:15 110:25
88:5 104:3,5 144:25	180:2,6 182:10 216:6	136:9,9 141:13 151:11	111:3 113:23 114:25
150:1,25 155:6 157:17	216:17	161:9 167:6 176:4	120:20 135:10 137:13
157:17 173:25 174:18	<b>Cigna</b> 126:3,7,10,15,20	191:14 198:5,7,8	138:22,23 139:11,21
	1		1

142:19,25 143:16 152:14 153:22 157:5.7 161:5,18 163:7 173:19 181:11 185:8 198:5 202:24 207:7 215:5 216:16 217:16 218:15 218:23 219:22 223:4 clearly 57:5 120:3 153:9 163:3 170:18 175:19 180:5 187:8 Cleary 9:2 142:2 219:6 **CLEMENTS** 27:8 **clerk** 211:2 **client** 111:18 131:14 166:18 175:3 218:18 clients 71:23 148:17,20 148:21 149:7,9 168:20 200:23 212:17 **client's** 168:21 217:1 **Clifford** 9:12 217:9 **close** 62:9 102:23 129:1 133:1.8.18 167:12 174:20 **closed** 188:9 **closely** 162:3 **closes** 39:24 230:10,18 **closing** 40:2 45:3,24 110:15 129:23,24 130:5,8,25 132:5 140:21 143:25 144:16 144:16 145:11.13.13 168:23 173:25 176:1 180:17,24 190:25 206:1,14,18,23 208:18 209:15 222:17 233:10 **Coal** 162:10 **code** 2:6 47:16 69:12 97:4,23 98:16 100:20 135:19 136:3 138:1 139:3.17 156:6 157:22 158:3,22 159:2 160:21 160:22,25 163:1 164:22 184:9 193:18 193:22 **coded** 43:16 code's 47:17 97:5 160:5 coercion 190:7 Cohen 9:20 39:7

coherence 156:17 **COHN** 3:14 **COLA** 169:21 **Cole** 12:19 **COLEMAN** 10:2 **collateral** 42:16,22,23 78:16,20,22 79:5 124:4 124:18 125:2,4,12 149:24 205:20 colleague 155:4 183:11 210:4 **colleagues** 40:13 224:8 226:7 **collective** 66:20 67:3.21 68:3,10 71:25 142:5,10 142:11,13,20,25 143:1 143:7,22 144:8 153:24 154:1 172:2,22 227:19 Collector 35:3 **COLLIER** 12:8 **COLLINS 36:11 colloguy** 166:21,22 167:20 199:19 **color** 43:16.21 color-coded 43:14 Columbia 17:15 37:11 37:11 **Columbus** 35:16 **column** 86:13 come 39:4,15 66:17 72:3 81:12 86:1.6 88:24 93:7 95:19 103:21 105:17 111:17 116:21 119:4,21,21 123:14 128:25 129:25,25 131:10 141:1,10 143:9 146:12 171:16 177:14 177:21 178:14.22 179:25 180:4 185:6 193:9 199:7 201:8,18 207:20 208:11 209:18 209:21,22 211:22 214:14 219:20 221:24 226:24 **comes** 51:8 85:19 87:17 128:4 225:9 **comfort** 41:14 208:23 comfortable 217:1

232:10 comforted 110:10 coming 46:7 93:8 116:3 116:4,17 120:10 168:13 174:8 182:25 201:3,8 203:22 211:4 commence 179:8 commenced 150:1 178:12 **comment** 40:9 60:12 135:25 141:3 145:10 145:17 183:21 214:18 214:23 215:10.14 230:15 232:8 commentary 199:19 commentators 56:24 **commented** 60:10 62:4 comments 109:16 141:3 175:25 214:21 225:13 commerce 98:9 **commercial** 54:11 63:1,2 63:5 74:10 118:11 123:18 141:18 163:22 163:22,23 171:6,7 173:4 commercially 163:19 **committed** 63:23 72:5 **committee** 4:18 17:14 18:4.12.20 19:3 20:19 21:3 22:17 39:18 40:9 40:11,23 42:3 47:7 54:24 101:25 102:7,9 102:13,20 104:10 105:8,24 106:2,25 107:19 109:2 110:13 111:24 112:6,8,14,18 141:14 159:11 163:8 165:19 184:25 185:13 203:21 206:5 207:6 208:20 224:12 226:8 228:1,23 229:19,20 230:1,6,8,21,21 231:19 233:1 committees 176:25 177:19,19 180:14,15 committee's 102:10.11 102:14.16 106:24 109:2 111:25 210:6

**common** 162:24 185:16 **commonly** 211:25 communicate 41:13 communication 131:13 communications 6:4 24:13 212:13 214:12 communities 146:21 147:7 **community** 51:6 92:14 108:15 comp 104:25 105:1,6 122:5 **companies** 6:6 72:15 203:14 **company** 6:3 11:3,11,14 11:14 12:12 14:3 23:19 28:3 33:11 34:3 39:13 47:15 48:10,11 49:20 50:6 52:21 53:13,16,24 55:24 57:25 59:25 63:6 70:16 73:18 93:16 107:11.18 111:21 125:22 130:2,3 131:23 143:17,18,19,24 148:10 150:1 162:10 173:18 179:9,20,21,22,23 180:16 185:18 201:22 203:13 209:4,5 213:9 214:10 215:11 227:24 **company's** 48:11 comparable 58:16 compared 70:4 **compel** 138:24 191:7,8 compelled 221:5 compellingly 138:14 **compels** 105:17 compensation 104:22 122:4,9,19,24 171:11 171:12 220:15 221:4,7 221:10,12 222:4,13,22 223:5,10,15 competent 191:22 competently 218:23 competing 124:24 competitive 186:10 187:14 complains 153:11 182:16 **complaint** 84:23,24

148:11 163:9 **complete** 51:17 78:18,21 96:2.13 **completed** 51:15 58:23 73:3 **completely** 59:21 62:24 97:1 196:19 completion 102:15 **complex** 26:15 152:3 complexity 177:2 compliance 172:6 **complicated** 41:7 213:25 **complied** 165:10 complies 139:2 148:4 comply 59:18 72:11 122:15 146:7 165:5 172:4 184:6,7 **complying** 97:5,10 **Components** 208:6 **comport** 160:20 composed 104:9 comprehend 126:20 comprehensive 98:5 comprised 112:14 compromise 55:4 171:10 **Computers** 38:3 conceded 57:19 **concedes** 138:20 176:10 conceivably 54:3 concentrate 95:22 **concept** 149:18 151:15 151:17 169:18 172:19 176:21 177:1 concepts 232:4 **concern** 108:25 117:11 117:11,14,14,18,22,24 117:25 127:22 144:10 170:24 195:3,4,14 221:22 **concerned** 58:1 109:23 110:2,5 113:14 114:18 159:7 167:16 196:7 199:21 233:10 **concerning** 72:18 82:3 191:17 **concerns** 46:25 54:17 56:23 84:17 94:15 109:13 112:12 127:16

189:8,25 193:1 194:1 201:11 conclude 168:8 **concluded** 49:24 58:4,19 234:19 **concludes** 62:13 147:14 **conclusion** 149:4,12 168:6 conclusory 56:12 condition 115:4 152:20 164:6 172:3 **conditional** 173:14.17 conditionally 146:6 **conditioned** 66:21 69:3 227:21 233:9 conditioning 47:19 conditions 67:2 112:1 123:4 143:24 146:7,14 154:3 163:11,12,13 172:22 conduct 92:20,21 conducted 182:7 **confers** 111:23 confess 114:3 **confidence** 51:18 56:16 confidential 104:13 confidentiality 179:1 **confined** 145:11 **confirm** 45:11.13 94:20 102:2,25 188:14 confirmation 50:15 52:9 73:19 103:23 129:10 129:21 165:6 177:3 confirmations 94:21 **confirmed** 50:18 129:17 210:8 216:12 confirming 44:25 confirms 42:3 **conflict** 155:20 conflicting 91:16 confusions 106:23 **Congress** 98:4,5 99:25 100:20 162:12 **Congressionally-man...** 72:24 **Congress's** 193:20 congruent 197:11 conjecture 57:19

**Connecticut** 10:13 125:22 126:2 connection 45:3 102:17 104:22 110:12 144:25 154:9 161:1,15 162:4 163:20 164:18 165:3 167:8,25 168:15,23 172:3 173:5,8 181:12 183:19 191:5,19 201:13 218:3 227:22 **Conner** 102:20 **CONNOLLY** 10:12 conscious 50:2.3 consensual 105:15 115:16,24 consensus 115:21 consent 89:8,14 90:13,17 90:24,25 91:8,11,13,22 92:8 114:12,20 131:25 132:17 134:25 135:7,9 135:15,17,24 136:1,5 136:11 183:9 consents 191:4 207:1 **consequence** 68:23 69:1 consequences 56:12 58:3 73:4 164:17 consequently 216:9 conservation 16:12 113:7 114:14 180:15 consider 52:1 55:9 58:14 62:12 63:22 68:24 168:4 175:14,16 consideration 68:4.9 70:18 86:12 108:4 145:22 182:25 considerations 66:11 considered 55:15 108:17 139:6 167:19 **considering** 89:25 179:2 187:23 228:6 consistency 155:1 157:4 **consistent** 74:6 94:1 182:8 184:8 196:18,19 228:24 consolidated 81:2 consortium 123:17 conspicuously 53:18 **conspiracy** 149:6,12

168:24,24 169:3,4 171:2 constituencies 48:5,10 49:12 70:25 72:17 constituency 107:16 108:4,5 109:8 188:20 **constituents** 40:6 111:11 constitute 169:4 constitutional 84:14 91:12 166:16 **construct** 71:16 198:3 constructed 144:21 **construction** 156:9 158:2 159:6.22 161:11 164:19 198:10 constructive 196:16 **construe** 160:23 164:20 167:17 construed 157:15 160:15 construing 168:24 consultation 106:7 166:18 203:20 consulted 39:17 234:6,8 **consumer** 17:4,5 20:19 21:3 56:16,22 173:20 178:1 179:12 196:13 196:22 **consumers** 17:4 96:7 173:18 consummated 166:2 consummation 103:24 103:25 104:2,3,4,7 145:24 227:21 **contacts** 198:18 **contained** 184:4 190:23 **contains** 76:24 142:24 contamination 114:12 114:15 contempt 91:8 92:21 contend 71:23 contending 69:18,22 **contention** 149:5 150:13 150:14 contested 144:25 **context** 90:9,25 91:9 124:6 130:14 136:16 150:6 154:19 164:23 167:7 168:13 172:16

[			5
195:25	controlling 156:16	224:24 227:6,6	70:5,12 73:17,22 74:4
continental 79:13	controls 140:3	correctly 217:15	74:14,20,24 75:1,8,10
continually 182:12	controversial 184:1	<b>cost</b> 56:10 171:15	75:14,17,23 76:3,8,25
continuation 2:10 96:3	controversy 94:14	costing 172:10,11	76:25 77:18,21,24 79:1
96:10,16	184:22	couched 64:13	79:4,17 81:11,14,21,23
continue 65:22 67:17	conversant 155:6	<b>Coudle's</b> 135:12	82:2,22 85:20 89:3,6
69:14 105:12 114:19	conversation 213:2	<b>counsel</b> 3:15 4:3,11 6:14	89:12,15,18,24 90:2,10
122:22 129:12,12	conversations 41:1	19:25 35:2 39:7,18	90:16 91:7,14,18,21,21
130:20 185:5 192:13	convertible 77:4	42:20 45:12 69:11	91:25 92:5,9,11,16,22
199:1 201:7,19 204:8	cooperated 117:19	90:23 93:18,24 101:25	93:2,4,7,11,25 94:10
205:2 206:6 208:23	cooperation 117:17,20	108:5 112:6 115:7	95:1,5,10 96:19 97:25
<b>continued</b> 149:23 151:2	118:2,3	139:18 163:10 164:13	99:13 100:3 101:9,16
continuing 96:19	cooperatively 206:24	175:1 194:9,9 198:18	101:18,21 102:6 105:5
contract 45:18 67:22	coordinate 201:4	206:9 210:4,8,10,10	105:17,21,23 106:5,16
92:4 120:6,8 125:24	coordination 83:2	214:10,12 215:2,6	106:20,22 107:5,9
126:18,21 127:5,5,10	<b>copies</b> 43:14 44:3 90:5,7	216:10,11,22 221:8	110:7 111:14,17 112:3
127:11 128:5 129:18	219:11	222:3,5,25 228:22	113:3,10 114:7,25
135:7,8,9 141:13	<b>copy</b> 41:20 90:4,8 202:18	<b>count</b> 51:7 198:25	115:1,9,16 116:1,3,6,14
152:15,16 163:7,12,13	<b>Cordry</b> 16:25 113:9	counter 43:10,12	116:16,19 117:2,4,8,22
163:18 195:9,11,12	132:20,21,22,22 133:14	counterparties 201:23	119:2,6,24 120:1,4,8,23
201:7 202:9 203:21	133:21 134:5,9 189:4,7	counterparty 202:25	121:4,6,9,13,23 122:5
205:24,25 206:7 216:4	193:8 195:23 197:2	<b>country</b> 50:11 236:16	122:14 123:7,9,14
216:24,25 217:1 220:1	222:2	<b>County</b> 35:2,3 90:11	124:17,25 125:7,17,19
contracted 166:8	<b>Cordry's</b> 199:19	<b>couple</b> 46:13 52:2,11	126:1,15,16 127:10,13
contracting 155:11	<b>CORDY</b> 189:12 193:9	95:14,22 105:23	127:19 128:1,5,6,8,17
contracts 126:19 127:1	195:22 196:3 197:3,6,9	133:24 193:10	129:3,4,6 130:11 131:5
127:24 128:10 129:17	197:19,21 200:13,17,22	<b>course</b> 46:10 60:2 71:10	131:7,10 132:8,12,19
131:18 135:11 152:17	<b>corner</b> 77:17 78:15	73:9,11 74:24 76:10	132:21 133:14,25
163:11 196:8 201:14	<b>corners</b> 187:20	92:24 94:24 115:14	134:8,14,17 135:6,22
201:20,24 202:15	<b>Corp</b> 15:10 29:3,14	130:21 134:25 139:6	136:15,18,21 137:9,10
203:16 204:12 205:19	141:18,18 211:25	148:19 151:1 152:2	138:12,19,21,23,24
206:21,22,23 208:18,25	217:18	156:15 165:17 176:5	140:6,9,13,19,22,23,24
209:2,8,11 212:4,8,15	<b>corporate</b> 47:16 72:24	198:15 199:2 207:12	140:25 141:15,19,20,24
212:23 215:25 216:5,8	103:22 151:7 230:16	209:17 229:11	143:11 145:3,4,6,12,19
217:14	corporation 1:8 3:4,15	court 1:2,14 39:2,4,9,15	146:5 147:14 148:1
<b>contractual</b> 90:19 91:1	11:13 16:13 19:19	39:24 40:7,8,15,16,20	150:12,17,20,22 151:5
92:13 154:20	20:11 23:11 32:3 39:8	40:25 41:5,11,16,18,19	151:12 152:8 154:24
contractually 155:9	118:6,19 149:20	41:21 42:1,4,6,9,17	155:1 156:2,5,8,11
contrary 95:25,25	161:23 165:12 184:18	43:5,16,19 44:1,6,9,14	157:4,13,16,20 158:7
138:13,19 148:10	205:15 217:17	44:18 45:14 46:5 47:2	158:18 159:4,4,4,7,12
164:8 182:5	<b>corporation's</b> 118:16	47:4 48:17 49:19 50:9	159:14,17,22 160:3,8
contrast 63:3	<b>correct</b> 65:21 76:22 84:7	50:11,25 53:25 54:8,12	160:11,15,17 161:4,17
contribute 154:14 contributed 172:18	92:10 103:12 105:4	54:24 55:21 57:3 59:3	161:17,21 162:7
contributed 172:18 contribution 118:24	106:4 111:19 117:7	59:5,20 60:6,7,16,21	164:16,19 165:1,1
119:1,7	136:17 140:1,10 162:9 181:16,17,24 184:20	61:16,22 62:3,13,21 63:20,20 64:8,18 65:5	166:3 167:21,24 168:1 168:7 172:5 177:14
<b>control</b> 46:12 54:1	189:11 192:11 200:3		
118:19	206:12 213:17 215:10	65:16,19,22,25 66:1,2,6 67:13 68:12,19 69:5,17	181:14,18,21,25 183:20 184:16,18 185:5 188:8
110.17	200.12 213:17 213:10	07.15 00.12,19 09:5,17	104.10,10 105.5 100.8

Cox 221:3

188:25 189:10,17,19,23

190:1,7,13,14,17,21

191:1,18,22,23 192:1

192:10,15,20,25 193:3

193:5,7,18 195:21,23

199:25 200:4,8,11,16

202:19 203:23 205:4

200:21,24 201:1

205:13 206:6,11

209:20 210:19,25

211:2,8,11,18,20,22

212:10,19,21 213:1,4,6

213:15,21 214:4,8,20

215:4,8,18,22 216:14

217:2,5,7 218:6,10,25

219:1,3,11,14,17 220:1

220:3,10,22,25 222:14

224:2,4,11,14,19 225:4

225:16,25 226:4,6,12

226:17,22 227:1,3,25

228:5,11,18 229:2,24

230:23,25 231:5,9,12

231:16 232:2,7,13,22

233:4,11,25 234:5,10

**courtroom** 177:22

**courts** 60:19 61:11,24

161:11,14 162:25

99:17 101:7 123:2

74:9 91:1 96:15 156:17

156:19 157:18,20,23

court's 39:14 80:7 97:24

127:8 137:25 141:16

154:25 157:24 160:4

168:11 195:19 201:21

**cover** 46:25 103:1 161:3

**covered** 45:25 120:18

196:9 197:12 227:11

**Covington** 11:2 215:21

158:12 159:5 160:8,23

219:20

204:9

185:1

**covenant** 141:12

covenants 82:14

coverage 196:11

222:19 223:17,25

197:2,4,7,18,20 199:16

**craft** 160:4

187:11

165:25

169:23

176:13

177:4

233:22

credibly 49:8

crater 60:24

create 52:17 68:7 76:15

created 92:15 118:8,12

creates 49:7 78:5 91:23

109:16,16 135:17

creating 63:24 71:15

creation 71:24 100:2

creatively 202:11

167:4 171:6 179:15

**credibility** 64:6 164:9

**credible** 66:4 176:4

credit 2:8 69:8 70:6,9

151:10 154:19 155:13

230:6,12,14 231:16,25

31:13 34:3 36:3 51:6

118:23 124:3 137:11

59:1 92:14 107:16

creditors 4:18 22:17

39:18 40:9,22 42:3

47:17,24 51:23 52:5

53:1 54:20 55:12 59:9

62:4 70:4 71:12 72:15

74:11 82:18 87:21,21

101:25 104:10 105:24

110:5,17 121:12 137:8

106:1 107:19 109:21

146:2 153:15 159:11

163:8 165:18 171:8

183:7 185:13 203:20

228:1,23 229:19 230:1

230:6,7,21,21 231:19

233:1

**crisis** 154:4

criteria 55:14

210:5 224:11 226:7

176:25 177:10,11

87:25 88:9,15,25

149:1,2,3,17

84:3 85:17 150:4

creditor 24:4 28:11

	Iuge 247
	l. 106.11
critical 39:13 126:7,8 155:25 182:22	<b>cycle</b> 186:11 <b>C-R-O-C-E</b> 91:6
	С-к-О-С-Е 91:0
criticism 76:3,3 criticize 76:8	D
criticized 156:11 173:6	<b>d</b> 18:9 23:15 39:1 191:11
186:14	235:1
criticizing 60:2,3	<b>Dale</b> 185:18
<b>Croce</b> 91:4	<b>Dallas</b> 19:6 22:20 31:6
crossed 123:24	dam 198:11
Cross-Complainant/D	damage 144:24
12:11	danger 148:3 178:16
cross-examination	185:17
176:12	<b>DANIEL</b> 4:15
<b>CROWLEY</b> 15:7	<b>DARRYL</b> 24:18
crucial 120:2	data 11:13 179:1
CRUTCHER 13:2	date 63:11 130:5 138:8
cry 55:8	150:5 187:18 204:7
crystal 142:19	205:1,20 207:18
cube 186:14	217:19 219:25 236:20
culminate 222:3	dated 77:3,5,14 217:16
culminated 221:11	David 5:18 13:8 44:7
cure 44:20 45:18 46:24	<b>DAVIS</b> 5:8 28:2
126:12 130:6 201:25	day 56:4,14 57:2,15 64:2
204:5,12 205:5,11	64:25 65:9 67:17,17
206:2 207:7 208:17	128:24,24 130:23
213:10,18 217:25	176:23 196:24 199:2
220:2,3	210:3 228:17 233:16
<b>curiam</b> 167:24	233:17
<b>CURLER</b> 23:10	days 46:14 50:15 51:1
current 100:11,12	52:2,9,10,11 54:8 56:7
109:10 167:1 215:3	56:8 58:19 64:12 65:14
229:6,8	76:12,13,14 89:2 106:9
currently 126:12 207:9	115:8 140:23 173:19
218:18	176:17,18,20 177:3,16
<b>Curson</b> 66:23 142:21	177:17 180:19 186:23
143:15 153:20	193:10 203:24 207:16
<b>Curson's</b> 68:20 142:16	208:11 210:3 225:18
142:17,23 183:3	225:23 226:24 227:14
CURTING 26:9	<b>DC</b> 7:19 8:14 12:14
<b>Custom</b> 32:13	16:23 17:8,17 18:22
customer 57:17 208:14	19:22
<b>customers</b> 107:22 205:16	<b>DDSA</b> 182:11
<b>cut</b> 64:5 65:4,23 108:20	<b>DE</b> 10:16 21:6 34:15
150:1 151:24	<b>dead</b> 63:10 64:15 66:18
<b>cutoff</b> 179:15	199:8
<b>CWA</b> 13:12	<b>deadline</b> 62:25 228:5
Cybergenics 158:16,18	<b>deadlines</b> 54:11 63:4,7
158:21 159:17	73:20

		I	
<b>deal</b> 46:3,4 61:7,10,15	130:19 131:3 132:9	159:7,13,13,16,18	deliberately 58:9
67:24,25 68:4,21 69:10	134:18 135:8,16 136:1	161:25 162:2,5 164:5	deliberative 73:1
94:2,3,5,21 95:3 99:8	149:23 162:19 196:20	167:24 168:8,12	delivered 204:11
108:20 110:23 121:24	198:16 210:5 214:12	170:22	delivery 191:7,8
134:6 138:6 150:9	214:13 215:2 217:24	decisional 164:24	<b>Dell</b> 208:6
152:4 153:12,13	227:19,24	decisions 73:16 110:18	<b>Delphi</b> 58:4 177:5,5,8
157:18 165:3,18,19,25	<b>debtors</b> 1:10 2:2,6 4:3,11	155:1 157:5,16 160:19	demand 98:17,19
167:3 183:2,8 186:21	42:12,15 44:16,21 45:2	decisis 139:25 157:13	demanded 60:18
189:2 194:24 195:1	45:7,10,12,17 47:10	164:23 168:14	<b>demean</b> 175:10
196:6 200:17,18 205:5	48:17 49:2,3 53:2,5	<b>deck</b> 211:20	demeanor 64:7
206:24 208:3 210:12	54:14,22 56:4,15 58:7	declaration 85:2,5 86:7	demise 172:18
228:25 231:8 233:6	58:24 59:7,12,18,21	142:16,17,23 176:6	demonstrate 47:10 168:3
dealer 17:14 18:4 66:9	60:2,15,18 62:10,19	decline 57:5,21 186:6	169:22
112:6,15,18 194:3	65:24 66:11 70:14 71:5	declined 100:6 149:23	demonstrated 59:5
195:14	73:4 76:21 77:12 85:3	151:4	157:23 188:1
dealers 20:3 107:22	92:12 93:18 94:18	declining 55:16 56:2	demonstrates 55:21
112:14,16,17 178:4	95:24 105:13 106:15	decree 89:8,14 90:14,17	151:18 170:18 183:3
190:5,9 194:20,21	109:1 112:11 115:18	90:21,25 91:8 92:8,16	DEMPSEY 37:2
213:12	115:18 116:12 122:9	132:17 135:9,17,22,24	<b>denial</b> 91:12 168:10
dealerships 213:9	123:19 124:1,9 126:9	136:1,5,12 183:9	denied 136:13,15
dealing 46:14 98:5 99:23	127:23 132:24 145:9	decrees 90:22 134:25	<b>DENNISTON</b> 11:19
141:12,21 171:24	146:12 147:1 150:25	135:7,15	28:16
178:7 222:9	161:18 184:7,8,11	dedicated 103:5,9	denominator 109:22
deals 48:9 121:23 188:11	187:19 191:10 192:5	deemed 74:25 156:18	<b>Denver</b> 20:14
188:14 189:2 198:12	194:9 199:6 210:10	<b>default</b> 144:4	deny 174:16
204:20 225:2	213:11 215:24 216:9	Defeasement 169:16	denying 91:7
<b>dealt</b> 46:21 59:3 166:20	216:10,11 217:11,14,25	defendants 91:13	depart 210:4
167:15 183:17 195:15	220:7 226:19 229:18	<b>defer</b> 71:25 141:11 208:2	department 5:2,11 6:14
198:3 204:13	231:20 235:5	deferrals 169:21	26:3,13 27:3,12 113:6
<b>deal's</b> 199:8	debtors-in-possession	<b>deferred</b> 126:13 191:6	113:18 114:13 164:1
death 156:24	4:3,11 184:11	191:17	department's 114:19
debatable 58:6	<b>debtor's</b> 62:16 147:17	<b>defined</b> 227:11	depended 144:13
debated 155:6	149:25,25 151:9	defines 79:10	dependent 66:10 144:15
<b>Debenture</b> 14:3 111:17	debts 92:13	definitely 106:15 117:25	dependents 147:5
111:20,23	<b>decade</b> 149:19	134:12 167:21 231:15	Depends 135:22
debentures 77:4	decades 98:11	<b>definition</b> 42:22 51:2	deposition 169:10
<b>DEBORAH</b> 24:9	<b>December</b> 77:14 78:2	78:9 79:10 98:15	<b>depositions</b> 43:9 219:10
<b>debt</b> 51:5 69:19,24 79:11	<b>decide</b> 101:2,13 121:14	definitions 79:4	<b>deprive</b> 149:7 168:25
86:15,16 87:9,12,18	153:4 196:20	definitive 110:11	171:3
92:1	<b>decided</b> 53:12,21 60:3	<b>degree</b> 210:11	deprived 170:6
<b>debtor</b> 3:4 39:25 44:25	66:5 98:3 121:17,18	<b>DEL</b> 27:18	<b>Dept</b> 25:4
45:4 48:24 55:12 60:6	168:6	<b>Delaware</b> 34:13 50:11	Deputy 22:7
60:13,14 61:20 62:2	<b>decides</b> 54:8,12	117:19 118:17 149:21	derail 109:14
63:13 76:2 82:5 92:9	decision 40:3 44:23 50:2	<b>Delaware's</b> 117:19	derivative 159:25
94:17 96:6 100:18	50:3 63:16 64:17,17	delay 56:20 111:4,7	derived 49:10,11 71:2
101:1 104:9 108:24	91:7 99:9,17 139:5,8	180:15,16 207:13	201:25
125:9 126:15,18 127:9	147:12,20 156:16	<b>Delaying</b> 180:12	derives 48:21
127:15,21 128:4 130:9	157:1,7,8,9,25 158:20	deliberate 53:11 92:19	describe 176:22 201:9
,			

described 148:23 199:23	devised 53:13	<b>Dirksen</b> 154:16	dissenting 62:4
223:20	<b>devoid</b> 149:10	Disabled 12:20	dissident 47:8
<b>description</b> 105:4 232:10	dialogue 94:18 127:15	disagree 115:4	dissipate 173:23
235:4	128:9 130:15,19 196:2	disagreement 125:6	distinct 57:22 63:12
descriptions 173:7	dialogues 204:10	disagrees 77:25	distinction 71:21
design 98:5	dice 60:24 67:13 108:23	disappear 59:1	distinctions 74:7
designate 43:8,10,11	110:19 130:12	disappeared 59:10 177:7	<b>distinguish</b> 95:22 97:15
designated 153:2 169:11	DICKINSON 12:2	disappearing 147:21	distinguishable 62:24
designation 44:22	dictate 71:18 137:11	disappoint 132:10	distinguishing 54:9
designations 43:13,22	dictated 108:23	disapproved 185:11,12	194:15
44:4,11,12 219:10	dictates 59:19 61:17	disbelieve 59:20	distracted 133:7
designed 64:10 71:7	<b>Diego</b> 29:17	discharge 92:1 164:4	distress 155:15
82:20 100:20 110:4	difference 85:9 113:11	165:7,8,9,15 167:8	distressed 73:18
111:5	125:1,10 128:18	discharged 187:23	<b>distributed</b> 71:10 108:2
<b>designee</b> 104:10,10	130:16	discharging 175:21	<b>distribution</b> 44:17 82:17
<b>desire</b> 57:22 90:20 207:5	<b>differences</b> 151:20 203:6	disclosed 103:20	84:24,25 103:25
228:1	<b>different</b> 39:23 41:1 48:2	<b>disclosure</b> 51:3 72:19	182:17,18 185:14
Desperate 60:18	61:7 64:7 85:11 87:2	104:18 153:7 176:25	distributions 54:2 70:2
despite 96:17	92:16 115:20 129:25	discount 179:13	71:18 137:8
detail 126:20 140:15	133:12 134:3 136:16	discovery 6:4 52:2	district 1:3 5:13 89:15
210:12	165:23 185:22 205:5	discretion 73:22	89:16 91:7,14 150:11
<b>detailed</b> 139:16 232:3	226:20 227:8	discriminates 82:17	155:2 156:11,15,16,17
details 103:15,18 234:15	differently 70:22 73:7	discriminatory 97:3	156:19 157:5 159:4
<b>deteriorate</b> 186:1,1,16	88:11	discuss 81:20 134:22	diverse 55:11
deteriorating 55:23	differing 115:17	188:20 215:6	diverted 73:18
57:14 59:12	difficult 61:15 77:13	discussed 93:24 99:11	<b>divide</b> 73:10
deterioration 55:18	diligence 99:16,21	166:12 206:4,4 218:16	Division 27:13
186:16	201:19	discusses 222:4	<b>dixit</b> 180:19
determination 70:24	<b>dilute</b> 183:6	discussing 72:5	<b>DLA</b> 11:10 28:10
160:16 169:3	<b>diminish</b> 111:9 184:5,6	discussion 42:14 109:21	docket 201:21 204:2,9
<b>determine</b> 53:6 72:21	diminishing 185:20	133:1 167:20,21	<b>doctor</b> 130:1,1
200:14	<b>diminution</b> 185:17,24	216:10	<b>document</b> 42:25 77:11
determined 51:24,25	<b>DIP</b> 2:8 60:17,23 61:13	discussions 93:21 103:14	77:20 120:20 132:3
73:7 166:1 183:10	64:1 69:23 83:22,23,23	103:16 109:1 130:9	175:6 210:22 229:9,15
<b>determines</b> 66:14 119:6	119:14 141:9 144:1,4,6	173:7 174:6 177:17	229:23 230:8
determining 53:5 138:2	149:17 233:9,21	205:23 206:15,16	documentation 110:12
detract 187:4	<b>dire</b> 56:12 58:2 60:13	212:25 221:11	<b>documents</b> 66:25 68:20
detriment 56:21	68:23,25 73:4	disease 98:10,13 99:3	76:20,20 79:8,22
<b>Detroit</b> 3:18 24:7 29:4,7	<b>direct</b> 143:15	167:5	104:24 105:10,15,19
34:6	directed 149:12 169:13	disk 210:22	118:8 131:21,25,25
<b>Deutsche</b> 211:23,24	direction 212:11	dispose 54:21	142:7 144:5 204:11
212:16,20,22 213:5	directions 157:3	<b>dispute</b> 137:4 197:16	206:25 218:2 223:7
develop 98:13	directly 143:13 144:23	203:4 208:2 217:24	233:20,24
developed 55:13 201:22	162:3 196:14	disputes 45:18 190:11	<b>doing</b> 44:11 57:17 61:6
<b>Development</b> 23:3 141:4	director 221:13	191:10,16,19,20 202:9	71:16 74:6 80:6 81:17
141:6	directors 104:9 152:22	204:5	82:13 88:15 134:10
developments 231:4	152:23 153:1,3,4	dissent 199:4	136:24 139:19 173:25
<b>devil</b> 147:25	175:13,15,18,21 187:22	dissenters 63:12	176:13 187:4 199:9
	1	1	1

<b></b>			2
224:21	<b>due</b> 74:10 77:4 91:10	effective 39:24 97:12	168:19
<b>dollar</b> 50:13,14 87:14,18	97:13 98:19 99:16,21	100:9 161:13 222:17	emphasized 76:9
87:19,22,23 88:1 150:4	100:1,21 149:9 201:19	effectively 60:14 108:22	employ 100:19
<b>dollars</b> 63:24 64:1,20	213:19	171:21	employee 126:5 127:7
70:16,16,17,18 71:9	<b>DUETCHE</b> 211:21	effects 56:5 82:20	129:15,15,22 131:20
84:4 85:8,11,13,18,23	<b>DUNN</b> 13:2	effectuate 47:11 53:12	132:6 174:21 208:24
86:1,4,5,6,9,14,20,22	duties 175:15 223:11	56:1	employees 96:4 107:21
86:22 87:6,12,18 103:3	duty 62:16 68:13 108:16	effectuating 53:9	126:6,8,11 129:8
110:9 111:10 119:8,9	138:22 141:20,20	efficient 186:10	144:14 147:4 152:6,10
119:11,12,16,18,19,20	147:17 161:11	effort 47:21 170:18	152:12 153:6,14,19
	<b>D-485</b> 236:13	<b>eh</b> 112:1	172:19,25 173:1
119:20,21 120:17 124:9 151:23 154:7,9	<b>D-486</b> 236:9		-
170:15 172:12 177:25	<b>D-491</b> 236:11	eight 111:22 119:11,19 119:19 126:19	178:10,10 182:22,23 227:7,15,18
177:25 183:6,12 210:13 229:13	<b>d/b/a</b> 23:19 203:9	<b>Eighth</b> 11:5 141:18 <b>either</b> 41:12 50:10 70:19	employer 63:18 123:1,5 221:13
	E		
dollars-worth 98:25	e 1:22,22,23 3:2,2 8:16	94:11 99:18 117:5 136:5,7,8 144:13	employment 152:15,16 153:19
domestic 11:12 187:15	9:9 11:8 20:24 39:1,1	, ,	
dominance 49:1,6	131:16 191:13 235:1	151:21 177:8 180:2	employments 152:17
<b>Doraville</b> 80:11	236:2	186:2 197:15 203:1	<b>en</b> 158:17,19,20 159:9,10
<b>DORR</b> 23:10	earlier 57:10 108:23	206:3 213:12 218:24	159:12,13,18
<b>dotted</b> 123:23	116:20 208:22 210:11	225:14 228:20 230:1	enacted 98:4 186:21
<b>doubt</b> 58:24 90:17	210:15 212:5 219:8	232:7	encompass 127:6 227:7
144:10 216:2	229:7	elaborate 120:25 140:4	encountered 130:11,14
<b>Doug</b> 209:24	earliest 41:24	elected 39:25 112:15	encumbrance 191:14
<b>DOUGLAS</b> 15:16 31:17	early 55:19 229:17	203:3	encumbrances 161:6
downside 186:3	earn 72:6	<b>Electronic</b> 11:13 236:9	endeavor 159:23
downward 186:11	easiest 43:18	electronically 210:20	endeavors 140:20
<b>DOYLE</b> 22:9	easily 54:1,14 59:3,4	electronics 185:15,18	ended 39:10 182:20
dozen 131:16	211:1	elegant 42:25	endorse 155:24
drafted 196:17	East 12:4,21 14:22 35:5	elements 51:5 103:19	ends 137:5 176:24
drafting 163:9	<b>East</b> 12.4,21 14.22 55.5 35:14	169:4	energy 210:14 217:13,20
drafts 233:23	Easterbrook 155:5,7,13	eleven 76:13,14	enforce 113:19 114:6
draw 65:17 74:5 130:4		ELIADES 12:18	115:6,14 160:17 191:2
drawn 154:18	easy 176:17	ELIZABETH 31:8	191:12 192:23 195:17
dressing 49:18	eat 110:3	36:17	222:23
<b>drift</b> 162:22	echoing 57:15	ELLERS 15:2	enforceable 90:20 91:15
<b>drill</b> 232:22	<b>ECKSTEIN</b> 4:22 231:4	ELLIS 14:20	135:16 136:6,8 190:10
<b>DRINKER</b> 12:10	231:6	eloquent 95:13 110:24	enforcement 91:3,8
<b>Drive</b> 10:6 15:13 30:4	economic 56:21 60:25	else's 134:3	engage 71:11
37:13	83:10 147:3 173:12	<b>email</b> 41:4	engaged 73:5
<b>driven</b> 63:1	187:15	embellishing 199:21	Engineering 206:19
driving 54:11	economically 64:19	embodies 90:18 135:18	Engineers 13:11
<b>drop</b> 63:10 64:15 66:18	Edward 16:8 153:1	embody 225:2,8	ENGLISH 16:2
<b>Drucker</b> 3:21 131:14	Edwin 10:4	emerge 54:7	ENGLUND 18:9
<b>Drye</b> 14:2 44:16 111:20	EESA 83:9	Emergency 83:10	enhance 111:5,6 153:14
<b>DRYSDALE</b> 8:2,10	effect 67:5,22 147:23	<b>emotion</b> 168:20	153:17
duck 96:22,24,24,24,25	156:22,25 161:2,12	emotional 168:18	enhancement 153:18
96:25	162:24 173:18 183:9	empathizes 148:20	<b>enjoin</b> 115:12
	1	1	I

Т

enjoined 139:12	110.01 152.16 10	138:20 152:21 166:23	examiner 177:18
0	118:21 153:16,18 165:11 178:22		
<b>enjoyed</b> 57:6		166:24 167:1,2 195:19 233:2	<b>example</b> 51:9 64:11 76:6
<b>enormous</b> 171:15 <b>ensure</b> 109:15 137:23	equivalent 58:11 68:8 97:10		76:7,7 149:20 151:22 157:22 176:20 198:13
		estates 48:14 72:15	
entails 98:8	ERIN 7:7	230:9	200:5 205:18
entangled 173:20	<b>erosion</b> 56:18	Esther 236:13	excellent 170:3
entanglements 173:22	erroneous 168:8	et 1:8 10:4,5 23:18 36:12	exception 193:22
enter 146:10 209:13	error 157:5,7 207:21	154:3 158:25 172:21	exceptions 205:11
211:14 224:22	escape 81:4,6 96:9	evade 184:12	excess 124:10,21,22
entered 40:22 83:23	especially 59:6 118:7,10	evaluate 168:6	137:15
89:13,14,22 91:11	118:18 229:25	evaluating 54:21	exchange 127:15 169:7,8
143:23 161:19 199:25	<b>ESQ</b> 3:8,9,10,11,12,20	eve 93:20 109:25	185:19
205:23 208:15 210:20	3:21 4:8,15,22,23,24,25	evening 39:10 175:25	<b>exclude</b> 67:15 123:3
231:24	5:8,9 6:11 7:7,14,21,22	225:12	<b>excluded</b> 42:23 78:2,7,16
entering 223:4	8:8,16 9:9,10,18,25	event 45:24 68:18 144:3	78:20,21,24 79:5,10,10
enterprise 96:3	10:10,18 11:8,19 12:8	events 82:3 152:14	98:15 114:16 136:11
entire 108:4 112:15	12:16,24 13:7,8,17,25	eventually 79:1,6	181:10,21,22 216:20,21
entirely 104:12 139:22	14:8,9,17,18,25 15:7,16	everybody 39:4 46:21	<b>excluding</b> 85:21 87:6,10
entitled 148:17 156:15	15:24 16:8,9,18,25	52:16 86:16 92:7 133:7	exclusion 42:22
entity 118:20 137:1	17:10,11,19,20 18:8,9	134:2 147:24 148:19	exclusive 191:2
179:6 187:25	18:17,24 19:8,16,17,24	168:19 194:10 213:24	excuse 79:19 101:12
entrench 56:22	20:8,16,24 21:8 22:14	219:4 228:25 234:7	225:19
entry 2:2 116:12 190:4,6	22:22 23:8,15,24 24:9	everybody's 46:25	excused 80:5
207:16 235:6	24:18,19 25:8,16 26:9	177:22	executed 44:24 191:5
<b>environment</b> 49:7 52:18	26:20 27:8,17,18 28:7	everyone's 201:11 207:8	execution 131:24
53:4 192:16	28:16 29:9,10,19 30:8	evidence 47:13 50:5 53:8	executives 152:6,17
environmental 16:12	30:17 31:8,17 32:9,18	53:21 55:18,21 56:2,10	153:6
20:11 26:14 113:6,19	33:7,15,23 34:8,17	56:14 57:1,2 58:3	executory 125:23 135:7
114:13 134:25 135:1,7	35:8,18 36:8,17 37:7	59:11 60:8 63:15 67:1	135:11 215:24 216:4
184:6,7,12,14,23,24	37:17 38:8,17	67:24 76:21 77:1 82:15	220:1
185:1 194:1 197:1,22	essence 55:4 72:23	83:17 84:11,17 85:5	exegesis 139:16
197:24 200:6,18	115:15 146:18	89:18 96:18 137:13,18	exemption 72:6
envisions 130:15	essentially 115:11	138:4,10,10,11 140:23	exercise 141:9 146:25
equal 48:1,15 81:10	136:19 147:9 154:23	142:7,8 143:14 144:8	157:19 180:13
155:11 181:7	158:7 171:19 222:9	145:14,16 148:7,11	exercised 141:17
equally 43:19 66:12	<b>Esserman</b> 22:16,22	149:11 164:7,16 176:2	exercising 146:4 223:11
87:25	95:12 100:12 165:2	176:5,9,15	exhaustive 198:14
equipment 39:12,21 40:2	166:21 183:16	evidentiary 67:2	<b>exhibit</b> 56:15 76:21 77:1
78:9,12,13 80:10 82:7	establish 59:11 149:11	evolution 230:25 231:5,6	77:2,12,13,16 84:22
82:12 179:7 209:3,5,14	164:12 175:18 186:4	evolving 231:8	85:3,3,4,5,6 86:7
210:13	186:25	<b>ex</b> 106:11 112:17	142:18,18,23 169:12,13
equitable 92:22 97:24	established 136:25	exacerbate 56:22	169:14,15,15 170:16
101:7 150:7 160:4,9,9	137:25 153:10 181:8	exact 69:21 96:3 120:23	175:6,12
160:23 164:20	187:1	211:12 217:14	exhibits 142:17 175:18
equities 107:20	establishes 139:21 182:6	exactly 68:22 134:9	188:21
equity 48:9 52:20,23,23	185:25	139:21 142:16 156:3	exigencies 63:5
52:24 53:4,6 55:12	estate 45:8 68:3,5 79:23	161:24 192:18 200:10	exist 49:8 99:23
69:9 70:19 72:22 79:11	79:25 86:23 137:3,8,24	exaggerated 56:6	existed 150:25
		00	

**existence** 95:20 149:12 existing 96:2,10 165:20 166:10 233:9 **expand** 65:12 expect 51:15 63:9 90:20 93:22 105:15,19 140:15 208:25 223:23 expectation 57:17 118:12 expected 57:17 **expediency** 55:5 74:12 136:24 expedited 226:4 expedition 55:1 expeditiously 56:18 **expenses** 64:20 71:9 103:1,7,11 158:5 **experience** 63:6 152:24 **experienced** 51:13 164:3 experiences 60:11 expert 76:14,14 176:6 180:21 **expire** 59:17 **explain** 85:20 120:3 207:20 209:19 explained 85:19 138:14 208:10 210:11 explicitly 139:7 exploring 62:9 **Export** 23:3 141:4,5 **exposure** 98:10 184:24 express 23:20 97:19 134:3 143:20 163:11 163:12,13 190:17 expressed 234:7 expression 179:3 expressly 139:10 140:11 141:15 162:12 extends 95:17 extensive 109:1 extent 42:24 45:23,25 46:3 50:10 75:14 79:13 95:16 113:25 114:4,25 125:8 127:13 132:3.5 165:21 166:13,15 182:6 184:13.15.21 197:7 200:5 201:1 203:4 204:24 206:14

213:18 219:18 225:17 234:11 extinguish 114:5 extinguished 113:22 extra 60:25 71:16 90:5,8 148:17 extraordinarily 138:19 139:1,18 extraordinary 52:1 59:6 73:24 138:13 140:17 148:23 193:15 extremely 156:5 164:3 eves 96:7 **e-mail** 211:11,12,13 226:9 228:20 234:13 234:15 e-mailed 210:25 226:9 **e.g** 169:19 F **f** 1:22 7:18 21:24 27:17 33:23 85:3,6 86:7 191:16 236:2 Fabrication 206:19 face 55:7 59:25 96:18 124:5 148:1 162:25 **facilities** 39:23 81:8 123:19 124:12 facility 2:8 44:17 79:12 102:4,25 103:6,10,13 197:24 229:5,8,11,12 230:6,12 231:25 233:9 **fact** 41:2 49:2,14 51:2 60:2,3 65:19 70:11,13 81:5 82:16 96:17 98:14 98:16.21 110:10 111:1 111:6 114:18 121:14 127:4 131:19 135:21 138:20,21 150:15 152:5 153:12 159:25 162:21 176:6,7 179:16 186:3 187:3 200:18 210:19 215:13 221:9 factor 54:9 185:23 factors 49:8 54:21.23 55:10 185:10 factory 174:21 facts 73:21 109:10,11

149:11 **factual** 96:14 fact-intensive 135:21 fail 63:23 66:5 68:17 179:25 failed 53:18 74:17 160:5 168:2 failing 47:15 223:23 fails 119:8 failure 66:22 146:23 fair 40:20 58:8 70:15.20 85:15 88:24,24 118:5 141:12.21 142:6 151:12 168:7 192:1,25 200:24 217:4 218:10 fairly 88:9,15 99:8 184:10 fairness 49:13,16,17 70:15 **faith** 48:20 49:5 81:19 82:1,1,15 83:18 84:12 84:14,18 88:8,9,23 138:10 141:13,21 182:4,5,8 188:1,3 **fall** 92:13 falsifying 164:12 familiar 60:11 78:1 family 18:12,20 19:3 47:8 fantastic 140:19 far 55:24 74:6 95:20 105:4 134:9 136:24 137:13 138:16 159:7 167:15 198:25 199:21 214:25 229:25 Fargo 7:3 12:12 93:16 209:4 far-fetched 149:5 fashion 45:20 **fast** 51:25 56:11 57:22 63:10 66:7,15 87:8 117:12 177:6 fastest 47:1 favor 48:4 80:1 82:17 favorable 139:1 favored 49:12 70:25 71:13 73:4 82:18 87:21 favoritism 88:4,4

**FAWKES 30:8** fears 56:5 57:15.21 feathers 96:25 features 107:2 135:9,10 federal 91:10,15,21 92:9 92:16 163:25 181:11 191:21 192:12 **fee** 56:19 **feel** 221:22 feeling 64:21 feels 194:11 **FEINSTEIN 22:9** Feldman 13:8 107:10,11 **felt** 109:10 186:16 fewer 131:16 **Fiat** 62:9 180:7 203:10 **Fiat's** 139:18 fiction 73:5 **fiduciary** 62:16 108:16 110:21 138:22 147:17 175:22 187:23 **FIELDER** 36:11 fielding 202:2 **fifteen** 199:7 203:23 208:11**Fifth** 3:5 18:5 31:13 84:15 121:20 fifty 50:13 119:16 165:11 fifty-nine 70:7 **fifty-six** 85:22 86:1 **fight** 61:21 109:17 **fighting** 173:19 **fights** 177:18 **FIGOR** 35:8 figure 69:21 101:13 106:8,11 212:7 **figured** 43:18 **figures** 174:5 file 79:19 115:1,2 124:8 176:21.23.24 203:25 207:24 221:5 **filed** 43:13 44:4,12,19 50:21 51:6,20 67:8 76:12 78:13 79:18,20 80:6,9 93:17 107:3 108:12 109:7.18 112:9 112:11.12 113:8 116:11 117:8,21 122:6

	_	_	_
123:21 193:14 202:4,7	Finmeccenica 18:3	Foley 29:2,13 212:13,19	forthright 138:14
202:9,10,15 204:16	<b>firm</b> 10:2 32:12 33:2	folks 39:2 46:8,22 98:12	fortunately 110:20
209:5 213:10 215:25	102:21 175:7 229:20	99:20 100:2,6 101:21	186:23
219:23,23 222:1,18	233:20	106:5 166:10 188:16	<b>fortunes</b> 149:23
filing 50:14 52:9 55:22	first 3:16 46:15 47:12	188:25 189:1 192:14	forty 64:12 98:12
57:11 80:9 82:10 218:2	51:17 56:4,7,7,14 57:1	213:22 219:18,20	forty-eight 131:17
filings 78:11 80:9 181:9	57:7,15 74:1 76:20	224:15 233:5	forty-five 198:23,23
<b>fill</b> 157:14	80:7 86:9 89:10 102:1	follow 55:8 59:19 61:17	forty-five-Attorney-G
final 39:16,19 72:19	102:9 112:23 120:17	66:6 145:24 151:15	194:19
84:19,21,22,23 88:3	121:17 123:18 126:18	157:3,11 193:17	forty-nine 84:4
89:15,21 90:8 96:12	132:11,15,16 135:6	206:16	forty-three 186:6
103:25 120:11 141:3	141:4,18 145:9 158:19	followed 139:7 158:15	forum 155:8 190:13
185:6 191:1 198:23	159:20,22 160:1 164:9	168:15	forward 64:25 103:21
203:25 218:17	169:14 176:23 190:15	<b>following</b> 80:10,11 102:8	105:14 106:19,25
<b>finalized</b> 171:1 211:11	194:12 196:23 201:16	222:20	107:1 109:15 111:1
221:21 229:15	205:14 214:11 226:18	<b>follows</b> 191:1	112:20,20 137:12,23
<b>finalizing</b> 146:14 204:12	233:16	footnote 61:25 62:3	174:13 179:21 183:3
finally 80:20 84:13 105:8	<b>first-day</b> 197:5,12,14	147:11	186:8 187:24 223:8
201:20 214:19	<b>FISH</b> 24:3,9	<b>Force</b> 7:10,17	<b>found</b> 77:7 82:16 89:20
<b>finance</b> 149:23 155:22	fit 53:14 157:20 186:12	forcefully 102:9	97:16,22 143:13
163:6 174:12 177:21	<b>fits</b> 187:20	Ford 28:3 34:3 174:5	180:11
financer 149:17	five 101:15 119:25 120:1	<b>Ford's</b> 174:7	foundation 148:9 173:21
financial 7:11 11:14	152:23 167:10 210:3	foregoing 236:4	four 61:5 75:21,21 168:3
30:12 47:25 49:21 57:4	231:2	foreign 178:22	178:13 187:12,20
84:9,10 108:1,3 152:20	five-member 230:20	forget 154:24 155:20	206:22 226:20,24
155:15,15	<b>FL</b> 15:22	170:17	227:8,17
financier 174:14 178:19	flames 147:24	Forgive 50:25 107:9	<b>Fourth</b> 162:12
180:23	<b>fleet</b> 186:6 205:16	128:1 220:22	Fox 6:2 214:10
<b>financing</b> 59:17 60:13,17	208:13	forgot 227:5 231:10	fragile 56:17 137:21
65:4,15,24 69:23 72:4	fleeting 137:19	form 39:16 41:2 42:3	frame 50:22 51:10 58:23
83:24 92:25 103:2	flesh 147:24	60:4,7 129:11,20 137:6	59:4 76:12 152:11
147:1,21 151:8 163:15	flexibility 157:19	173:21 200:1 214:18	frames 54:15
164:7 174:20 179:6,10	flexible 160:4	214:21,22,23 215:3	framework 138:1
179:10 180:3,9 181:14	<b>flies</b> 96:25	228:14,15,24 229:23	FRANK 24:19
<b>find</b> 67:1 68:17 76:14	<b>flight</b> 193:3	230:15 232:12	Frankel 4:17 17:20
77:7,22 79:24 84:21	<b>Floor</b> 4:5 5:5 8:5 13:14	<b>forma</b> 87:5	101:24 112:4,5 230:5
86:18 96:15,19 97:18	14:14 16:22 18:14	formalized 130:22,24	frankly 46:6 108:20
151:15 156:5 159:15	21:14 23:5 26:5,16	formally 127:9 129:16	109:14 111:7 216:18
170:19	32:6 35:5,15	131:3	fraudulent 158:24
<b>finding</b> 98:10 149:11	floppy 210:22	FORMAN 12:18	<b>free</b> 97:17,20 139:11
190:7 193:11	<b>flow</b> 46:2 171:16	format 53:13,14	161:5,18 173:22
<b>findings</b> 64:8 96:15,17	<b>flush</b> 66:8	<b>formed</b> 112:6	195:16 198:5
<b>finds</b> 48:18 180:2	flux 229:9	former 80:17,18,18	FREEBORN 30:2
<b>fine</b> 41:11 46:7 71:25	<b>fly</b> 96:17	153:1	freedom 73:17
102:2,6 103:15 144:18	<b>Flyer</b> 23:20	forth 78:20 80:2 121:24	freely 155:12
210:8 225:14,16	<b>focus</b> 47:9 70:3 78:1	174:14,14	frequency 159:20
231:12 232:4	234:1	forthcoming 103:18	frequently 60:12 117:18
<b>finish</b> 206:15	focused 201:16 234:2	108:25	Friday 114:14 202:8
	I	1	I

FRIEDMAN 7:21	165:25 167:2,3 176:14	General's 25:2,11 26:2	82:9 83:6 84:4 96:8,8
Frigidaire 169:19	179:16 183:10 194:13	26:12 27:2,11 35:11	96:10 98:25 104:17,17
<b>Fritz</b> 80:23	<b>futures</b> 100:5	116:9 218:13	104:24,25 107:16,24
front 132:6 144:10	FutureSources 156:10	generate 169:21	108:1 112:5,25 114:9
<b>FROST</b> 30:11	<b>F.2d</b> 141:19 156:10	GENOVESE 20:2	114:10 115:7 117:16
<b>FTI's</b> 102:20	<b>F.3d</b> 158:16 162:11	gentleman 192:2	118:2,14 119:10,18,22
FULBRIGHT 31:2		gentlemen 188:9	120:6,8 122:8,18,21,25
full 53:1 69:8 72:19	G	genuine 48:22	122:25 123:3 126:4,8,8
86:13,14 112:2 136:8	<b>G</b> 21:12 26:4 37:7 39:1	Gerald 33:3	126:11,12,25 127:7
136:25 143:12 153:7	235:3	Gerber 1:23 211:12,14	129:8,9,18,21 130:7
172:9 188:22	<b>GA</b> 24:16	getting 69:8 78:4 86:20	131:16,20 132:14
fullest 166:15	GAAP 118:3,3	87:11,18,22,23 119:24	136:6 137:3 138:17,22
fully 55:7 86:8 91:15	gain 110:6	133:4 153:14 170:13	145:20,23 146:20
105:13 111:23 120:14	GALLACHER 37:7	173:11 182:18 188:21	147:24 148:6,21 149:8
120:15 139:2,5 197:23	gamble 138:18 146:19	192:19 198:21 210:5	149:8,10 151:20,22
201:23 223:19	147:2,8 178:7	225:6	152:6,6,10,19,21,22,23
fun 177:22	gambling 62:13 147:14	<b>GIBSON</b> 13:2	152:24,25 153:6,7
function 164:4	game 109:18 148:21	<b>GILL</b> 21:17	165:18 167:12 168:25
functioned 118:15	174:24	give 41:13,22 42:24	169:6,23 171:11,13,13
<b>fund</b> 16:13 65:2,11 67:11	<b>gap</b> 102:23	49:25 50:25 60:25 66:7	171:14,15 172:17,17,18
99:18 103:6 138:8	gaps 157:14	71:13 75:3 77:15 80:1	173:4,16,16,25 174:5
141:11 165:25 167:5	garden 124:3	81:24 90:5 97:12 98:18	174:11,20 175:13,14
178:21,22 206:9	Garrison 19:11 233:14	98:20,21,23 100:9	176:11 177:2 178:2,10
fundamental 62:25	<b>Gas</b> 37:11,11	101:5 113:24 119:18	178:12,20,23 179:14,16
126:14,17 128:14	gather 198:19 224:20	119:25 134:2 141:13	179:17,25 180:4
fundamentally 50:19	<b>GE</b> 15:10 102:2 209:25	141:15 161:2,12	184:13 186:1,3,8,10,10
109:23 144:21	210:10	163:18 166:5 171:2	187:11,14,23 190:4,5
<b>funded</b> 137:24	<b>GECC</b> 39:12	188:16 196:15 204:23	197:23 206:1,23 212:1
<b>funding</b> 64:19 67:18,18	<b>gee</b> 178:23	211:12 212:7 219:14	212:4 215:7 223:8
103:13 138:5 150:1	general 1:8 3:4,15 6:13	228:22 229:25 234:5	230:17
233:8	6:19 10:13 16:20 21:11	<b>given</b> 60:15 83:12,13	<b>GMC</b> 187:14
<b>funds</b> 70:20 83:13 99:18	21:17,20,24 22:3,7	86:12 88:16 99:4	<b>GMCO</b> 221:24
151:2 168:2 221:4	27:4 39:8,23 56:23	119:15 126:15 127:23	<b>GM's</b> 53:19 55:22 57:4
222:22	76:10 78:10 80:24 83:9	144:18 152:5 176:17	65:14 111:22 116:25
furnished 175:3	83:12 84:9 85:14,15	180:7 182:25 231:17	122:18,21 126:4
<b>further</b> 55:11 58:21	86:3,3 87:4,9 88:19,21	<b>gives</b> 78:8 85:10,13	130:20 140:2 174:9
68:23 82:15,23 84:13	92:20 97:24 101:7	91:22	222:5
106:6 120:24 123:10	113:5 118:4 125:22	<b>giving</b> 41:21 68:8 207:20	<b>go</b> 57:18 63:9 68:5 69:5
135:14 139:12 141:3	126:3 133:4 135:25	glad 90:6 211:3	77:15,16,18 78:22
164:21 169:10 180:3	137:20 138:15 144:14	<b>GLORIA</b> 32:18	79:22 81:23 84:19,22
180:15 181:5 188:12	144:23 146:2 149:6	GLUCK 20:2	111:1 117:13,15
202:15 203:24 208:3	153:15 170:10 175:11	<b>GM</b> 2:10 17:14 47:8	120:24 122:16 130:25
215:14 217:3 218:2	185:3 189:15 198:20	48:14,14 49:3,4,21	132:11 133:18 136:10
Furthermore 83:7 88:2	205:17 217:18,21	52:17,19,21 53:19 56:1	137:23 140:4,14
future 73:13 95:18,19	220:20 221:3 232:2	56:6,16,19,25 58:15	144:22 147:24 148:1
97:1 98:6,14,19 99:10	generally 90:21 157:17 Generals 132:23 194:18	62:23 63:23,24 64:16	150:12 163:6 170:11
100:6,24 101:4 138:17		65:1 66:2,5,8 71:24,24	181:14 183:3 188:4
139:12 153:5,5 165:22	198:24 199:13,14	72:2,6,9,14,22,22 74:2	189:20 209:14,23
	•	1	

Page	255

210:11 224:2 225:11	good 23:18 39:2,3,6	government's 47:21 48:6	HAL 27:17
226:17 230:22	40:10 42:11 44:15,18	56:4 59:17,18 62:5,11	<b>HALE</b> 23:10
goal 52:16 53:22 137:7	45:16 47:6 48:20 49:5	78:11 84:2 87:11 103:6	half 144:15 173:10
207:11	54:5 81:21 82:1,1 88:8	103:10 183:24 192:12	HAMERMESH 32:9
goals 201:16	88:8,10,23 92:22 99:6	government-sponsored	Hamilton 9:2 36:2 112:5
goes 68:22 74:5 78:25	101:23 104:15 112:4	179:5 187:25	<b>HANAN</b> 16:9
81:18 95:20 97:11	113:4 122:2 123:15	grand 73:25 80:13,17	hand 42:19 43:4,23
115:14 130:1 169:5	125:21 134:17 141:12	grant 42:24 43:2 79:13	44:12 124:4,5 193:16
170:14 172:14 175:8	141:21 145:8 153:12	79:15 123:5 140:24	202:17 211:4 219:13
178:4 194:16 199:9	177:24 178:2 182:5,8	168:4 181:22 218:1	handing 61:3
going 40:16 41:3,22	182:21 188:1 193:3	221:13 223:8 228:13	handled 102:19 202:4
42:17 46:18 47:9 60:24	209:24 211:23 213:7	granted 43:2 181:11,16	hang 234:14
64:24 66:2,7 71:4	214:4 215:20 217:5,8	182:2	HANGLEY 32:2
74:22 79:1,7 83:13,14	220:5,19 230:4 231:14	granting 159:8 181:19	Hanover 99:17
84:3,16 86:25 94:16	233:13 234:8	grateful 47:22	happen 97:24 109:19
96:11 99:1 101:18	good-faith 151:11 176:9	gratitude 72:7	113:17 114:7 174:10
103:2 106:12,19,25	176:10	grave 117:11,14,14,18	177:4,14 180:20
107:1 109:15,17,19,19	<b>GORLICK</b> 13:10	117:25	208:19 233:10
109:21 114:9 116:20	Gotshal 3:3 42:12 45:17	great 134:6,7 148:3	happened 118:15 145:16
117:11,22 118:10	131:12	150:9 152:4,23,24	146:3 152:19 170:22
120:24 124:20 130:5,7	gotten 204:20 234:6	155:3 159:20 194:11	172:23 174:4
132:16 133:23 137:11	Gottlieb 9:2 142:2 219:7	194:24 210:12	happening 139:22
140:14 143:13 161:25	GOULSTON 31:12	greater 20:3 70:3 174:3	177:25
162:6,18,21 165:8,21	<b>govern</b> 230:9	greatest 195:1	happens 67:23 110:25
166:23 167:11 170:24	governance 103:22	greatly 56:6	174:18 175:20 176:21
171:14,17 172:17	230:17	Green 1:15	208:19
173:4,20 174:13	governed 76:22 230:17	<b>GREENE</b> 20:2	happy 94:21 105:21
177:20,21,24 178:2,2,4	governing 67:6 190:9	GREGORY 24:12	114:24 115:9,23 185:4
178:5,6 179:21 181:5	government 19:20 43:3	Griswold 24:5	209:18 212:24 231:25
183:8,13 186:7 187:11	47:15 48:4 49:6,21,22	ground 149:18	harbor 218:2
187:12,13,24 188:9	53:2,4,21,23 54:1,13	grounds 76:16 92:22	hard 94:5 106:6 194:8
192:5 196:12 197:21	57:9 58:24 59:7,15	95:15	HARDIN 37:10
199:4,11 203:9 205:12	60:1 62:7,12,14 63:4	group 13:20 17:2 19:12	harking 224:7
207:24 209:12 212:6	63:22 64:16,17 65:23	123:16,17 203:14	harm 168:9
212:15 216:21 220:12	66:1,13 69:8 70:6 72:3	208:6 213:8,12 220:6	Harman 6:5
223:8 224:19,25 225:1	72:5,6,7,9,12,22 73:22	groups 48:2 55:9 227:11	harmed 83:25 84:1,3
225:5,6,8 228:18 230:9	73:24 74:3 81:10,25	Guaranty 19:19 23:11	harmonize 161:13
232:14,15,22 233:23	83:5,8,15 85:17 86:2	Guardian 12:19 38:12	Harrison 15:2 20:18
234:1,14	86:13 88:3,8,24 102:25	guess 71:8 83:7 87:5	21:2 211:24
going-forward 195:10	103:2,8 118:10 136:23	133:8 149:6 210:20	Hartford 157:25 158:3,9
<b>GOLDEN</b> 24:12	137:1 138:5,7,8,11,15	233:18	158:15 159:6
<b>Gonzales</b> 62:1,17	140:19,20 147:15	guidelines 54:18	Harvey 3:8 15:2 145:8
Gonzalez 121:11 139:7,9	148:24 163:5,9 172:23	guiding 171:4	hash 91:5
143:13 147:19 157:10	174:17,17 181:12	<b>guy</b> 231:16	hate 132:10
161:16 165:13 166:20	187:3,8 214:1 228:23	guys 41:14 127:14	hay 142:6
167:16 168:7 182:10	governmental 115:13	Н	Haynor 33:3
Gonzalez's 139:5 147:12	governments 73:12	<b>H</b> 3:10 7:7 17:10,19	head 87:9 131:16 178:1
157:6 168:12	141:6	<b>11</b> J.10 /./ 1/.10,17	201:8

<b>hereto</b> 80:2,2	44.3,7,13,1943:2,10,17	103.14,10 100:1,17,19	hopeful 200:22
Henry 16:3 22:10 36:8	42:11,19 43:7,9,13,24 44:5,7,15,19 45:2,16,17	164:19,24 165:2,4,8,13 165:14,16 166:1,17,19	185:7 187:6
82:8 186:7 Honry 16:3 22:10 36:8	40:24 41:15,17 42:7,8	163:2,20,23 164:7,15	146:23 163:8 169:6
Henderson's 56:14 57:20	<b>honor</b> 39:6,20 40:10,11	162:9,9,11,16,16,23	112:25 123:23 133:23
205:16	131:15	161:1,8,10,12,14,22	54:7 62:11 108:23
170:18 174:2,11 182:1	Honigman 3:14 39:7	159:19,24 160:7,11,19	hope 5:8 11:15 28:12
152:25 153:5 169:5	Honestly 52:7	157:13 158:1,21	228:12
118:13 142:9 152:5,15	HON 1:23	156:3,24 157:1,6,7,11	139:14 204:1 218:5,14
80:23 98:21 105:7	HOLT 12:18	154:22 155:21,24	Honor's 89:21 132:17
56:3 57:9,12,16 67:4	holistic 159:23 160:21	153:8,9,17,21 154:6,12	233:19
Henderson 43:11,24	holiday 106:9	152:14,18,20,22 153:4	232:6,18,20 233:3,7,13
helps 75:3	holes 75:5	151:14,18,22 152:2,4,8	230:4 231:3,18,24
helpful 40:21 41:22	Holdings 149:20	150:8,9,16,19,21	227:10 229:12,21
211:2 213:22	205:1 219:25	148:7,25 149:14 150:5	224:17 226:18,23
127:19 133:19 201:4	holding 53:4 74:7 99:9	146:10 147:9,18 148:4	223:2,18,19 224:6,13
help 68:12 91:19 92:11	98:20 111:22	144:7 145:2,8,9,13	219:6,21 220:5,13,19
167:16 221:8	holders 52:23 55:12	141:2,17,23 142:1	216:16 217:8,10 218:9
147:19 150:24 165:14	199:12 holdow 52:22 55:12	139:24 140:4,10,14,21	214:11,19,25 215:15
held 52:2 99:13,18	hold 53:5 74:5 133:10	138:4,8,9,18 139:14,20	213:3,5,7,10,14 214:3,9
hedge 178:21	HOFFMAN 14:18	135:14,16 136:22,23	211:1,21,23 212:12
Hedding 35:4	233:15	134:13,15,19,24 135:3	209:17,24 210:15,17,24
66:17 69:6 176:20	177:19 180:14 229:20	132:7,10,13,20 134:6	208:11,13,22 209:1,16
hearings 52:1 55:14 59:5	21:3 22:17 109:3,4	130:18 131:2,6,11	206:7,12 207:4,14,24
188:9 204:7 210:1	hoc 18:4 19:12 20:19	128:22 129:5,7,19	204:4,7,19 205:7,15
110:1 116:20 128:24	Hitachi 203:11,11	126:2,18 127:17 128:4	202:17,22 203:18
51:24 82:20,21 93:20	<b>history</b> 73:23 169:16	125:6,14,18,21,23,25	201:5,6,10,13 202:7,13
hearing 2:2,6,10,10 46:2	<b>historic</b> 74:1	123:15,21,25 124:6,20	196:20 199:18 200:13
231:1 232:15 233:1	HISCOCK 13:19	121:22 122:2 123:8,13	191:25 192:4 193:2
229:7,12 230:1,25	hired 164:3	116:15 120:11,24	189:6,14 190:16,20
224:7 227:13 228:1,7	hindmost 147:25	112:4,22 113:2 116:5,8	187:13,17,19 188:5,6,6
202:1 206:9,13 218:7	Hills 33:13	110:15 111:12,16,19,23	186:13,19,25 187:3,5,8
179:25 194:20 195:15	Hill 80:14	105:18 106:4,14 107:8	185:2,6,7,11,17,22
159:10 171:9 173:10	<b>highway</b> 64:3	103:3,12 104:1 105:3	183:18 184:3,10,20,22
139:4 145:15 159:3,9	highlights 103:16	101:12,20,23 102:17	182:14,21,24 183:9,14
122:1 134:1,6,8 135:6	highlighting 202:21	95:11 96:23 101:8,10	181:4,5,17,24 182:2,9
109:24,25 112:19,23	<b>highest</b> 137:14	93:5,13 94:7,23 95:4,8	180:8,11,17,19,24
94:9 95:7 96:18 105:23	higher 188:20	90:1,3,9 92:10,19,20	178:17,20 179:4,16
heard 46:18 64:21 67:14	hey 130:5	88:18 89:1,5,10,11,22	177:13 178:1,4,11,16
188:11 191:18	11:14	84:13,13,21,23 88:2,2	176:13,17,19 177:4,8
133:24 159:21 175:4	Hewlett-Packard 11:11	81:17 82:13,24 83:7	175:4,8,10,12,23,24,25
125:24 127:20 129:6	Hewlett 28:11 204:17	75:20,20 80:20 81:15	174:3,7,15,19,23,24
91:18 94:22 116:20	Heulig 131:15	70:21 71:3,11 74:13,19	172:11,17,23 173:12,14
hear 46:19 74:15 89:7	hesitation 138:14	68:16,23,24 69:24	171:2,4,7,9,21,25 172:7
129:15,22,22	hesitate 60:19,22	65:8,21 66:14,25 67:20	170:1,3,7,12,17,21
healthcare 126:4,5	208:13,15,19	60:10 61:9,11,12,13,19	169:5,10,11,12,16,22
169:24 227:24	Hertz 205:15,18,23	51:21,25 52:14,16 53:8	168:17,19,21,22 169:2
health 113:20 114:20	18:2	49:15 50:16,23 51:17	167:18,19,23 168:11,13
heading 223:17	HERRINGTON 17:13	46:23 47:6,6,8 48:22	166:23 167:4,8,9,11,15

	I
hopefully 43:25 179:21	immediate '
225:12,13	immediatel
hoping 45:19 210:17	208:19
HOPKINS 33:10	immortal 1:
<b>horizon</b> 178:16	impact 100:
horrific 188:5	190:23
<b>host</b> 157:16	impair 113:
Hostetler 122:3	impaired 11
Houlihan 109:5	impassione
<b>hour</b> 40:16 188:2,10,12	168:18 17
188:15	imperil 148
hours 102:18 122:10	implement
131:17 210:3 225:7	164:21 19
<b>House</b> 54:7 65:1,13 66:4	222:10 22
179:24 180:1	implemente
housekeeping 42:9,12	implementi
43:6 102:1 188:11	implication
189:2 226:13	implication
How's 159:21	implied 141
<b>HP</b> 11:13	importance
<b>HR</b> 131:16	107:21,22
<b>hue</b> 55:8	important 4
<b>Hughes</b> 26:15	46:15 50:2
hundred 50:14 87:22	59:19 66:1
hundreds 146:20 210:13	71:20 73:1
214:23	103:20 11
<b>HUTZ</b> 10:12	118:25 11
hyphen 221:2	135:15 14
	- 155:25 16
I	- 197:25 23
<b>ice</b> 186:14	importantly
<b>ICX</b> 217:17,20	98:6 129:1
<b>idea</b> 71:25 89:8 120:15	impose 114:
121:8 196:12 231:17	imposes 184
identical 77:7 161:19	impression
227:9	65:17
identified 126:19 201:14	
221:18	improved 5
identify 127:10 128:5,13	improveme
idol 156:9	200:19
<b>ignore</b> 154:25	inaccurate
<b>ignores</b> 147:2 153:12	inadverten
<b>II</b> 203:12	inapplicabl
<b>III</b> 34:17	inappropria
IL 4:13 10:8 15:14 25:14	inaugural 5
30:6 37:15	incidental 1
<b>Illinois</b> 25:11,12	incidents 45
illness 98:15	inclined 228

75:15 **v** 163:5 55:3 :16 169:9 :15 114:5 13:22 162:21 **d** 154:23 1:19 :3 9:4 160:17 1:2.12 4:23 ed 50:1 ing 49:24 190:18 s 184:1 :12 e 46:17 ,22,23 42:21 46:10 20 55:15 11,13 71:12 15 74:7,11 2:18 113:24 9:4 129:24 2:8 144:11 8:16 185:23 0:8 **v** 73:21 95:18 19 182:24 :21 181:2 4:1064:25 65:9 66:14 7:7 ents 194:11 199:24 **ce** 93:18 **e** 161:10 **ate** 163:24 5:3 71:6 5:6 8:12

**include** 67:15 72:8 86:16 101:2 119:13 122:21 203:21 **included** 39:22 161:3 204:6 215:1 216:5 includes 144:4 **including** 11:12 49:2 50:7 53:10 54:9 64:1 69:15 78:9 79:11 87:14 95:15 97:8 123:4 135:1 139:2 147:3 172:10 186:17 191:5.6 192:7 inconceivable 59:24 60:1 65:13 inconsistent 146:16 inconvenient 48:16 incorporate 75:12 112:25 113:1 221:17 **incorporated** 39:19 incorrect 228:15 increased 55:25 110:8 **incur** 146:22 **incurred** 129:23 130:8 130:22 indebtedness 85:21,22 87:4,5,5 indefinitely 118:19 indemnify 45:5 indemnities 206:16 **indemnity** 45:24,25 **indenture** 7:3 13:3 14:4 76:20 77:10 81:9,9 93:15 94:8 107:12 120:20 183:14 **indentured** 107:9,12,14 108:14 111:15,21 117:6 209:6 indentures 82:14 107:13 181:7,13 182:3 independence 48:23 61:21 63:17 152:4,18 153:10 independent 54:10,24 63:1 149:9 150:6 151:18 152:22,23 177:19 179:19,20 185:18 independently 57:10

**Indiana** 89:16 168:2 182:12 203:11 **indicate** 43:15 93:23 162:13 193:10 **indicated** 39:10 43:7 53:20 58:20 62:8 96:6 105:10 108:10 109:15 111:13 221:16 **indicates** 70:15 109:9 130:19 indicating 122:8 indiscernible 40:23 117:17,17,20,23 118:2 119:10,11 166:13 181:18 **individual** 99:23 102:9 102:13 104:11 106:3 108:11 110:16 222:15 individualized 61:2 **individuals** 144:12,15 **indulge** 210:18 **indulgence** 89:2 148:17 **Industries** 6:3 38:12 214:11 **industry** 62:6 146:22 147:7 154:4,5 164:1 178:15 179:23 187:7 187:15 inequitable 92:20 inevitably 59:19 inextricably 68:6 infallible 155:3,5 infamous 175:6 **infer** 174:6 inference 65:17 **inflict** 172:17 inform 56:9 **information** 67:14 109:8 127:15 131:19 143:10 175:3 **informed** 56:24 106:8 110:18 infusion 70:20 **initial** 54:15 168:23 202:7 **initially** 152:13 193:21 194:9 **injunction** 96:21,22,23

	1	1	-
97:1 100:23 166:4	179:3 181:16,19	irretrievable 56:20	<b>Jail</b> 90:11
injunctions 166:22	191:15 234:7	irreversible 174:23	Jakubowski 10:10 95:13
<b>injunctive</b> 114:22 135:18	interested 28:3 33:3	186:11	98:1 141:8 146:9,11,16
injury 98:8	178:25 187:1	<b>Irwin</b> 3:12 42:11	154:22,23 155:2,18
Inmates 90:11	interesting 107:24 166:9	ISACKSON 18:8	156:4,21 157:12,14
innocent 93:18	interests 40:4 55:11	<b>ISD</b> 36:12	158:14 161:2 163:4,21
<b>input</b> 39:18 196:15	95:18 99:15 100:5,8,15	issue 51:8 72:1 78:1	166:11 173:14
inquiries 202:5	114:23 147:2 164:21	81:18,20 83:20 92:8	Jakubowski's 161:7
inquiry 135:21	181:15	98:24 99:7 104:21	162:15 164:18
<b>inserted</b> 190:3 218:17	interfere 223:10	105:17 109:25 110:12	James 6:11 9:10 19:8
<b>insider</b> 118:23 151:7,11	interlineation 210:18	120:5 124:3 125:7,8	25:16 34:11 142:1
insiders 118:20	interlocking 139:17	130:6,11 136:12,20	214:9 219:6
insidious 98:8	internal 205:18	142:4 158:21 159:10	Janesville 80:12
insight 139:1	International 6:4 9:3	160:11,14 161:5,17	<b>Janice</b> 131:15
insignificant 154:10	11:12 13:11 208:6	165:17 166:1,11,20	<b>JASON</b> 37:17
insistence 185:13	214:11	167:15 168:4,22	JAWORSKI 31:2
insolvent 118:6	interpret 191:12	173:24 183:10,18	<b>Jay</b> 131:20
instance 114:2 160:1	interpretation 90:24	185:15 194:4 198:9	<b>JAYSON</b> 33:15
institution 84:10 155:15	160:21	205:21 208:14 221:6	jealousy 173:7,9
<b>institutions</b> 84:9 108:1,3	interpreted 76:23 162:11	221:11 231:7	Jefferson 34:4 37:4
instructed 212:17	199:24	issued 77:9 92:9 161:14	<b>Jeffrey</b> 10:18 125:21
instruments 78:9	interpreting 199:20	issues 44:20 45:1 46:4,15	<b>JENNER</b> 4:2,10
insufficient 54:12 110:1	Interpublic 203:14	51:22,23 59:4 69:7	Jennifer 14:8 111:19
110:2	interrupt 195:21 228:10	89:6 93:9 94:19 99:11	<b>JENNIK</b> 14:11
insurance 125:22 126:3	Interstate 141:18	106:1,6,12 111:8	jerk 94:4
130:2,3	intertwined 68:6	132:18 133:16 134:12	<b>Jersey</b> 26:12,13
<b>insurer</b> 171:15,18	intimation 62:7	136:14 139:4 166:5	JILL 7:22
<b>intend</b> 105:12 127:11	inure 171:7	189:14 194:17 200:18	<b>JJF</b> 6:6
206:14 207:15 233:17 intended 95:2 160:6	invested 63:24	201:7 203:1,2 205:10	<b>job</b> 74:18 108:14 110:22 126:10 133:19 139:18
162:13	investigations 61:1 investment 66:8	205:18,18 208:15 220:15 221:25	140:19 172:19
intending 207:9	investor 149:22 178:22	<b>Isuzu</b> 203:12	jobs 62:6 66:9 146:21
intends 122:8 126:25	<b>invites</b> 156:7	item 102:1 152:2 226:18	<b>Joe</b> 45:16 131:11
197:23	invoices 201:18	229:4	<b>JOHN</b> 3:11 7:14 14:18
intensively 139:4	involve 176:24 212:24	items 226:15	29:10
intent 130:20 184:12	involved 59:24 105:13	it'll 77:21 222:15	joinder 109:9 111:12,25
185:1	107:21 146:21 158:2	<b>IUE</b> 13:12 43:10 169:16	joint 89:13 212:1
<b>intention</b> 138:5 207:5	158:21 163:25 182:11	169:17,23 172:8 173:1	JONATHAN 19:17
225:11	210:12 233:21	227:4	<b>Jones</b> 5:18 44:7,8,9,10
intentions 64:14	<b>involves</b> 44:25 217:12	<b>IUE-CWA</b> 14:12	103:12 105:3 132:12
interest 40:6 52:23 55:9	226:23	<b>I's</b> 123:24	132:13 134:21 136:21
56:22 62:6 63:21 74:12	<b>involving</b> 73:2 90:24		136:22 140:8,10,14
79:11,14 87:16 88:20	157:17	J	148:25 177:23 223:17
88:21 95:21 97:20,21	in-possession 184:9	<b>J</b> 4:8 6:19 12:24 13:7	223:18 224:1 232:7
109:12 113:6,18,20,20	ipse 180:19	16:8 26:15 29:19 36:8	<b>Jose</b> 35:6
113:25 114:24 138:3	irrelevant 49:5,14	202:11	Joseph 3:10 10:5
138:20 151:10 153:13	irreparable 168:9	<b>JACOB</b> 33:23	JPMorgan 163:25
160:15 162:14 176:11	irrespective 154:7	<b>JAFFE</b> 36:8	judge 1:24 55:8 60:23
	l	I	I

61:6 62:1,17,18 89:22	justify 56:11	162:24 184:16,18	land 114:11 171:22
95:25 96:20 98:3	<b>J-1</b> 202:12,22 204:17,18	186:20 191:15 197:11	landlord 44:16 45:5
100:14 101:5 113:4	206:20 208:2	197:13,14,17 200:14	LANE 23:17
115:23 121:11 135:12	<b>J-2</b> 202:12 203:10,12,12	201:4 232:17	language 79:24 90:24
139:5,6,9 143:13	203:14,15,17 204:4,25	kinds 177:15	97:19 114:5 115:6,19
146:17 147:11,19	206:8 207:3	<b>Kinko's</b> 220:16	122:11,12 123:22
149:21 150:13,23	<b>J-3</b> 202:12 204:19	<b>KIRKLAND</b> 14:20	158:5 159:1,25 161:4
151:5 155:2,4,4,6,12,18	K	<b>KLEHR</b> 15:2	162:13 165:6 166:19
156:9,11,13,15,16,21		<b>KLEIN</b> 16:2 32:12	183:22 184:10 185:2,4
156:23 157:6,9 158:8	<b>K</b> 11:19 12:13 19:21	knew 81:6 146:13 170:4	192:5 196:16,21,25
161:16,24 162:1	28:16	know 46:5,6 51:9 52:7	198:8 207:6 214:13,15
165:13 166:19,21	Kansa 123:12,15,15	58:21 64:8 69:3 70:11	215:4 216:2,5,17,22,24
167:16 168:6,12	124:19 125:6,14,18	70:11,13 75:11 78:4	218:17 220:7,9 224:9
182:10 211:10,16	220:5	81:15,15 85:4,4 97:25	224:12
213:17 214:7 218:12	KANZA 220:5	99:3,24,25 105:18	languished 57:25
judges 61:14 156:8,22	Karen 16:25 132:22	120:10,10,13 126:22,23	languishing 64:12
judgment 48:19 55:15	<b>KAROL</b> 11:19 28:16	127:2 128:1 131:1	Lansing 21:15 26:7
59:12,13,23 71:25	Karotkin 3:9 183:11	139:14 152:12 166:8	80:18
89:15,22 90:4,8 91:1	189:4,6,11,13,18,21,24	178:3 183:23,25	Lardner 29:2,13 212:13
91:10,11,13,15,22	190:2,19,22 192:2	194:14 199:19 211:8	large 50:12 169:19
92:19,20 116:22	195:24 199:17,18	214:25 226:24	largely 230:11
157:20 160:12 176:10	200:3,5,10,25 224:16	knowledge 82:8 179:11	larger 85:12
187:22	224:17 225:3,10,19,21	217:24	largest 107:15
judgments 90:15,22	226:1,5,11,13,15,18	known 126:3 139:11	LARRY 38:8
judicial 74:3 89:19 90:21	227:2,6 228:4,10,12,19	206:17	late 72:3 105:10 132:24
JULIUS 26:9	229:1,4 232:14,17	knows 152:8 158:2	207:10
July 1:18 56:2 59:18	234:1,4 <b>VATUEDINE</b> 22:7 20:0	Koch 64:21 167:9	latency 98:9
65:2,11,15 66:23 67:9	<b>KATHERINE</b> 22:7 29:9	KOEVARY 19:17	Latham 15:9 209:25
67:15 68:25 69:3 138:6	<b>KATZOFF</b> 13:25	Kolbenschmidt 206:8	Latsina 80:15
141:10 144:2 177:7	<b>KAYLOR</b> 7:22	<b>KOLKO</b> 16:9	Lauderdale 15:22
204:7 212:9 217:16	<b>keep</b> 68:5 77:13 87:15	Kramer 4:17 40:11	law 10:2 14:3 15:18
219:25 236:20	104:13 106:8,10 134:6 144:11 151:24 180:8	101:24 230:5	32:12 55:13 61:16
jumped 163:5	<b>Kelley</b> 14:2 111:20	<b>KRAVITZ</b> 13:10	64:18 66:6,13,14 72:7
jumps 149:4	Kelly 44:16	KUNZ 34:17	76:23 96:16 111:17,20
<b>June</b> 51:21 57:17 73:3	<b>KEMP</b> 32:12	<b>KY</b> 30:15	111:23 113:25 117:20
76:13 77:3,5,5 83:24	Ken 220:5	<b>К-О-Р</b> 221:2	118:16 119:1 123:6
87:16 161:23 174:1,2	Kennedy 14:11,17 22:7	L	135:10 136:25 139:2
180:4 186:4,5 225:21	75:13 82:19 168:17	L 5:17 12:19 14:9 20:16	139:21,24,25 148:5
<b>Junso</b> 10:4	170:3 171:19 173:6	22:22 23:8 24:9 235:3	155:7 156:18 157:7,10
jurisdiction 156:4,20	170.5 171.19 175.0	label 50:2	158:24 161:16 162:24
168:5 191:2,7,18,22	Kenneth 4:22 123:15	labeling 47:18	163:2 164:22 168:14
195:17,20	Kensington 217:18,20	labors 61:2	168:15 190:10 191:21
jurisdictional 195:16	Kensington 217.18,20 Kevin 10:4,4	lack 69:1 142:6 151:2	194:1 195:7,10 198:10
<b>Justice</b> 5:2,11 25:4 26:15	key 147:17	210:6	198:13 211:2
justices 168:3	<b>KIMBERLY</b> 12:24	LADDIN 24:18	laws 91:16 113:19
justifiably 184:25	kind 41:8 96:22 98:7	LADDIN 24.18 Ladies 188:9	122:20,24 184:6,8,12
justification 48:19 55:1	99:7 127:15 157:22	LAMME 33:23	196:9,11 200:6,19
88:17 185:8	<i>99.1</i> 121.13 131.22		lawyer 41:7 163:5 170:4

lawyers 50:5 53:9 115:14	138:23 149:16 150:14	lie 146:25	148:21
166:4	220:6	lien 42:24,24 43:1,2 78:5	liquidating 137:3
<b>law's</b> 156:17	lenders 60:11,12,20	78:8 79:15,15,25 80:1	liquidation 49:18 53:17
lay 193:13	61:24 73:20 85:25 86:8	80:1,9 81:4,5,7,12,16	58:8 59:19 62:3,15
laying 146:6	87:12 94:18 123:18	94:10,11,12,12 120:17	88:22 137:6,6,16
LBA 45:21 206:8,9	141:9 149:25 220:8	120:20,21 121:2,13,14	145:19,24 146:1
lead 96:15,19 174:2	lender's 124:8	121:17,18 124:5 181:9	147:16 148:2,2 165:9
189:5	lending 64:1 83:22 85:18	191:14	165:20,24 167:3
leading 82:4 90:11 91:3	length 49:5 151:19	liened 80:22,25,25 81:5,7	170:14 172:14,15
leaner 186:10 187:14	164:11 182:1	81:7,8 82:12,13	179:9,12 188:5
Lear 178:11	lengthy 161:25	liens 42:17 78:11,13	Lisa 2:25 236:4,8
learned 213:11	lent 118:18	79:18,19 80:6 81:10	list 78:18,21 82:6 114:10
<b>LEARY</b> 21:24	LESLIE 23:24	82:6,10 121:16 123:18	204:1,12 217:15
lease 44:22,24 45:2,3,4,8	lessened 91:11	124:10,22,23 161:5	listed 80:8 82:7 86:6
45:22 46:1 93:15	<b>lesser</b> 62:15 147:15	171:22 181:11,22	185:18
217:12,16 218:1	<b>lesson</b> 156:7	182:2	listened 145:12 176:2
leases 39:13,21 40:1,4	lessors 209:3	life 125:22 126:3 227:24	LISTHAUS 13:10
209:5	less-than-stellar 75:24	lightning 70:1	listing 62:14
leave 46:21 48:8 106:23	75:25	likelihood 168:9	literally 102:18 122:13
189:15 195:19	letter 42:18 43:4 228:20	<b>likes</b> 73:10	198:14
leaves 87:12 96:25	let's 87:24,24 90:7 97:15	likewise 168:18,19 208:7	litigant 231:17
119:12 230:18	101:19 133:25	limit 58:9 65:24 74:17	litigate 208:12
leaving 71:14 106:3	<b>level</b> 94:14 165:1,1	139:20 162:13 198:7	LITIGATION 17:2
195:2,16	188:20 208:24	limitation-on-liens 76:19	litigations 109:22
<b>Leckie</b> 162:10,11	leverage 61:20 66:16	76:24 77:7	little 40:12 60:23 65:6
<b>led</b> 130:16	93:15 146:5 155:11	limited 11:13 44:19	68:12 77:22 114:16
<b>LEFFERT</b> 20:16	177:16 180:7,13	59:16 63:3 64:20 102:8	128:2 144:18,19,20
left 71:9 72:9 81:14	<b>LEVICK</b> 38:2,8	102:11,12,14 105:24	152:1 198:11 202:1
134:1 210:4 221:15	Levin 4:17 40:11 101:24	111:25 112:10 116:11	Livernois 38:13
<b>legacy</b> 169:19	230:5	122:6,7 123:21 124:2	LLC 6:4 12:18 16:11
legal 48:3 72:8 90:9	LEWINSTEIN 14:25	156:5,10 191:7 203:11	22:9 30:3,11 31:13
94:15,16 117:13,15	Lewis 20:18 21:2 211:24	204:5 213:10 215:25	156:10 217:20 236:15
118:1 137:15 141:7	Lexington 28:4 30:12,15	216:1	Lloyd 23:18
148:17,19 171:25	liabilities 122:19 136:11	limits 54:16 74:10 187:7	LLP 3:3 4:2,10,17 6:2
221:25	149:9 154:7,8,8,9,11,13	187:9	7:2,9,16 9:2,12,20
legally 48:2 66:3 68:5	154:20 163:12 165:9	line 46:9,19 74:5 130:5	10:12 11:2,10 12:10
137:16 148:14	171:5 183:6 191:14	133:18 154:18 169:15	13:2 14:2,20 15:2,9
<b>legitimate</b> 63:2 73:9,14	197:22,24	173:3 186:19 235:4	17:13 18:2,11,19 19:2
180:11	liability 10:3 17:3 46:1	linings 167:13	19:11 20:18 21:2 23:10
<b>LeHane</b> 14:9 44:15,16	68:14 69:13 96:10,16	link 160:2,2,3	23:17 24:12 28:10 29:2
44:18,19 45:15 46:6,7	96:19 97:1 99:1 100:25	linkage 68:17 69:1 142:5	29:13 30:2 34:11 36:2
206:11	136:20 149:13 171:17	142:7 143:15 144:8	36:11 37:10
<b>LEHR</b> 26:20	194:6,13 198:3,5	Lionel 48:21 54:13,16,18	LMC 203:12
LEINWAND 20:2	218:21,22	54:20 74:6 185:9,10,10	loan 42:14 70:3 77:14
<b>lemon</b> 196:9,11	liable 197:23	185:17,23 186:12	86:2,2 118:7,9,14,23
lend 118:11 138:23	<b>liberty</b> 9:6 12:4 43:22	liquidate 59:25 60:4	119:7 141:10 230:12
lender 48:25 61:7,13	202:20	71:24	loans 69:9 83:12,16,17
64:2 82:4 123:16,17	license 223:8	liquidated 72:2 88:21	83:23 118:21
	I		I

			5
<b>loan-to-own</b> 149:18	lower 85:9,11 159:5	<b>Manor</b> 131:20	<b>Matthew</b> 5:17 13:7
151:16	LPA 33:10	manufacture 179:8	29:19 32:9 134:23
<b>LOBELLO</b> 16:8	LUCAS 35:18	Manufacturers 12:11	MAUREEN 21:24
Local 13:12	LUCAS 55.18 LUFT 9:9	209:4	MAUREEN 21.24 MAUTNER 7:7
localities 80:11	lunch 188:10	manufactures 15:3	maximize 137:7
located 78:6,13 79:12	lunchtime 41:13	93:16	Mayer 4:24 95:7,8 101:9
location 99:20	lying 164:12	manufacturing 39:22	101:10,12,17,20,23,24
LOCHNER 33:18	<b>L.L.P</b> 31:2	79:12 80:10,14,24,24	101:10,12,17,20,23,24
LODGE 10:12		82:6,9 148:10 211:25	106:4,14,17,18,21,23
Logan 32:4	M	MARC 14:25 34:8	107:6 210:7,7
logos 96:5	<b>m</b> 6:11 7:21 13:8 14:17	MARGARITA 25:8	<b>MCCUTCHEN</b> 7:2
long 57:5 82:6 98:9	16:21 17:11 18:8,21	margin 174:3	MCCOTCHEN 7.2 MCDONALD 33:10
101:18 150:19 160:8	28:7 32:18 94:6	MARICCO 19:24	MCDONALD 33:10 MCNAMEE 33:18
167:13 177:12,13	MA 31:15	mark 8:3,11 18:24 23:17	MCRORY 20:8
202:23 225:4,8	machine 105:11	95:12 212:8	mean 67:15 71:18 75:1
longer 50:1 105:25	MACTAC 23:20	<b>marked</b> 43:14 203:19	76:12 79:21 104:2,2
106:19 122:14 174:9	<b>Magcorp</b> 184:16	204:3 219:11,13	118:2 128:9 136:2
183:15	magic 58:23,25 59:7,8	<b>markedly</b> 64:7	138:7 153:5 162:16
long-term 144:25	60:8	market 20:20 21:4 26:17	174:19 177:13 184:21
look 40:15 41:23 47:24	magical 58:20	56:21 118:5 174:7,8,9	202:24 222:14 226:7
51:12 52:8 60:7 77:5	Magnesium 161:22	186:24	meaning 54:16 78:2
	184:18		113:21 135:19 136:2
82:2 86:10,12 91:1	mails 131:17	marketing 96:5	
96:11 97:23 100:5,6	main 30:13 62:2 63:1	marketplace 63:6	157:15 158:8 209:9
105:14 142:8 144:17	89:6	Marketplaces 207:2	meaningless 127:1
159:20 174:1 177:23	mainstream 108:2	Marsh 123:19	means 50:6 53:9 113:22
178:23 179:1 224:10	maintain 157:4 170:24	Martin 11:8 215:20	115:16 118:3 128:20
234:1,2	maintained 156:17	martinet 94:4	170:19 174:12 180:15
looked 67:7 112:24	maintenance 170:20	MARVIN 27:8	233:25
126:22 159:21 205:8	major 46:16 51:5 72:17	Maryland 123:19 Massena 80:13	meant 43:16 59:2 64:12
looking 82:1 96:13,21	73:2 108:1 194:4		86:21 180:5,6 199:20
98:7 100:7,23 175:12 175:12 183:25 233:21	221:22	master 105:9 117:10	measured 125:3,12
	majority 159:12 168:7	122:17 127:22 143:21 144:2 146:14 222:6	mechanic 106:11 167:3 mechanics 228:19
loop 233:23 Lordstown 206:22	majority 159:12 100:7 makers 63:16		mechanism 106:8
217:13,20	making 59:1 76:7 83:17	MASTROMARCO 33:2	mechanisms 100:1
Los 11:17 28:14	85:17 91:4 159:15	33:7 MASUMOTO 5:9	137:23
lose 54:6 147:25 186:8	160:16 201:9 202:5	material 147:19	<b>Medco</b> 132:1
losers 88:16	230:13	material 147.19 math 87:16	
loss 56:21	manage 201:16	matrix 71:12	medical 102:4 150:10,23
loss 56:21 losses 64:5	management 6:7 63:17	matter 1:6 42:5 43:6	169:24 170:16
	96:5 179:17		Medicare 170:9,11
lost 137:21 147:8	managers 49:3	98:11 102:2 117:15	medium 50:13 188:19
<b>lot</b> 41:5 48:12 71:5 92:12	mandated 53:15 61:22	188:22 194:24 212:14	meet 51:10 70:20 223:15
94:14 131:19 144:20	Manges 3:3 42:12 45:17	216:23 221:6 222:19	meeting 102:18 128:22
156:23 198:12 210:14	manifest 167:14	224:7	mega 193:23
224:21,23 225:10	manifesting 98:10	matters 42:10,13 46:10	MEHLSACK 13:17
230:7 231:6	manifests 167:5	46:14 94:3,6,14 188:11	meld 96:1
low 70:9,10	manner 52:1 64:18	189:2 197:25 204:2	melting 55:23 186:14
Lowenstein 213:8	<b>manner</b> 32.1 04.10	226:13	member 112:7,17

<b>members</b> 102:9,13 107:6	181:17,20,24 182:1	moment 86:24 101:14	226:19,23 227:8
109:3 112:15 169:20	181.17,20,24 182.1	104:13 105:17 120:21	228:13,18 235:5
230:20	206:19	140:16 152:5 194:5	motions 177:15
membership 142:19	<b>Miller's</b> 58:4	204:14	motivated 57:21
182:21	million 50:13,14 64:20	momentarily 133:7	Motor 27:12 28:3 29:3
Memphis 123:20	71:8 86:14,20,21 98:25	Monday 202:10,14	29:14 34:3 95:23
Mennen 21:12 26:4	108:9 110:8 119:9,12	monetary 89:9 91:23,25	203:15 211:25
mention 50:16 233:18	119:18,20 124:8	92:15 135:18	<b>Motors</b> 1:8 3:4,15 39:8
mentioning 75:9 233:19	144:15 150:4 154:7,15	money 70:24 83:22 84:4	39:23 56:23 76:10
mere 92:4	154:15,15 170:15	84:5,7,8,10 92:9	78:10 80:25 83:9,12
merely 66:2	172:12	113:13 117:24 118:11	84:9 85:15,15 86:3,3
meritorious 168:4	millions 210:13	118:17 119:12,14,14	87:4,9 88:20,21 92:20
merits 91:14 168:1,10	million-plus 154:9	129:14 136:1 154:17	97:16 98:3 137:20
message 74:9 228:21	mind 46:5 108:16 110:15	155:15 164:2 171:16	138:16 144:14,23
messes 60:24	134:6 144:11 152:11	174:12 177:21,24	149:6 170:11 203:12
Messina 114:9	232:17	178:6 182:13 186:8	205:17 217:18,21
met 73:15	minds 128:22	210:12 233:5	<b>MOTT</b> 36:11
Metal 80:13,13,17	Mineola 236:18	<b>monies</b> 187:5,6	<b>mouth</b> 94:17
methodology 118:5	minimum 49:11 139:25	Monster 34:12	movants 46:20
<b>MEYER</b> 16:2	195:12,13	month 47:12 57:7,8	move 76:7,17 112:20,20
<b>MI</b> 3:18 12:6 21:15 24:7	<b>minor</b> 46:10	170:16 172:13 174:1	177:2,6 204:25
26:7 29:7 32:16 33:5	minute 116:19 134:21	177:7 178:12 186:4,5	moved 131:22 203:10,11
33:13 34:6 38:15	224:24	<b>months</b> 76:11	203:12,14,16 204:17,18
Michael 18:17 19:24	minutes 101:21 119:25	<b>Montis</b> 12:19	206:8,19 207:3
23:8 37:7 47:7 141:5	120:1 224:8,10	<b>moot</b> 222:15	<b>moves</b> 177:15
Michigan 21:10 26:2,3	<b>Mirant</b> 135:13	Moraine 80:12	<b>moving</b> 69:25 131:23
33:4 104:23,25 105:1,5	<b>Mirax</b> 141:17	Morgan 23:19	152:24,25 179:17
171:10,14 202:2	misses 124:6	morning 39:2,3,6 40:10	<b>MPA</b> 191:3,11 216:7,11
220:14,21 221:3,4,7,9	missing 160:2,2,3	42:11 43:10 44:15,18	216:19
221:12,14,23 222:13,21	misstated 107:7	45:16 47:6,9 101:23	<b>MSPA</b> 136:11
222:24	mistaken 224:18	102:19 112:4,24 113:4	<b>Mt</b> 22:11
microphone 93:7	mistakes 203:24	114:3 123:15 125:21	<b>Mullane</b> 99:17,18
microphones 225:22	misunderstanding 94:8	132:25 171:9 198:22	Multimatic 12:3
<b>middle</b> 169:16	misunderstood 92:2	206:10 210:1 218:16	<b>multiple</b> 128:21 201:21
mightily 172:18	94:24	225:13,22 229:12	MURRAY 4:15 14:11
<b>migrate</b> 162:22	mitigation 169:18	231:1,11 232:11	musical 63:9
<b>Mike</b> 221:3	MITTENDORF 23:17	morning's 174:4	N
milestone 141:11 163:13	modification 68:9	MORRIS 27:17 34:11	
Miller 3:8,14 34:2 39:3,7	206:15	mortgaged 79:23,25	N 3:2 19:16 24:19 31:8
58:2,18 89:25 90:1	modifications 143:1	<b>Motif</b> 116:17,24,24	34:8,17 39:1 235:1,3
97:6 109:15 113:11	154:1	117:3,7,9 119:4,25	236:2 Na <b>Galia</b> 4:17 101:24
123:9 125:20 131:15	modified 45:22 89:14	120:2,5,10,24 121:5,7	<b>Naftalis</b> 4:17 101:24 230:5
132:10 133:15 134:15	153:23 200:1 227:13	121:10	230:5 name 91:4 93:13 104:13
134:19 141:2 142:3	modify 66:20 92:22	<b>motion</b> 2:2,6 39:12,17	116:24,24 183:16
145:7,8,9 150:16,18,21	227:19	76:6 102:8 122:7,7,8	187:12 210:17 220:20
150:23 151:7 156:3	<b>modifying</b> 46:17 90:15	129:11,20 135:5	220:22
158:20 159:19 162:9	Moers 4:24 101:24	140:24 159:8 172:8	named 155:18 202:11
166:3,17 167:23 172:7	Mohawk 33:19	199:25 224:18,20	nameu 133.10 202.11
		-	-

	_	_	
names 175:9	159:14 193:1 215:14	152:21,21,21,24,25	non-duplicative 121:25
narrative 105:10	234:2,15	153:7 171:11,13,14,15	Non-I 227:2
narrow 90:25 106:6	negative 56:5 155:16	172:16,17 173:4,16,21	non-recourse 103:13
narrowed 59:14	173:17	174:4 184:13 185:3,19	non-repetitive 123:12
narrowing 151:3	neglected 107:6	186:9,10 187:11	non-resolved 125:23
narrowly 157:16	negotiate 60:14 70:2	197:23 201:17 202:10	<b>non-UAW</b> 227:1
Nashville 27:6	88:23 146:13 155:12	206:1 211:3,24 218:15	<b>noon</b> 219:12
nation 156:19	negotiated 49:10,14	221:6 222:2 223:8	Normaji 116:24
national 3:16 16:20 17:5	70:23 107:7 151:21	<b>NEWBOLD</b> 25:16	<b>normal</b> 71:10 72:17
112:5,16,16 114:10	152:2	<b>NewCo</b> 136:10,19	Normally 228:5
132:22	negotiating 49:4 105:19	171:11 216:21	<b>NORMAN</b> 16:18
nationalization 74:2	108:18 188:1	<b>news</b> 133:20	North 4:12 10:15 15:20
nationalize 72:9	negotiation 83:5 152:1	newspapers 99:12,14	21:4 24:4 33:4 80:15
nationwide 156:20	230:7	<b>NEYSA</b> 35:8	80:15
nation's 74:10	negotiations 49:5 72:18	NGMCO 221:13,19	northern 114:11
nature 90:19 98:14	72:21 146:10 151:19	<b>NGMCO's</b> 221:6,8	Northwest 12:12 93:17
105:18 121:25 182:6	169:23 182:7 188:2	222:4	<b>note</b> 44:10 107:19
191:15 227:14	198:15 221:8 229:6	nicely 113:11	119:20 139:18 145:18
<b>NCR</b> 32:3	negotiators 49:2	night 89:20 101:14	166:19 184:3 201:2
near 119:24	neither 155:5	105:11,13 132:25	203:8 211:13 217:13
nearly 61:5	Nemours 10:14	198:19 202:14 225:14	223:19,21 224:8
necessarily 133:10,12	network 66:9	nine 61:5 119:12,18	<b>noted</b> 96:20 159:22,24
136:2 199:23 229:24	NEUWIRTH 3:11	123:17	160:10 167:20
necessary 40:21 126:16	never 71:23 117:10	nineteen 69:19	<b>notes</b> 76:21
137:2 160:12,16 171:6	118:11,14 130:13	ninety 50:15 51:1 52:10	<b>notice</b> 89:20 97:12 98:20
173:2 191:21 206:25	155:18 157:2 162:17	54:8 56:8 58:19 64:2	98:21,22,23 99:4,7,12
209:19 221:12	177:20	64:25 65:9,14 176:18	99:14,15,22 100:8,9,21
necessity 159:14	<b>new</b> 1:3,16,16 3:6 4:6,20	177:3	166:6,20 203:24
need 42:4,6 48:11,12	5:6,13,15 6:9 7:5,12	<b>nits</b> 230:13	207:15,17 208:11
54:19,19 55:1,17 56:1	8:6 9:7,16,23 11:4,6	<b>NJ</b> 12:22 26:18	212:2,3 228:6
56:11 60:13 63:10	13:5,15 14:3,6,15,23	<b>nobody's</b> 187:1 213:2	<b>noticed</b> 209:9 226:21
75:14 84:21 91:19	16:6 18:6,15 19:14	<b>nod</b> 214:1	<b>notices</b> 126:19
92:11 93:7 101:12,16	20:3,6 21:19 22:2,5	nodding 105:7	<b>notify</b> 106:12
105:2 115:17,21 120:3	23:6,13,22 26:12,13	<b>NOL</b> 156:2	<b>notifying</b> 207:17,19
127:1,2 129:2 131:22	28:5 48:10,11,14 49:3	Nolan 89:13,22	<b>notion</b> 195:8 196:10
132:4 134:1,3 144:16	49:4 52:17,19,21 53:19	nominated 230:21	198:4
157:20 184:25 188:17	56:1,18 58:15 63:18,19	<b>non</b> 123:10	notoriety 178:20
188:19,25 218:7	63:24 67:18 71:24	nonassigned 216:8	notwithstanding 110:24
220:17 222:24 223:19	72:14,15,22 73:13	nonassumed 216:4	153:21 156:20 178:20
223:21,21 224:12	76:22,23 86:3 89:18	nonbankruptcy 158:24	<b>novel</b> 171:20
231:20,20 232:23,25	96:8 104:24 111:21	<b>noncure</b> 215:25	<b>nullify</b> 115:12
234:7	113:5,12,16 114:8,9,20	nondebtor 195:18 216:3	<b>number</b> 39:22 41:1
needed 49:11 103:7,11	117:21 119:10 122:8	nonexclusive 54:20 78:8	45:18 51:7,12,12 56:11
105:3 174:22 219:10	122:18,21,25 123:3	nonobjecting 227:3	64:23 85:4,5,11,12,19
233:19	126:8,11 129:21 130:7	nonsale 179:18	85:23 95:15 128:14
needs 48:10 54:11 63:1	130:20 135:12 137:3	non-approval 164:17	170:17 193:24,25
64:8 76:25 82:2 87:13	138:17 143:10,12,17,18	non-choice 62:19	194:11 196:25 204:2
117:12 127:9 148:12	143:24 149:8,8 152:6,6	<b>non-cure</b> 125:23	204:13 219:23
	1	1	

numbers 77:17 85:9,25	210:6 213:10 214:17	occurs 45:24	234:1,10
86:5 126:21,21,21	215:25 216:1,13	<b>Ocean</b> 15:20	<b>okays</b> 234:6
170:4	218:15,19,24 219:8	<b>OEM</b> 173:22	old 48:11,14 72:22 96:8
numerator 109:20	220:9 221:5 228:7	offense 95:2	104:17,25 107:16
<b>NUMMI</b> 212:1,1,16,20	objections 46:24 51:22	offer 59:17 60:1 122:12	119:18,22 122:18,21,25
212:22	59:1 74:22 76:2 93:17	169:7,8 179:5 190:5	126:12 143:18 145:23
<b>NW</b> 16:21 17:7,16 18:21	93:23 94:5 95:6 99:11	218:14	152:10,19,23 153:6
19:21 24:14	107:1,4 116:21 133:5	offered 170:10 227:14,15	165:18 172:18 173:16
NY 3:6 4:6,20 5:6,15 6:9	140:15 196:1 199:11	offering 49:20 59:15	174:20 222:5 230:17
7:5,12 8:6 9:7,16,23	201:6,21 202:4,9,23	180:21	236:16
11:6 13:5,15,23 14:6	203:19 204:4,8,18,20	offers 180:22,23	<b>OldCo</b> 136:9,16,17 165:5
14:15,23 16:6,16 18:6	204:24 205:8,11	office 5:3,12 21:11,20	165:8,18,20,23 170:14
18:15 19:14 20:6 21:22	207:10 209:6,7 219:23	22:3 25:2,11 26:2,12	171:8,8 172:4,6,14
22:5 23:6,13,22 28:5	220:1,2,8 228:6	27:2,4,11 35:2,11,13	183:1,4 184:21
33:21 236:18	objective 50:23 153:16	116:9 131:21 218:13	<b>OLIVER</b> 15:18,24
<b>N.A</b> 9:13	154:12	officer 153:23	<b>Omanna</b> 23:18
<b>N.V</b> 9:13	objectives 53:2 157:21	<b>OFFICES</b> 15:18	ombudsman 112:24
<b>N.W</b> 7:18 8:12 12:13	160:24	official 4:18 101:25	113:1 196:22
16:11	<b>objector</b> 146:1 148:5,13	112:7	ombudsman's 196:13
<b>N319</b> 16:15	174:13,14	officio 112:17	omissions 203:25
	<b>objectors</b> 42:21 43:15,22	<b>oh</b> 35:16 42:1 79:20	omitted 107:8
0	113:11,12 143:10	84:21 95:10 167:21	omnibus 93:19
<b>O</b> 1:22 26:9 39:1 236:2	145:18,20 146:4,5,18	176:17 189:23	<b>once</b> 53:14 72:10 155:6
<b>Obama's</b> 180:2	147:9,23 160:22	<b>Ohio</b> 35:11,12 37:11	161:22 186:15 220:12
<b>obey</b> 66:13	180:10	122:3,5,9,20,25 123:1,6	onerous 61:22
<b>object</b> 76:1 83:24 84:1,1	obligated 65:2,11	217:13	ones 76:9 198:19 205:12
89:25 108:22 209:12	obligation 79:15,16	okay 40:8 41:14 42:7	219:13 232:25
213:13,18	88:14 89:9,9 91:23,25	44:1,14 45:14 46:22	one's 211:4
<b>objected</b> 76:1 95:15	92:15 108:25 122:22	65:16,22 69:17 74:19	ongoing 106:6 146:22
228:22	124:11 135:18 136:6	75:6,15 78:7 79:6 90:2	172:21 195:4,17
<b>objecting</b> 60:4 76:16,17	157:3 174:20 175:16	93:2 95:5 101:20	197:16 204:24 221:6
76:18 85:1 146:3	184:5	106:16,20 107:5 112:3	221:16 223:14
183:15 227:4,15	obligations 45:5,7,12	113:3 116:3,6,14 121:9	<b>online</b> 201:23 219:12
<b>objection</b> 39:12,17 44:19	79:14 81:6 122:9,19,23	123:7 125:7 129:4	<b>Ontario</b> 73:12 141:6
45:1 76:13 83:8,15	135:25 154:21 171:12	132:8 134:5,14 136:18	<b>OPEB</b> 169:16
84:6 86:25 87:24 88:13	171:24 175:22 184:7,8	136:21 145:4 181:25	<b>open</b> 64:6 176:24 204:10
93:19 95:10 102:8,11	187:23 190:9 191:9	185:5 188:25 189:10	operate 48:10 53:24
102:12,15 105:24	221:7 222:5 223:15	189:13,23 190:21	137:2 153:14 222:23
106:18 108:24 111:25	observed 222:8	191:23 192:1,10,25	operating 13:11 117:24
112:10 113:8 116:11	obtained 203:5	200:4,16,21 205:13	operation 151:9 153:7
117:8 123:10,21,23	<b>obviously</b> 83:1 87:1	206:6,7 209:20 211:2	173:2
124:2 125:24 126:1,7	106:10 115:21 153:18	213:4,21 214:2,4 215:6	operations 56:19 117:16
126:13,14 128:25	172:15 194:14 198:2	215:8,18,22 216:14	117:19 151:2 169:19
129:3 130:24 136:4,5	212:17 233:20	217:5 218:6,10 219:1	172:21 174:13 221:14
136:13 148:14 192:7,9	<b>OBWC</b> 122:6,8,20 123:5	219:18 220:3,10,25	operative 67:22
192:11 193:12 196:5	оссиру 153:6	223:25 224:11 226:6	<b>opinion</b> 49:13,16,17
205:25 206:5,20	occurred 45:6 57:10	227:25 228:19 229:2	54:24 58:4 62:1 70:15
207:18,18 208:1,7,12	159:24	231:9 232:5,7 233:5,12	121:11 135:12 143:12
	1	l	1

Page	265

			Fage 200
150:19 151:20 156:12	222:22 224:9,21,25	<b>PA</b> 15:5 20:22 22:12	14:5 23:12 36:4,13
157:10 176:14 180:25	226:21 228:14,21,24	32:7 36:6 37:5	Parker 15:18,24 42:20
opinions 145:15	229:16 230:16 231:24	pace 186:2	43:3 46:20 74:15,16,19
opponents 44:1	232:12,16,20 233:21,22	PACFILLA 25:8	75:6,9,11,15,19 77:19
opportunity 59:15,16	232.12,10,20 233.21,22	Pacific 11:3 215:21,23	77:23 78:4 79:1,3,6
63:2 70:1 88:23 137:18	ordered 225:25 226:2	pack 89:14	81:11,15,22,24 82:23
204:23 207:20	orderly 137:25	package 68:21 196:4	83:1 108:10 110:17
oppose 122:7 186:17	orders 114:13,21,21	Packard 28:11 204:17	117:5 120:23 181:4,6,8
opposed 106:19 142:4	160:12,17 234:13	packs 51:8	182:4,16 188:3
210:9	ordinary 130:21 151:1	Paddock 112:7	Parker's 42:17 77:1
opposition 106:24	original 77:20 179:7	PADOCK 34:2	part 63:11,11 64:24 68:4
oppressive 72:20	originally 106:24	page 77:5,16 78:14,19,23	93:18 104:6 108:18
opted 215:12	Orrick 17:13 18:2 112:5	85:3,6 86:7 90:12 99:9	114:11 119:18 143:1,6
optimistic 199:1	Ottawa 21:13 26:6	133:24 135:13 142:18	153:16 158:22 163:16
option 58:14 62:4,10	ought 156:23	142:19 143:2,6 169:11	166:25 167:2 175:5
147:18,20 179:8	outcome 110:20	169:12,14 203:9,10,10	185:14 186:9 196:2,2,3
options 53:17 62:2,9	outlined 112:1	203:13,14,15,16 204:15	196:8 212:20 218:16
65:24	outlines 104:19	204:17 235:4	218:21,22
oral 75:1 76:8 116:20	outset 65:10 109:23	pages 202:23	parte 106:11
orally 75:3	outside 53:3 71:13	pagination 77:19,20	partially 93:22 120:14
Orange 10:15	150:25 151:1 162:19	78:15	120:15 185:16
orchestra 63:10	outstanding 206:3	paid 86:9 87:13 129:24	partic 70:4
order 2:2 39:11,14,16	overall 57:4 68:2 72:18	130:4,6 179:19 197:4,8	participate 72:17
40:22 41:20 42:3 48:9	196:4,6	197:16,18	participation 119:7
53:16 60:9 64:4 65:24	overarching 145:10,17	<b>Pair</b> 158:13	190:4,6,8,11 191:20
66:22 67:9 70:20 73:19	overbearing 60:11 73:19	palatable 178:18	213:12
78:11 81:25 83:23 88:8	73:21	pale 95:20	particular 42:15 65:6
90:7,24 91:16 96:11,12	overborne 60:15	paper 211:8 225:18	67:7 107:1 109:6,13
96:21 97:13,18 98:23	overly 114:1	234:2	118:17 129:17 142:3
102:16 104:23 107:2	overreach 60:12	papers 75:2,4 106:24	148:12 155:19
113:2,15,19 114:1,3,6	overrides 91:16	107:3 108:12 109:5,7	particularly 42:21 55:17
115:5,8,12 123:2	overriding 63:21 127:4	115:25 116:23 123:25	55:19 71:21 98:8
129:11,20 133:2,6	overruled 99:11	133:17 134:7 140:2	132:17 155:5 232:9
134:22 135:10 138:6	oversight 93:19	168:24 218:20	parties 40:4 41:6 44:22
139:10,10 161:5,16,18	overturn 199:5,15	par 120:22 121:16	56:10 61:17 63:16
161:19 163:15 164:6	owe 92:7	<b>paragraph</b> 56:15 78:5	64:24 70:1 71:22 72:23
165:16 166:3,15	owed 85:24 87:10 122:25	114:2 143:12 184:4	73:2,5,12 90:18,19
167:17 173:14 183:22	191:9	190:15,22 191:1 222:2	91:2 104:11 106:7
183:23 184:4,5 189:8	<b>owee</b> 174:9	222:3,8,16 223:3,9	107:20 109:6 125:9
190:3 191:3,12 192:5,6	owned 179:22 185:16	paragraphs 189:24	128:19 153:9,10
193:24 194:5 196:24	owner 49:4 63:19	190:2,23	155:11 156:13 176:11
197:5,10,12,14 198:16	ownership 73:10	Paramus 12:22	176:18 180:13 195:18
199:9,20,21,22 200:1,1	owning 213:9	paraphrase 146:9	199:14 202:3,5,8
200:7,8 203:21 204:6	<b>O'DORISIO</b> 20:10	216:23	203:23 204:11,23
207:6,15,16 210:2	P	paraphrasing 216:19	207:5,12,17 212:7
214:14,16,18,21,22,24		parcel 143:7	214:23 215:3,16 216:4
215:3 216:2,6,17,23,24	<b>P</b> 3:2,2 18:17 20:8 39:1	Pardon 81:22 121:5	221:18 225:12,17
218:17 220:7 222:1,7,8	221:1	<b>Park</b> 7:4 8:4 13:4,21	227:16 231:7 232:4
	1		I

Page 26	56
---------	----

			Page 200
parties-in 138:2	109:17 114:20 125:1	pertaining 55:10	71:13,14,15,16,16,19
parties-in-interest 72:20	126:23 133:22 134:12	pertinent 217:22	73:6,19 82:17,19 88:24
226:8	152:23 168:16 177:14	Peter 7:21 221:1	95:16 104:4,5,8,17
partly 75:25	180:6 188:18 194:23	<b>PETERS</b> 30:2	111:4,5,8 126:5 127:7
partner 102:3	194:25 198:12 201:2,3	petition 45:7 150:5	129:8,13 137:10,22
partners 31:13 102:21	209:18,21 231:13	<b>PGW</b> 30:3	145:24 151:1 165:6,19
149:22	232:25	ph 80:14,15 135:12	167:2 176:22,23,24
Partnership 203:9	<b>PEPPER</b> 36:2	183:12 207:2	177:8 178:5 180:4,16
parts 178:24 218:15	perceive 146:4	phase 172:14 203:12,13	185:14
party 28:3 33:3 54:10	percent 71:7,8 87:14	<b>Philadelphia</b> 15:5 20:22	<b>plane</b> 189:16
61:15 108:19 125:10	108:6 151:24 165:11	32:7	planned 111:1
128:20,21 178:24,25	174:1 186:5,6 194:23	<b>PHILIP</b> 23:15	planning 134:10
192:7	194:25	Phillips 102:20	plans 50:17 51:4 52:12
<b>party-in</b> 160:14	perception 125:11	phone 127:14	58:22 138:17 182:13
party-in-interest 81:13	130:16	phrase 117:11,16	plant 79:12 206:22
passed 228:6 233:19	<b>PERDUE</b> 36:11	phrased 194:6	217:13
passing 129:14	perfect 78:11 81:16 95:2	pick 87:17 104:15	Planter's 158:1
pat 95:17	157:22 194:14	127:14 171:11	<b>plants</b> 80:18 173:2
PATRICK 4:8	perfects 181:15	picked 88:17 196:11	184:13,21
<b>Patton</b> 18:11,19 19:2	perform 67:17	197:13	Plastic 23:18
47:7	performance 57:4,7	PICKERING 23:10	play 69:4 147:9 170:4
<b>Paul</b> 19:11 108:5 109:4	75:24,25 122:23 191:9	picking 88:15 127:21	174:16 178:7 229:6
229:19 233:14,20	<b>peril</b> 157:13	<b>pie</b> 109:16,17,24 148:11	<b>played</b> 157:23
<b>Pause</b> 50:9,25 65:5 67:13	<b>period</b> 39:25 40:2 50:15	piece 67:14 195:16 197:1	<b>player</b> 165:12
69:17 89:24 101:11	51:15 55:25 57:5 98:9	198:2	Plaza 9:6
116:7 127:13 216:14	99:1 103:23,24 104:3,4	pieces 137:2 196:6,25	<b>plc</b> 9:14
225:20	104:7 179:21 186:6	Pierburg 206:8	<b>plea</b> 171:19
<b>pay</b> 45:7 86:14 87:11	194:12 201:19	piercing 156:20	pleading 74:25
92:9 129:15 130:20	periods 45:10 103:23	<b>pink</b> 43:23	please 39:5 50:9 65:5
136:1,8 154:19 158:12	104:6	<b>PIPER</b> 11:10 28:10	67:13 69:5,17 81:23
183:12 231:13	perishability 56:20	<b>Pitt</b> 80:15	89:24 93:8 111:17
paychecks 172:20	perishable 59:17	Pittsburg 80:13	127:13 206:6 211:22
paying 85:8,14,17 86:13	permanent 104:16	Pittsburgh 22:12	216:14 220:23
116:25 130:7 170:15	permeated 149:19	place 13:21 14:13 50:20	pleased 39:15 102:1,17
231:15	permissible 139:22	50:20 51:19 52:19	plenty 40:18
payment 86:23 103:11	permit 48:3 128:6 223:6	114:12 137:13 138:6	PLIFKA 22:16
122:23	permits 40:2	144:22	PLLC 12:2 38:11
payments 213:19	permitted 72:12 95:21	places 82:11,12	plugged 53:14
<b>PAYNE</b> 22:9,14	person 80:1 104:14	plain 157:15 158:8	<b>plugging</b> 75:4
<b>PC</b> 14:11 20:10 33:18	180:21 188:19 223:23	plainly 138:12	<b>plus</b> 87:7 110:9 111:10
80:16 BDC 90:15 15 17	223:23 233:16,17	Plaintiffs 16:3	119:19,20 183:5
<b>PDC</b> 80:15,15,17 <b>Poning</b> 80:17 236:12	personal 78:6 166:6	plaintiff's 91:12,14	<b>PM</b> 234:19
Penina 89:17 236:12 Ponnsylvania 155:7	personally 86:18 personalty 78:8,9	163:4 plan 49:23,24 50:4,7,18	<b>point</b> 58:4,6 61:9,18 68:19 69:18 71:20 76:7
Pennsylvania 155:7 pension 19:19 23:11	persons 155:8 164:3	50:19,22 51:2,19 52:4	79:7 81:5 83:8 84:19
168:2 182:12	perspective 59:21 115:18	52:25 53:6,10,20 54:4	84:21 88:3 90:9 94:16
people 41:7 46:9,18	115:19 149:1 232:5	58:11,12,12,16 59:3,4,9	97:9 100:7,19 101:5
51:13 62:22 107:7	persuasive 164:25	69:4,7,11,16 71:4,6,12	106:16 115:23 119:5
51.15 02.22 107.7	PUI SUASING 107.23	07.7,1,11,10 /1.7,0,12	100,10 113,23 117,3
L			

120:23,25 123:24 124:6.12 125:14 133:25 134:13 135:12 141:7 142:3 143:13 147:20 162:3 163:10 169:17 170:11 183:21 188:23 194:10 197:7 197:20 198:24 199:3 200:15 216:18 224:7 pointed 97:6 144:24 146:18 148:25 166:5 185:22 points 64:6 74:22,23 75:7,21,21 95:14,22 117:5 119:3 120:11 124:1 129:4 131:4 134:11 **poker** 174:16 police 113:15,24 114:6 115:6.13 183:24 **policies** 157:22 160:22 politically 64:18 **POLK 28:2 Pollack** 234:14 **Pontiac** 80:15.15 **poof** 59:8 population 169:19,21 **portion** 137:20 147:12 187:6 193:20 218:19 218:24 posited 155:10 position 60:14 71:22 100:14 102:12 105:25 127:4 133:5,10,23 141:4 149:2 155:17 164:13 180:22 182:20 183:7 199:5 215:5 229:16 **Posner** 155:2,4,18 156:9 156:11,14,21,23 **possibility** 50:1 53:19 62:14 147:14 177:18 possible 44:13 47:1 84:20 101:15 106:7 112:21 137:3,14,17 225:24 **post** 40:2 post-Chapter 178:21

post-closing 109:19 195:18 post-consummation 104:17 post-petition 130:13 151:8 201:18 post-sixty-five 170:8 potential 49:25 62:15 96:9 98:14,19 99:2,10 109:22 147:15 149:8 154:6 165:22 171:9 184:24 185:24 potentially 92:21 105:6 108:23 110:19 **pound** 147:24 power 48:17 59:20 61:23 62:18,21 66:16 74:3,4 156:6 160:11,23 161:4 161:21 164:20 183:24 201:15 powerful 64:2 73:25 74:9 powers 97:24 101:7 113:15,24 115:6 158:23 160:4 164:20 193:20 practical 41:5 **practice** 149:19 Pratt 206:19 pre 45:6 51:7 150:4 151:8 preceded 65:16 precedent 156:16 164:6 preceding 190:23 precise 103:25 precisely 159:1 preclude 160:15 predecessor 75:15 predecessors 93:11 146:19 predetermine 71:6 predetermining 71:14 71:15 **predicted** 56:8,25 **predictions** 56:12 57:2 **prefer** 85:12 **preferable** 199:12,13 preferences 158:24

preferred 86:5 prejudge 224:20 prejudice 102:12 136:15 prejudiced 147:8 premises 44:21 prepare 76:6,11 176:1 prepared 58:20 102:7 103:21 111:24 116:13 192:3.8 216:12 222:25 231:23 prepetition 69:9 prerogative 73:14 present 41:3,19 46:24 53:18 58:14 64:13 73:13 96:11 98:6 128:25 129:2 130:23 158:4 presentation 110:24 presentations 175:19 presented 40:12 50:5 53:9 99:19 108:17,21 140:23 143:14.16 148:7 222:1 presently 98:13 99:3 227:4 preservation 146:20 preserve 54:19 55:17 74:23 108:14 110:22 174:22 207:8 preserving 62:6 president 55:2 180:1.5 200:14 presidential 200:12 press 65:13 pressure 66:18 pressures 62:25 presumably 69:4 presume 56:7 pretext 73:6 pretty 154:15 167:11 196:18 232:18 prevent 160:18 preventing 222:9 previously 82:18 85:25 103:5,9 105:20 pre-bankruptcy 55:25 pre-Chapter 178:21 pre-closing 45:6,10

pre-nego 52:12 pre-negotiated 50:17,19 50:22 51:2,4,5,19 52:12 58:12.22 pre-packs 50:17 52:11 58:22 pre-petition 45:10 63:25 69:19,24 70:3 119:9 130:13 149:16,17 201:18 price 23:2 49:9 70:20 71:1 85:1,15 87:24 119:15,19 124:10,13,22 141:5 151:13 179:19 191:9 primarily 102:20 primary 74:4 prime 205:18 principal 47:8 49:2,3 63:16 103:19 107:14 161:11 166:16 232:25 principals 118:4 160:9 **principle** 104:5 154:25 171:4 220:15 229:10 principles 55:4 72:8 136:24 139:25 148:5 **printed** 155:14 prior 44:21 45:24 129:23 130:8 priorities 114:10 **priority** 70:3 123:18 privacy 112:24 113:1 196:12.13.13.22 **private** 178:22 privilege 193:6 pro 15:19 87:5 proactively 202:3 probability 146:23 168:3 probable 168:5 201:14 probably 125:9 134:10 143:11 195:1 probl 84:15 problem 41:5 86:10 98:18 121:2,15 127:19 128:3,14,24 130:25 144:23 166:18 177:12 185:3 208:21 209:1 214:3,20 219:14

225:22 229:24 problematic 132:3 problems 45:14 84:15 126:18 172:18 184:14 193:23.24 procedure 82:16 84:2 87:20 208:10 215:11 215:12,13 procedures 138:1 proceed 39:14 62:20 120:3 **proceeding** 55:10 81:2 84:16.25 88:6 91:22 100:9,10 104:1 137:5,7 145:1 149:3 152:3 177:16 185:7 **proceedings** 91:8 94:24 98:23 137:12 138:12 140:18 148:2 160:10 165:17 176:5.16 234:19 236:5 proceeds 61:3 84:25 103:5,8 110:9 process 44:11 45:21 50:4 53:20 57:18 58:1,11,12 58:19 59:3 60:9 63:22 69:4,7 71:13,15 72:17 72:24 73:6 74:11 76:1 76:2.4 97:13 98:19 100:1,21 106:6 110:13 110:14 111:2,4,5,8 123:22 130:3 131:23 133:3 137:25 160:12 160:18 174:10 176:17 177:20 178:4 179:9 188:4 194:21 201:10 201:16,17 207:7,10 208:2,4,8 222:24 processed 129:23 processes 100:19 **produce** 178:2 produced 70:15 181:9 product 10:3 17:3 98:8 149:13 190:7 194:13 230:7 products 30:3 56:16,23 96:4 141:18 professional 72:1

professionals 175:17 proffered 187:17.18 progeny 48:21 186:12 program 83:11 172:10 175:8 programmed 178:14 progress 202:15,17 203:7 225:11 progresses 137:22 **Progressive** 23:19 203:13 prohibited 81:17 projected 98:25 projections 186:4 **prolonged** 57:23,24 promised 221:7 prompt 164:5 pronounce 80:16 pronouncements 65:1,9 pronouncing 91:5 proof 124:8,15 proofs 125:1 proper 55:2 166:14 198:10 **properties** 78:12 82:6 120:15 174:22 property 42:23 78:6,22 78:24 79:10,11,15,18 79:19 80:6,8 95:19,21 97:20,22 113:21 117:23 120:18.19 121:18,19 124:11 149:25 167:1 prophecy 57:3 proposal 115:17 173:13 230:18 231:18 proposals 119:8 232:11 propose 203:25 207:15 219:24 proposed 47:25 62:10 84:2,16 85:7 99:12 111:21 113:14 129:20 170:9 184:4 189:7,8 190:3 192:6 210:1 214:22 222:1,8 223:6 224:25 228:14.21 229:16 230:20 234:13 proposing 192:15

proposition 54:25 148:18,18,19 171:25 propriety 54:21 prosecute 158:23 prosecuting 159:11 prospect 168:7 prospectus 77:2,4,6,8,9 protect 54:20 108:15 110:22 113:19 114:19 115:5 164:2 174:22 177:24 187:5 191:13 protected 40:5 53:1 113:25 protection 26:14 72:20 96:14 135:2 150:20 155:10 156:2 205:9 209:13 **protections** 47:18 59:9 97:4 100:22 101:3,3,6 161:15 protects 192:23 217:1 protestations 49:4 prove 61:14 82:1 proves 231:14 provide 42:18 44:13 72:3 72:4 78:11 90:6 92:23 97:17,23 99:14 100:1 100:20 115:11 122:22 122:22 123:4 132:1.4 135:4 138:1 167:3 187:15 204:1 205:20 227:10 provided 42:20 43:14 44:3 67:8 76:9 97:2,4 100:1 103:1 131:19 140:17 143:11 151:8 169:24 191:11 203:20 222:17,18 provides 76:22 78:8,10 98:4 100:22 126:3 161:5 175:20 215:23 **providing** 54:2 73:12 160:14 **provision** 42:21 76:24 77:7 122:21 155:12 160:20 167:17.18 181:22 190:8 197:11 222:7,11,20,21

**provisions** 42:14 48:12 60:17.20 61:11.22 71:17 72:13 114:1 139:17 160:13,13 189:8 190:10 191:3,12 194:1 195:6 216:11 229:11 233:9 Przekop-Shaw 220:19 220:20,24,24 221:1 222:16 223:13 224:3 **public** 17:2.6 52:19 53:25 54:6 56:9 64:1 65:14 101:14 113:20 179:11 **publication** 99:4,14,22 104:6 **publicly** 179:22 published 99:12 **PUDLIN** 32:2 **pulled** 212:10 **pulling** 193:13 punishable 92:21 purchase 60:17,17 83:9 84:4.5 87:24 105:9 117:10 119:15,19 122:18 124:10.13.22 136:25 139:2 143:21 144:3 146:15 148:23 149:5 150:3 154:12 179:19 191:9 222:6 **Purchased** 191:8.16 purchaser 46:1 48:20,23 48:25 53:22 54:11 61:13 63:2,3 64:3 68:8 73:9 83:3,4 139:13 146:7,11 148:24 149:10,16 150:6 151:11 152:11,16 153:13 154:10,14,18 162:21 172:24 173:3,9 173:15 179:6 180:2,23 182:4 183:1 184:11 186:9 187:2,4,25 190:9 190:24 191:8.13 192:13 196:24 201:14 201:19 210:17 220:8 purchasers 61:25 73:20 146:12 184:6

purchaser's 73:16
purchasing 48:6 137:1,2
205:17
pure 57:19 159:6
purported 181:1
purpose 75:1 86:24
160:6 188:15 216:6
<b>purposes</b> 50:8 136:3
137:15 139:20 160:24
179:2 182:13
pursuant 2:2,6 52:25
115:5 122:17 145:23
226:21
pursued 57:12 221:9
<b>pursuing</b> 214:17 <b>push</b> 60:19 62:22 63:20
73:17 212:6
<b>pushed</b> 61:11
put 43:12,23 50:12,22
69:10 101:14 120:17
120:19,21 121:14
131:21 144:22 176:5
177:24 178:6 188:17
189:1 206:13 209:3,7
210:14 231:7
<b>putting</b> 43:7 88:13
121:23 167:5 233:5
<b>P.C</b> 13:10 16:2 20:2
22:16 23:2 24:3 31:12
37:2 38:2
<b>P.L.C</b> 34:2
<b>p.m</b> 188:24,24
<b>P.O</b> 6:16 25:5 27:5
Q
quacks 96:24
qualified 151:11
qualify 158:10
quarter 77:3
question 42:16,17 43:1
47:14 55:16,16 59:20
64:6 68:22 83:19 86:19
89:21 92:2,3,11 99:20
101:1 121:10 130:7

69:7,11 98:22 105:21 115:25 134:24 135:3.5 148:5 194:7 231:24 quibbling 85:16 quick 40:15 47:19 186:22 207:10 quickly 44:7 52:17 54:2 56:1 57:18 62:9 84:20 112:20 135:4 144:16 232:16 **Quigley** 213:7,8,17 214:6 214:7 quintessentially 205:11 quite 69:25 85:19 104:15 181:11 **quote** 54:25 55:7 62:5 **quoted** 55:3 65:10 **quoting** 156:14 R **R** 1:22 3:2,8 4:15 13:25 21:17 29:9 30:8 39:1 235:3 236:2 **RACHEL** 26:20 **Radner** 149:20 rail 215:23 Railroad 11:3 raise 83:20 123:24 205:9 raised 44:20 45:1 62:4 69:11.14 74:22 92:3 120:5 134:12 136:4 141:8 166:12 173:24 182:10,12 189:9 194:17 198:4 217:24 raises 46:11 164:9 **raising** 92:3 136:16 160:14 166:5 **Raleigh** 43:12,24 Randolph 25:13 range 50:14 85:10 126:3 **rapid** 186:2 rapidly 50:18 **Rapids** 80:13 **RAPISARDI** 7:14 **rarely** 162:2 **ratable** 48:1,15 81:10 181:7 ratably 87:25

**rates** 154:3 **ratification** 142:17 143:3 143:3 153:23.25 rational 147:25 **rationale** 148:6.8 rationalization 182:19 **RAVIN** 12:18 **RBS** 9:13 206:24 217:10 217:17 reach 70:24 105:14,16 105:19 205:2 **reached** 99:5 116:12 122:10 189:6 198:15 199:22 223:9 reaching 168:5 202:3 react 64:17 read 40:19 67:23 68:19 76:25 117:17 121:2,4,6 121:10 147:12,13,13 158:6 174:4 189:21 195:15 196:13 232:17 reading 46:5 77:25 139:15 reads 122:8,20 ready 104:6 119:4 123:9 125:19 232:16 real 45:8 48:24 49:6,14 53:22 59:24 60:15 63:3 70:1,22 78:6 79:23,25 83:3,4,4,5 87:5,9 154:17 179:18 reality 118:12 194:24 realize 79:8 81:3 83:19 86:11 133:6 realized 121:2 219:9 reallocation 70:19 really 41:23 46:11 58:5 68:9 117:11 124:2 138:7 156:8.23 169:13 173:25 178:23 179:11 195:2 216:18 221:23 231:12 **Realty** 206:9 reason 40:14 57:16 88:10 105:16 118:25 150:24 187:21 199:7 213:23 214:14 reasonable 48:20 99:21

151:13 157:20 168:3 187:22 203:4 207:9 reasonableness 173:4 reasonably 100:15 199:1 **reasoning** 156:14 157:9 reasons 66:12,13 74:20 88:18 91:1 118:18 138:16 139:9 140:22 145:2 151:13 162:1 182:20 193:20 198:14 reasserted 183:4 **REATH** 12:10 **rebuttal** 123:25 133:12 recall 89:7 166:20 180:1 185:11 205:15 receivables 216:7,20 **receive** 145:22 148:22 153:15 160:6 received 126:24 131:16 143:18 207:24 212:2 224:8 receiving 47:23 143:17 172:9 receptive 155:23 recess 41:24 101:17,19 101:22 188:23,24 229:22 recharacterization 69:18 119:2 150:7 recharacterized 69:21 69:23 reciting 54:23 **recognize** 48:13 86:8 198:11 recognized 98:24 160:1 160:8 **recognizes** 74:7 146:1 recognizing 98:18 159:14 recom 198:17 recommendation 112:23 133:14 recommendations 113:1 recommended 198:17 recommends 196:18 **reconcile** 207:11 208:9.9 reconciliation 201:17 203:1.2

135:15

131:1 132:17 135:14

**questioning** 43:8 68:20

questions 64:10 67:12

		1	
reconstitute 148:9	reflected 55:14 90:20	relevant 42:18 90:12	202:7 219:24
record 42:13 44:25	reflecting 228:25	96:16 101:3 104:23	report 76:15 102:1,17
45:11,13 49:1 51:12,14	reflects 91:2 159:13	137:16 162:3	112:24 133:20 196:14
52:9 53:25 58:3,21	refusal 92:19	Reliability 17:5	196:15,17,18 218:12
67:2,24 68:1 101:14	refused 62:11 63:13	reliable 178:3	reported 106:13
112:9 116:8,13 121:24	regard 39:12 88:4,5	reliance 220:9	reporting 133:23
122:12 124:24 133:6	117:20 120:19 121:11	relied 95:24	represent 40:25 100:15
136:12 141:5 144:7	121:17,18 138:17	relief 97:8,10,12,14	107:10,11 111:4 112:5
145:11,14,16 148:1,11	223:13	114:22 131:2 140:1	112:7 113:6 115:24
149:10,13 151:18	regarding 200:18	228:13	140:19 166:10 212:16
153:8,21 164:14 169:2	regardless 67:23 130:21	reluctant 169:18	212:18,19
169:5,13 170:21	regards 138:15 221:10	<b>rely</b> 57:3 124:12,20	representation 175:1,2
174:25 175:13 176:2,4	222:21 223:14	146:22 156:13 175:16	221:20 228:22 232:24
176:8 180:8,18 181:9	regenerate 170:24	216:22	234:5
182:5,6,19 185:7,25	<b>Regis</b> 33:19	relying 77:11 156:12	representations 110:7
188:18 189:2,22	regulate 190:24 192:13	<b>rem</b> 162:14	231:11
193:10 195:15 201:2	223:8	remain 44:21 107:16	representative 100:2,5
202:24 203:8 206:13	regulations 122:20,24	137:12,24	146:24 227:11
209:3,8 215:11 217:13	123:6	remainder 125:4,12	<b>Representatives</b> 22:10
219:22 222:11,25	regulatory 113:15,24	remaining 88:14 129:4	<b>represented</b> 40:13 108:5
228:9 236:5	114:6 115:6,13 192:16	203:19	147:5 169:20 214:16
records 67:1 76:15	192:23 222:10,23	remains 106:25 198:9	representing 100:10,11
recoupment 216:3,9	223:11,14	214:16	100:12 135:1 148:15
<b>recover</b> 158:24 187:6	rehash 95:12	remarkably 135:21	212:14 229:20
recoverable 145:23	<b>Reinsel</b> 8:16 95:11,11	remarks 132:18 134:20	<b>represents</b> 108:6,8,16
<b>recoveries</b> 137:7 138:2	98:2 183:15	remedies 160:4	164:2 221:3
153:15 173:8 177:10	reiterated 164:13	remember 70:22	repute 152:23
177:10	reiterates 145:20	<b>remiss</b> 175:15	request 131:1 198:20,21
recovery 62:15 83:11	reject 40:1,4 88:19 172:2	removal 100:24	204:6 226:6
108:24 111:6,6,9	rejected 69:15 71:4	removes 71:12	requested 92:24 95:16
137:14 146:2 147:16	135:8,11 150:14	rendered 150:13	131:22,24 132:2
148:22 167:7	151:21	reorganization 72:24	161:18 165:16 166:4
redo 85:11	rejection 195:8	73:2 104:8,18 164:22	requests 151:20
refer 84:22 115:3 167:24	rejects 141:16	165:7 177:9 185:15	require 48:13 133:12
176:15 177:5 183:11	relate 45:6,9 206:22	reorganizations 72:16	138:23 157:19 196:20
196:10	related 47:13 66:16	155:23 156:1 157:18	207:23
reference 63:5 65:6	105:9 144:4 166:22	reorganize 88:20	required 49:8 54:3 61:12
75:12 129:10 139:14	184:23 191:11 201:7	repayment 103:5,9	92:9 97:13 122:25
145:14 162:6	209:6 216:8,20	repeat 65:5,7 75:2 76:25	154:11 157:11 194:22
references 145:16 176:3	relates 142:4 175:5	83:14 84:16	requirement 100:18
referred 98:17 147:11	226:19	repeated 120:22 173:10	123:4 172:1,3
161:22 162:10 163:10	relating 126:20 143:5	repeatedly 63:22	requirements 73:19 97:5
185:9 211:25	relationships 153:8	repeating 180:8	97:11,13 123:3 157:21
referring 59:1 85:2	relative 135:10 174:5	repetitive 123:11	223:16
168:23 200:6	relatively 46:10 169:20	<b>Repko</b> 58:15	requires 143:22,23
refers 78:16 84:24 165:6	186:22 release 115:12	replete 144:7 182:19	153:18 224:23
169:12 177:20	release 115:12	<b>replied</b> 155:16	rescinded 66:22 67:10
reflect 207:5 222:7 228:9	releasing 86:20,22	reply 46:20 124:1 132:9	154:2
			-

<b>rescue</b> 47:15,19,21,25	76:6 89:20 124:13	<b>Richard</b> 17:19 21:8	209:10 213:20,24
49:22 72:7	220:12 228:9	26:15	214:5 216:3,9 217:1
research 58:21 150:9	responsibilities 146:17	<b>Richman</b> 18:17 46:19	218:14 233:8
reservation 112:2,10	responsibility 104:25	47:4,6,7 50:9,16 51:16	<b>right-hand</b> 77:17 78:15
201:9 213:24 214:5	105:1 130:7 181:2	60:21 61:8 65:8,18,21	<b>RIOPELLE</b> 29:19
218:14	responsible 129:21	65:23 67:20 68:16,22	<b>rise</b> 42:24 49:25 80:1
reservations 111:12	162:22 184:14	69:6,24 70:11,13 74:14	91:22 141:13 163:18
reserve 110:11 133:9	rest 46:20 76:19 83:14	74:16,17 75:18,19	171:2
209:11,12 213:20	115:25 199:2	82:25 83:1,3 108:7	<b>rising</b> 94:13 131:7 174:7
214:17	resting 116:22	110:16 117:5 138:6,18	<b>risk</b> 46:11 111:9 138:21
reserves 105:8 209:10	restructure 54:13	142:6 147:11 164:9	146:23 148:2 162:5
resist 74:2	restructuring 47:16,18	173:24 175:25 177:20	risking 147:15,21
resistance 56:22	48:13 49:23 50:3,6,18	179:24 185:9 186:2	<b>risky</b> 138:19
resisted 169:17,25	53:10,12,15,23,25 59:8	<b>Richman's</b> 110:24 142:4	<b>RITA</b> 8:8
RESNICK 28:7	63:8	153:21 175:25 176:3	Road 32:14 36:5 38:4
resolicited 177:8	result 56:20 68:24 75:25	180:17,24	236:16
<b>resolution</b> 39:16 105:15	79:14 91:15 146:2	<b>riders</b> 127:6	Roanoke 44:17
129:1,1,2 133:3 193:11	149:5 157:24 159:8	<b>Rifkind</b> 19:11 233:14	<b>Robert</b> 1:23 3:20 4:25
203:4,5 207:7 208:2	168:9	<b>right</b> 39:9 41:22 47:4,11	14:9 18:8 30:17 39:6
212:17 220:14 230:12	resulted 173:13	48:7 52:6 67:14 68:20	40:10 44:15
resolutions 45:18	resulting 62:15 147:16	72:14 74:15 75:8,19	<b>ROBINSON</b> 20:2,10
resolvable 128:23	results 72:19,20 174:22	87:7 89:4,24 90:16,17	Rochnunis 183:12
resolve 93:22 123:23	resumed 102:19	93:4 98:2 105:5,23	<b>Roger</b> 17:20 112:4
191:10,16 204:8,21,22	retain 52:22 191:18	114:6 121:19 123:9,14	<b>Rogoff</b> 41:1,12
212:15 221:6	retained 191:13	125:19 127:22 128:1,8	role 108:23 146:15,16
resolved 93:22 112:13	retaining 191:7	132:8 133:9 135:23	153:5,5 157:22
127:18 133:17 203:2	retains 184:21 191:2	136:21 141:16 149:7	roll 110:19
resolves 220:8	rethink 155:17	152:11 155:9 157:7	rolling 60:23
resolving 39:11,17	retiree 62:7 144:5	161:24 162:1 163:10	romanette 79:4 81:13
195:25 221:10	151:23 154:9 169:18	163:17 170:12 172:8	181:18,21
resort 48:4	170:6,9,13,16 227:12	186:12 188:8,8 190:1	<b>Ron</b> 27:18 95:11 158:12
resources 51:18 58:24	227:13,24	190:14,15 191:24,25	<b>RONALD</b> 8:16
respect 42:16 43:11,12	retirees 147:5 169:1,9	192:18 196:3,17	room 92:7 179:1 194:10
71:22 91:10 99:10	170:5,8,12,19,20 171:3	197:19,21 199:16	<b>Rory's</b> 169:10
103:22 105:9 114:22	172:9 178:9,10 227:7	200:24 209:11,12	rosa 69:16 71:4,19 95:16
131:17 138:2 141:8	<b>Reuters</b> 156:10	213:6 214:17 215:18	<b>Rose</b> 12:19
151:22 155:4 156:15	revenue 27:3 56:20	217:2 219:19 220:12	<b>ROSENBAUM</b> 17:10
164:8,12 173:7 181:4,7	reversed 91:7 159:5 185:12	224:2,15 226:12 228:3	<b>Rosenberg</b> 19:16 233:12
181:10 183:16 191:16 193:25 194:20 195:8	review 110:11	229:8 230:19 232:13 233:4 234:12	233:13,14 <b>ROSNER</b> 31:17
199:18 201:20 202:9	reviewed 109:5 132:2		<b>ROSOFF</b> 4:23
206:17 209:14 217:25	216:17,25	<b>rightfully</b> 72:14 <b>rights</b> 40:4 47:17 49:25	<b>Ross</b> 19:4 31:4
219:7,10 222:19 223:3	reviewing 159:24 216:11	51:23 52:5 53:1 54:20	<b>ROTH</b> 37:2
219:7,10 222.19 225.5	revise 225:11	59:9 69:12 74:11 91:12	roughly 84:3 87:6,7,18
respects 90:18 191:6	revised 220:16 224:25	98:24 99:24 105:8	roulette 147:10 174:17
193:25 228:15	revolving 149:25	110:11 112:2,10 134:3	<b>Route</b> 12:21
respond 51:17 131:8	rewrite 136:11	141:10 146:25 166:25	row 126:21
response 49:17 52:15	Ricercke 18:3	184:8 201:9 207:8	<b>Roy</b> 6:19 116:3,4,8,8,15
		10110 20119 20710	

190:14,15 191:23,25	73:3,9,14 81:25 82:3,4	Saturn 80:22,22,23 81:1	211:24
192:4,16,19,21,22	82:16 84:2,25 85:1	81:8 82:7	school 145:10 155:22
193:1,2,4,6 195:24	87:20 88:19 92:23	saving 72:6	Schulman 95:7
Royal 9:13 22:11 206:21	93:17 95:16 96:1,14	saw 196:21 211:8	<b>Schwartz</b> 3:14 5:17 39:7
217:9	99:12 102:8,16 103:8	saying 59:8 79:20 87:15	81:12 132:16,19
<b>Roy's</b> 195:25	104:1,3,7 105:9 108:21	92:6 94:10 100:13	133:15 134:20,23
<b>Rubin</b> 236:11	108:22,24 109:11,14,16	118:13,17 124:17,19,20	135:23 136:17,19
<b>RUFF</b> 33:15	111:1 113:2,22 115:4	124:21 128:9,23	192:10,11,18 213:23
<b>Rufo</b> 90:11	122:7,8,17 123:3,21	130:19 133:19,22	232:7,9
<b>rule</b> 90:14,14,15 157:15	128:24 136:5 137:10	139:20 140:7 142:12	scope 161:21 162:14
158:8 172:7	137:13,19 139:11	147:23 161:8 162:12	198:6
<b>ruled</b> 182:10	140:24 143:21 144:2	166:23 171:20 178:1	Scotland 9:14 206:21
<b>rules</b> 2:7 60:23 90:21	145:3 146:14 148:7	183:23 195:8 200:8,11	217:10
118:16 122:20,24	150:18,25 151:3,12	says 42:23 43:3 52:16	<b>SCOTT</b> 38:17
123:6 160:17 172:21	162:4,20 164:6 166:1	64:3 66:2 78:23 79:11	Scranton 37:5
223:16	171:1 172:4 173:5	79:25 97:20 135:22	scratching 178:1
<b>ruling</b> 140:1,2,6,9	175:5 177:9 179:18	143:2 144:1 158:9,11	script 53:15
162:25 168:1,10	180:11 184:4 185:11	161:2 162:24 163:8	se 15:19 119:7
<b>run</b> 80:14 171:22 230:9	186:22 187:21,24	169:17 174:25 176:16	<b>Sea</b> 15:22
232:25	192:6 201:13 206:1	177:23 181:18,21	seamless 96:7 221:23
<b>running</b> 63:6 117:24	208:20 209:15 213:14	182:4 183:22 184:1	<b>Sean</b> 213:7
RUSSELL 20:8	213:18 214:14,16	193:22 200:2 216:19	<b>Sears</b> 15:11
<b>Russian</b> 147:9 174:16	215:25 216:2 222:6	scales 73:25	seats 39:4
<b>Rye</b> 16:16	224:17 227:21 230:9	Scalia 158:8	second 43:6 54:17,23
<b>R-Z-E</b> 221:1	230:17 233:21	scanned 210:21	55:6 67:14 70:5 77:15
	sales 54:21 55:24 110:9	scenario 137:4,17 165:13	79:9 81:24 86:12 88:12
<u> </u>	117:10 162:17 174:2	172:16	89:21 90:9 91:3,6
<b>S</b> 3:2 5:18 13:17 23:24	186:7 200:9 203:15	scenarios 76:10,11	102:14 120:20 121:18
24:18 39:1 235:3	salient 55:10 137:15	scenery 63:11	123:20 135:20 139:3,9
Sack 166:21	SALOMON 12:24	Schaeffer 13:20	139:15,19 150:12
Sacramento 25:6	salvage 164:1 187:7	schedule 78:12,17,21,22	154:24 156:7,21 157:4
sacrifice 66:8	SALZBERG 18:24	78:23 80:2,2,8 82:11	157:8 159:17 166:12
sacrificed 74:12	<b>San</b> 29:17 35:6	114:16 144:5 202:8,11	168:14 185:12,23
sacrificing 72:8 136:23	SANDER 22:22	202:16,22,23,25 204:1	195:4,23 215:9 228:10
safe 218:2	Sandler 213:8	204:4,4,15,19,19 208:1	233:16
safety 17:4,5 113:20	<b>Santa</b> 35:2,3 91:4	scheduled 82:11 201:24	Secondly 96:20 129:7
114:20	<b>SARTIN</b> 30:17	schedules 80:20 202:11	seconds 101:13 116:4
Saginaw 33:5	sat 145:12 193:9	202:14 207:4 217:21	122:13,14
Saint 33:19	satisfaction 94:12	<b>Schein</b> 23:8 141:1,2,5	secretary 65:13
sake 55:5	102:16 133:17 207:12	233:5,7	section 47:11 48:7 69:12
salaried 227:14	satisfactory 42:4 43:20	scheme 46:11 84:24	72:21 73:18 76:22,23
sale 2:10 39:12,13,17,24	200:22	113:23 182:16,18	78:5,7,10,14,16,17,19
39:24 47:11,18,19	satisfied 47:10 112:11	192:24 222:23	79:9,23,24 82:20 97:2
48:23 49:8,9,15 50:2,3	228:24 230:11	<b>SCHIFF</b> 37:10	97:8,23 98:4,4 99:25
51:20 53:13,14,15,17	satisfies 201:11	Schmidt 4:25 40:9,10,11	100:20,22 113:21
55:19 56:11 58:9 59:9	satisfy 148:12 224:12	40:18 41:11,15 42:8	139:3,23 144:1 150:4
61:22 62:3 63:10 64:4	satisfying 123:3	102:22 224:5,6,13	158:3,21,22 159:2,12
66:7,22 67:9 70:23	Saturday 225:14	Schnader 20:18 21:2	161:1,22 162:20 175:7

186:21 187:24 sections 42:18 171:21 secure 79:14.16 secured 51:5 69:19 85:18 85:20,22,25 86:2,8 87:11 120:11,13,14,14 120:15,16,16,18,19 121:19 124:3,8,15 125:2,3,11 149:2,3 151:11 181:14 securities 153:16.18 securitizations 205:19 205:21 security 42:14 77:14 79:14 122:22 123:4 149:24 151:9 181:12 181:15,15,19,23 see 56:9 60:16 63:14 67:8 78:20 88:21 89:21 90:7 101:21 110:23 115:8 145:19 174:18 175:23 186:23 201:3.23 219:19 220:12 233:23 seeing 196:17 seek 108:22 110:19 155:9 199:14 seeking 97:7 109:14 216:2 226:19 seeks 47:15 123:2 124:2 seemingly 92:13 seen 50:12 57:1 61:6 69:6 73:23 96:12,12 110:25 114:3 118:13 162:2 196:15 224:9 Segal 20:18 21:2 32:2 211:24 seized 137:21 self 171:14.17 self-insured 126:5 129:13 221:13 222:23 self-insuring 123:1,5 sell 97:17 124:12 179:11 198:5 **seller** 48:24 selling 83:5 124:21 162:19 Senator 154:16

214:18 228:17 234:2 sending 232:24 sends 74:8 **senior** 50:21 63:16 seniority 188:20 sense 61:9 68:1 106:5 115:19 133:18 162:24 205:4 213:3 225:4,8 sensible 64:19 sensibly 60:3 sensitive 184:1 sent 198:19 209:21 213:12 214:22 225:1 232:23 sentence 147:13,13,17,18 sentences 99:9 separate 67:24 68:6 69:2 69:2 108:5 113:8 126:19 196:5 215:16 separately 181:16 219:11 September 120:13 163:15 series 77:3 111:22 serious 69:11 114:12 seriously 109:1 serve 64:10 served 233:19 serves 107:18 **service** 132:2 144:2 178:3 services 6:7 11:14 32:13 38:3 126:4 127:5 215:24 serving 140:20 set 63:7 78:20 80:1 84:6 90:10 109:24 110:3,4 170:1 188:22 189:1 194:21 202:2 setback 54:14 Seth 3:21 131:14 setoff 216:3.9 sets 193:19 217:21 setting 63:4 73:20 settle 49:12 124:9 settlement 2:3 44:23.25 68:2 70:25 144:5 226:20,23 227:8,12

228:8 235:7 settlements 49:23 seven 86:4 153:1 199:1 213:9 Seventh 155:2,21 seven-plus 151:23 severe 154:4 severely 147:8 Severstal 24:4 shake 176:13 share 56:21 174:7.8.9 shared 208:20 shareholders 179:23 **shed** 69:13 **sheet** 86:11 87:4 220:14 220:16 **shell** 53:13 **shoes** 158:10 **short** 51:1 70:18 99:8 101:17 132:15 134:11 179:21 188:15 228:6 229:22 shortage 119:13 **shorten** 201:11 **shortened** 52:3 226:21 shorter 204:20,20 **shorthand** 144:17,19 shoulders 181:3 **show** 63:11 79:8,17,22 175:9 **showed** 52:9 63:15 81:13 showing 88:3,4,8 144:11 showing's 144:10 **shown** 51:21 140:2 178:19 **shows** 49:1 50:5 53:8,21 81:6 82:11 85:7 137:18 174:4 176:9 231:15 **shrift** 99:8 sic 78:14 86:14 203:13 side 88:14 sides 91:19 106:3 127:17 210:14 Sidley 123:16 220:6 sign 133:4 178:25 194:22 195:5.11 198:21 220:17 221:18 223:24 signatory 223:21

signature 207:23 210:9 signed 40:13 41:2 118:7 192:14 194:23 196:21 199:2 203:3 221:21 **significant** 56:17 166:24 178:19 202:16 203:7 significantly 151:4 signing 194:25 200:12 similar 48:2 55:3 94:21 132:2 149:15 208:14 216:5 similarly 188:18 197:22 **SIMON** 9:20 29:10 **simple** 131:1 simplicity 43:1 simply 41:12 43:16 45:13 48:15 49:5 60:1 94:20 99:9 124:13 126:21 135:25 136:23 137:9 140:3.21 147:18 196:4 199:6 200:17 203:5 207:24 212:3 213:19 216:2,22 **SINGER** 38:2 single 61:4 100:11,12 125:10 142:22 143:4 161:8 162:20 sir 78:4 79:6 89:12 91:20 91:24 117:2.3 119:24 122:1 123:10 132:22 151:7 172:8 181:20 200:10,25 225:3,19 226:5,11 229:1 234:4,9 234:18 sit 46:19 122:15 172:20 174:8 site 16:13 114:15,17 212:3 sites 114:8,22 217:15 situated 188:18 situation 55:7 98:7 118:12 131:14 155:25 157:24 165:24 166:11 167:11 173:13 178:18 179:4 186:20,21 187:10 188:5 situations 60:13 149:16 157:19 160:5

send 99:21 207:15,17

Page	274
raye	2/4

			rage z r
six 54:20 77:3 202:23	sorry 44:7 60:20 78:19	speed 55:19 70:1	started 198:21
sixteen 102:18	82:23 83:1 90:3 140:8	spell 91:4	state 6:14 13:13,22 21:10
Sixth 157:1	142:18 148:18 157:12	spelled 221:1	21:11,19 22:2 25:2,3
sixty 52:10 54:7 56:7	169:12 181:20 184:17	spend 71:4	25:11,12 26:2,3,12,13
64:2,25 65:9,14 119:16	220:2 224:2 228:12	spent 58:2 177:16,17	27:2,11 35:12,13 91:16
sixty-six 88:1 151:25	sort 42:25 59:13 193:12	spin 54:14	91:16 96:15,16,19
sixty-two 151:24	234:16	spinning 53:19	104:22 112:9 113:5,12
size 50:13 109:24 177:1	sorted 117:12	spinoff 52:17	113:15 114:6,8,11
<b>SKF</b> 36:3	sorts 84:8 101:2	spiraling 46:12	116:9 117:21 122:20
skimmed 135:23	sought 51:20 55:19	splinter 168:25 170:5,19	122:24 123:1 133:9
slice 67:13 130:12	140:1	172:11 226:25	166:6 171:10,14 185:3
<b>slide</b> 175:9	sound 55:15 96:22	splintered 117:11	189:15 190:10,24
slightly 87:2	150:24 151:13	<b>split</b> 127:21	191:21 192:8 194:17
slower 65:6	sounds 96:23 192:20	spoiling 57:13	195:6,10 196:11
small 92:23 169:20	231:2	spoke 170:7 196:4	220:21 221:9 222:9
192:12	<b>source</b> 167:6	209:25 212:5	229:6,8,9
smaller 46:11	South 11:15 13:22 15:4	<b>sponsored</b> 137:1 172:24	stated 108:6 124:9
<b>smart</b> 64:8	15:13 28:12 30:4 36:13	<b>sponte</b> 160:16	130:23,25 138:12
Smokeless 162:10	37:13	<b>Sprague</b> 157:1,2	139:9 140:22 148:20
<b>Smolinsky</b> 3:10 45:15,16	<b>Southern</b> 1:3 5:13 89:16	Spring 80:14	154:25 157:1,6
45:17 46:6,23 47:2,3	<b>so-called</b> 51:4 165:11	<b>spun</b> 52:21 72:15	statement 55:3 79:20
131:7,9,11,11 201:3,5	speak 46:19 77:21 95:1	square 32:4 67:19	104:18 127:23 141:11
202:20 205:5,7,14	133:15 134:16 181:5	squarely 139:4 148:4	141:20 168:22 170:17
206:7,12 212:5,12,24	204:23 205:14 233:16	187:20	194:22 200:12
213:3,23 214:2,3	233:17	stabilization 83:10	statements 45:22 56:12
215:10,15 216:15,16	speaker 75:18 82:25	152:13	82:10 153:21 176:25
218:7,9 219:21 220:2,4	134:16 211:6 233:3	stabilized 55:24	181:6 209:18
220:13 221:15 223:2	speaking 113:9 134:18	staff 198:18	states 1:2,14 5:2,3,12
234:9,18	135:24 166:17 194:18	stage 118:17	19:20 55:2 56:15 77:9
Smolinsky's 212:10	speaks 155:2	stake 52:24	78:17,20 79:13 85:7
smooth 130:15	special 3:15 4:3,11 22:7	stakeholders 47:21,24	89:15 90:10 134:24
<b>sock</b> 94:16	39:7 48:8 55:9 92:15	147:3 186:17,17	135:1 147:7 148:25
<b>Software</b> 150:10,13,23	193:22 210:4,10	187:16	166:7 175:2 184:4
sold 137:14 151:10	<b>specific</b> 51:9 52:7 96:14	stampede 45:20	193:11,21 194:4 218:4
162:23 176:12	99:21 100:2 101:6	Stamping 23:19 80:13	state's 113:19 114:23
solicited 51:3	135:3 156:6 165:25	80:14 203:13	115:5 192:23
<b>Solutions</b> 150:10,13	167:17 190:8 222:19	stand 60:9 71:22 107:24	stating 118:8 155:19
solvent 137:24	specifically 45:8 95:17	108:12 132:5 149:2	station 134:1
somebody 41:12 65:19	96:17 98:6,15 128:20	174:8 182:15 199:10	statue 97:19 159:21
68:8 77:24 174:12	131:17 134:11 137:1	standalone 96:2 116:11	161:13
210:21 214:23 224:11	141:17,22 165:14	standards 55:2 182:8	status 116:21 123:1,2,5
someplace 79:20	196:10	standing 52:6 83:20,21	171:22 221:13
somewhat 152:3 197:10	specificity 51:1 128:12	83:24 84:1 107:25	statute 101:6 157:14
229:9	specified 124:13	128:23 195:24 196:1	158:6,9,11 159:1,15,20
soon 44:13 133:23	speculate 176:14	stands 61:16	160:23 161:12 162:17
137:21 146:12 154:15	speculates 138:7	stare 139:25 157:12,13	164:20
225:24 226:6	speculation 138:9	164:23 168:13	statutory 97:11,19
sophisticated 126:23	<b>speech</b> 180:2	start 56:19 186:8,9	113:23 156:9 159:6,22

160:20 161:4,11 16:21 17:7,16 18:21 164:18 222:1016:21 17:7,16 18:21 19:21 20:12,20 21:4,13subsequent 93:21 96:15 185:14 190:2429:6,16 30:5,14 31:5 32:15 34:5,14 36:14 37:14 38:5,14 236:17 213:11stay 167:25 168:10 216:8 staying 233:2322:18 23:21 24:14 25:13 26:6,17 27:14subsequent 93:21 96:15 185:14 190:2437:14 38:5,14 236:17 Sullivan 6:11 214:8,9,9
164:18 222:1019:21 20:12,20 21:4,13185:14 190:2432:15 34:5,14 36:14stay 167:25 168:10 216:822:18 23:21 24:14subsequently 55:1337:14 38:5,14 236:17
stay 167:25 168:10 216:8         22:18 23:21 24:14         subsequently 55:13         37:14 38:5,14 236:17
steelworkers 13:12 28:12 35:4,14 subset 108:4 214:20,25 215:5,6,9
subset 100.4         214.20,25 215.3,0,7           227:4         Streets 32:5           subsidiary 80:24 82:9         summarize 79:7
STEEN 9:2         Strenuous 151:19         185:16         summarize 79:7
STEMBERG 22:9         strendous 151.17         105.10         summary 142.10           stress 73:24         substance 60:7 74:1         summation 132:15
step 60:16 64:22 65:3,12 stressful 190:19 183:22 194:2 232:19 SUOZZI 16:2
step 00.10 04.22 05.5,12         stressur 150.15         stressur 150.15         stressur 150.15           158:10         stretch 219:8         substantial 39:21 62:5         superfund 114:10
Stephanie 12:16 93:5,14         strictly 194:18         substantial 59:21 02:5         superior 6:3 214:10
Stephanic 12:10 55:3,14         strictures 96:9         substantially 47:11         supplement 58:21 77:3
stepped 213:2 strike 94:13 103:24 54:22 109:5 149:24 supplemental 202:10,1
stepped 215.2 strike 54.15 105.24 supplemental 202.10,1 steps 138:15 221:16 strings 170:4 162:19 177:9 183:6 supplied 160:3
Strings 1/0.4         Strings 1/0.4         Strings 1/0.4         Supplied 100.5           STEVE 10:10         strongest 137:2         227:9 229:18         supplier 178:11,15 202
strongest 157.2         substantive 95:6 102:23         supplier 178:11,15 202           stick 70:5         strongly 145:2         substantive 95:6 102:23         suppliers 66:10 132:1
strongry 143.2         substantive 33.0 102.23         supplets 00.10 132.1           sticking 232:19         structured 198:12         121:25 136:14 229:14         147:7 178:13 207:25
structured         structu
stim 170.5         217.12 210.1         250.15         suppry 217.12           stigma 56:19         structuring 165:19         substantively 195:6         support 54:12 55:18
stight         stight<
sup 40.12 41.20 222.15         studied 155.15         subtringe 75.0         50.17 05.7 71.24           222:15         stuff 67:17 81:12 127:20         sub-subsection 78:7         106:25 107:4 108:21
stipulate 200:13         still 07:17 01:12 127:20         sub-subsection 70:7         100:25 107:4 100:21           stipulate 200:13         213:24 225:9 226:14         succeed 82:5         148:6 149:11 169:3
stipulate 200:15         215:27 225:5 220:14         success 154:14 171:7,7         140:0 145:11 105:5           stipulation 39:11,16,19         STUTZMAN 22:16         success 154:14 171:7,7         180:21 200:9 210:6
<b>39:23 40:1,5 41:2 sua 160:15 success fill 169:7,8 supportable 66:3</b>
<b>supportable</b> 00.5 <b>supportable</b> 00.5 <b>supportable</b> 00.5 <b>supportable</b> 00.5 <b>supportable</b> 00.5 <b>supportable</b> 00.5
207:25 208:16,20 subject 39:20 51:14 successor 14:4 69:13 140:22 147:6 151:13
209:14 210:2,7 212:6 56:17 90:14,21 102:8 96:10 100:25 111:21 supporting 89:8 140:20
222:11,18,24 223:4,22 102:15 111:12 112:1 136:20 194:6 198:3 supporting 09:0 110:20 supporting 09:0 110:20
stipulations 204:13 116:12 134:2 157:15 218:21,21 support 89:11 140:1
207:22,23 208:5 162:18 163:18 165:23 <b>sue</b> 166:22 171:25
207.22,25 200.5       102.10 105.10 105.25       sub 100.22       sub 100.22         215:17       181:13 204:5 206:22       sufficient 99:14,22       Suppose 70:5
<b>stock</b> 68:8 71:7 86:5 215:16 216:23 <b>sufficiently</b> 168:4 185:2 <b>supposed</b> 138:9 177:6
109:20 110:3,6 185:16         submission 119:17         Suffolk 90:11         Supreme 54:23 90:10
185:19,19 188:22 suggest 135:4 146:15 99:13,16 157:16,24
stockholders 54:24 submit 48:22 52:13 64:5 149:17 204:25 228:13 158:7 160:8 167:24,2
152:19,21         64:9         68:25         115:9         130:2         232:18         168:11         193:18
<b>STONE</b> 34:2 153:9 163:23 164:19 <b>suggested</b> 145:19 146:11 <b>sure</b> 41:5,10 42:1,1
<b>stop</b> 137:1 184:9 185:2 187:19 <b>suggesting</b> 61:8,10 63:13 46:25 47:2 77:23
<b>STORRS</b> 31:12 192:6 219:11 229:16 <b>suggesting</b> 51:18 66:19 104:12 117:13 126:9
strategic 50:2,3,8 53:11 232:20 90:13 228:16 229:21 127:2 131:10,13
strategies 57:12 submitted 67:1 181:5 suggests 70:17 136:10 132:12,19 141:1
strategy 53:14,15 54:5 214:19 218:20 219:12 156:22 151:14 166:21 188:2
62:20 63:7 64:24 submitting 219:9 suicidal 51:14 189:17 192:13 195:22
streamline 45:20 110:14 subordinated 118:21 suit 91:12 196:9 201:5 202:19
streamlined 46:24 subordination 119:2 Suite 8:13 10:7 11:16 206:24 211:22 212:23
Street 5:4,14 7:18 9:15         150:7         12:5 15:12,21 16:5,15         219:21 223:3,7 224:1
9:22 10:15 11:15 12:13 subsection 78:7 79:2,8,9 19:5 20:13,21 21:5 232:3,15 233:11,22
13:13,22 14:22 15:4 124:12 22:19 24:6,15 28:13 surmise 174:6

#### surprise 143:9 102:12 118:19 119:10 212:3 231:13 213:10 **survive** 56:25 179:9 138:15 162:15 188:22 telling 65:14 94:2,17 thank 41:16,16 42:1,7,8 surviving 165:11 202:20 221:16 162:1 42:9 43:5 44:4,6 47:2,3 Susan 13:25 113:4 takes 130:4 179:13 193:1 temporary 54:14 74:12,14,14 75:20 89:1 218:13 220:20 ten 98:11 99:1 101:21 226:12 89:2,3 93:3,4 95:4,5 takings 121:12,20 suspect 40:18 tenable 154:3 101:8,9,10,20,23 sustain 170:15 talk 41:8 188:16,19 tendered 210:1,15 106:21,22 107:8,9 **Tennenbaum** 149:22 111:14 112:2 113:2,3 sustainable 148:14 196:14 172:15.16 talked 101:13 104:1 150:3 116:1,2,15,16 121:22 **SUTCLIFFE** 17:13 18:2 170:5 194:21 198:2,18 **Tennessee** 27:2,3 123:20 121:23 123:8 125:18 tensions 54:19 SWANSON 34:8 208:22 131:5.6 132:8.13 talking 87:21 109:4 **ten-minute** 101:19 Swegalok 33:11 134:13 136:22 140:16 117:13 154:16 155:19 sworn 176:15 term 64:11 117:14,14,15 140:24,25 141:23,24 sympathize 178:8 158:18,20 159:17 117:16 177:12,13 142:1 145:5,6 188:7,8 Syracuse 13:23 163:24 170:12 178:9 220:14,16 188:23 193:4,5,7 system 48:3 74:3,3 195:24 203:5 212:4,8 terminate 163:17 174:21 199:16,18 200:23,25 129:25 201:23 222:10 tantamount 82:16 **Termination** 191:6,17 211:16,16,19 213:5 systemic 146:23 178:16 **TARP** 83:10,13,16,22 terms 39:19 45:21 46:14 214:7,9 215:18 217:6,8 60:25 61:7 62:11 64:13 systems 6:5 11:13 56:17 84:4,5,7,8 182:9,11,13 219:2,3,16 220:4 S-A-N-T-A 91:6 **Task** 7:10.17 68:2 81:8 91:2 94:24 223:18 224:1,3,4,13 S-H-A-W 221:2 tax 35:3 45:7 133:2 140:2 143:3 229:2 234:9,17,18 **S.p.A** 18:3,4 taxes 45:8 193:25 196:23 146:6.13 152:4.18 **thereto** 191:4 217:22 196:23 197:4,11,12,13 155:14 165:10 173:4 thereunder 191:4 Т 197:14 189:7 191:3 194:2,2,5 therewith 191:5 **T** 4:25 22:14 114:2 236:2 194:6 195:4,9 198:16 taxpayers 164:2 **Thermocontrol** 204:16 236:2 taxpayer's 177:24 187:5 220:18 221:11,17 thing 44:11 52:3,15 89:7 table 63:18 108:20 124:7 187:6 222:20 229:10,14,17 89:10 92:6 112:22 230:19 231:19 232:2 233:20 **Taylor** 113:4,4 115:2,23 127:3 142:16 182:21 **Taft** 7:9,16 37:3 116:2 218:11,12,13 **terrible** 173:17 211:9 215:9 **tailored** 146:16 219:2 **terrific** 179:13 **things** 41:9 46:11,16 tainted 152:7 **Taylor's** 183:21 **testified** 57:9.15 67:4 48:12 51:23 60:18 take 40:14 48:7,9 54:1 **TCP** 150:3 83:12 85:6 92:24 110:4 74:21 75:4 76:17 97:24 70:24 77:22 82:2 85:23 teach 156:7 153:20,22 164:10,14 104:21 105:11 119:14 85:24 86:5 87:3,16,24 176:18 177:13 188:16 167:10 169:5 171:4 team 57:12 108:18 89:19 93:8 101:5,15,17 **TELEPHONIC** 24:2 174:2.11 182:1 205:16 189:5 194:25 195:25 101:19 111:11 117:22 TELEPHONICALLY testify 64:21 201:1 214:11 224:19 122:13,14 130:2,7 224:23 234:15 3:21 7:22 19:9,17 testifying 180:21 134:21 136:13 138:19 **testimony** 43:9 49:9 24:10,20 25:9,17 26:10 think 42:6 45:22 46:7,23 138:21 140:16 147:20 26:21 27:9,19 28:8,17 51:10 56:3 57:20,24 47:4 51:9 52:15 60:22 147:25 150:17 152:9 29:11,20 30:9,18 31:9 64:13 66:24 80:23 82:9 61:4.19 65:25 66:4 152:12 154:14 156:21 31:18 32:10,19 33:8,16 86:15,18,19 142:9,12 67:24 69:25 70:14 164:17 175:1 176:14 33:24 34:9,18 35:9,19 146:24 148:8 152:14 71:17,25 74:17,20 178:23 180:25 188:10 36:9,18 37:8,18 38:9 164:11 183:3 186:7 75:22,24 76:16,24,25 189:4 195:11,13 38:18 Testing 20:11 79:19 81:11 85:15,18 211:15 214:5 219:4 **tell** 43:17 52:6 60:20 tests 54:15 73:15 91:5 93:18,21 102:3,19 223:6 224:10 225:5,6,8 106:14 108:8 110:16 61:6.10 83:2 93:25 **Texas** 6:13.14.14 27:11 229:22 102:5 113:9 116:21 27:12 44:17 45:8 116:9 111:2 112:18 114:24 taken 43:22 87:13 122:15 128:10 156:7 116:10 189:15 192:8 115:19 121:12 124:5

126:1 127:2,3 128:6,15	126:5 146:21 172:19	Timothy 12:19	63:10 64:2 66:7,15
128:15,22 129:17	threat 61:15,15 64:15	title 118:3 160:13,14	77:13 177:6,6
132:25 133:8,11,21	66:16,18	163:11 169:15	trackable 201:23
135:10,15 136:3 142:8	threaten 65:3,23	<b>TITUS</b> 33:18	TRACY 5:8
144:7,16 152:10 158:8	threatened 150:1	<b>TMT</b> 54:24	trade 203:3
161:7 167:9,11,23	three 44:20 63:25 76:20	TN 27:6	<b>Traders</b> 15:3 93:16
175:10 177:3,16	85:10 89:2 108:8,8	<b>TOBIN</b> 8:8	209:4
178:11,13,19 183:15,17	110:16 112:15 118:6	today 40:22 41:24 45:19	traditional 58:1,10
189:13 193:15 194:11	126:17 131:4 140:23	46:3,21 51:24 52:22	Trafasee 207:2
194:24 196:19 198:25	167:10 176:20 177:16	55:7 57:5 72:5 100:8	Trailer 54:25
199:11,12,13 200:19	178:13 185:20 189:24	102:21 109:24 110:7	<b>train</b> 134:1
202:16 206:9,13	190:2 201:16 202:11	113:7 115:9 124:7,20	transaction 48:18 58:7
208:22 209:17 211:4	204:18 225:18	124:23 125:16 135:5	58:17 60:5 61:18 63:14
211:21 212:10 214:25	three-judge 159:4,7	135:14 137:9 138:21	64:9 66:12,19 68:25
215:5,10,14,15 216:25	three-person 231:1	138:25 139:6,20,22	69:15 70:22 71:3,6,11
217:11 218:4 219:19	three-quarters 66:8	140:1 172:8 174:8,9	73:9 74:5 85:7 92:25
220:15,17 223:2	three-way 213:2	188:13 204:24 210:15	106:19,25 107:1,4
224:17 225:10 226:12	<b>Thurman</b> 150:24 151:5	211:14,15 221:20,21	108:17,19 109:14
228:5 229:5,8,14	151:5	223:1,22 229:7,17	112:20 123:22 138:25
230:14 232:9 233:1,15	<b>tied</b> 40:16	today's 126:14 128:24,24	144:16 145:3,21,25
234:12	Timbers 159:23	130:23 136:3,12	146:3,6 147:6 148:4,4
thinks 180:20	<b>time</b> 39:25 40:18 41:8,20	<b>TODD</b> 30:11	148:13,24 151:18
<b>third</b> 4:4 54:10 62:4,10	45:21 50:1,22 51:1,4	toes 213:2	152:7 153:16,17
77:11 104:11 129:19	51:10,15 52:8 53:11	told 54:6 61:6,12 64:1	161:15 164:5 165:15
135:20 139:7 158:16	54:15 57:5 58:2,23	110:7 150:13 154:24	168:16 170:23,25
159:3,5,13,24 160:7	59:4 60:16,23,25 61:4	193:18 198:22,24	178:15 180:12,12
162:8 169:17 204:7	61:25 71:5 72:16 74:20	tomorrow 66:5 223:24	182:23,24 183:2
227:5	76:5,12 77:22 81:21	225:13,14 229:17	185:25 186:18 187:11
third-party 143:20	84:20 88:22 94:3,9,19	tonight 225:11	188:1,7 199:15 217:12
206:25	101:16 103:20,23	tool 53:23	218:1
thirteen 69:20	106:1 112:23 127:20	top 77:17 78:15	transactions 93:15
<b>thirty</b> 52:10 56:7 63:25	130:2,4 132:25 134:17	<b>topics</b> 134:7	transcribed 2:25 236:11
64:12 76:12 98:12	144:18,20 151:15	<b>TORF</b> 37:17	Transcriber 236:9
101:12 116:4 122:13	162:2 164:9 167:13	tort 99:10 106:1 107:23	transcript 139:15 188:21
122:14 163:1 173:19	172:7 176:1 179:22	148:15,16	236:4
186:23	189:1 191:24,25	total 85:20,21 87:4	transcripts 43:14,25
thirty-five 167:12	194:12 197:2,20	102:25 119:15,15,21	225:17,18
thirty-three 69:22 70:6,7	201:12 212:11 218:5	198:23	transfer 171:23 172:1
70:9,12 174:1 186:5	222:14 225:6 226:21	totality 82:2	206:25 218:3
<b>Thomas</b> 4:24 8:12 14:17	228:16 230:23	totally 161:9	transferred 56:18 114:9
30:8 101:24	<b>times</b> 11:4 50:10 51:7	<b>Tower</b> 15:11 35:13	114:18 197:24
thorough 162:5	52:3 53:24 60:21 73:23	<b>Town</b> 80:18	transferring 132:6
thought 43:21 57:16	130:1 174:4	<b>Toyota</b> 6:6 29:3,14	transfers 158:25
66:23 68:13 92:3	timetable 51:22	203:15 212:1,14,18,20	transition 96:7 130:15
132:13 162:4 197:4	timing 56:24 144:17	<b>TPC</b> 123:16,17 220:6,8	209:15 221:23
201:8 212:5,6 219:19	208:15	224:7	transmission 211:13
231:1	<b>Timken</b> 6:3 208:7	trace 149:7	transmittal 228:20
thousands 66:9 108:2	214:10 215:11	track 51:25 56:11 57:22	transpired 162:25
	1	1	1

	1		-
transportation 6:15	236:5	twenty-six 172:12	uncertainties 49:25
27:12 215:24	truly 73:22	twenty-three 107:14	unclear 114:16 197:10
Treasure 181:12	trump 138:10 222:15	111:10	205:7
treasury 7:10,17 26:3	trumped 70:9	<b>twist</b> 166:9	<b>uncommon</b> 61:20 105:12
42:15 50:6 53:14 57:25	truncated 51:24	<b>two</b> 40:17 42:12 51:16	undercutting 46:12
64:5 65:2,11 85:7,14	<b>trust</b> 12:12 13:3 14:3	53:17 76:19 80:6 85:10	undergoing 201:10
96:6 105:12 106:15	15:3 16:13 93:16 99:18	86:4,5 87:8 93:14 99:9	underlying 210:22
112:25 118:7 119:17	99:19 107:11,18	102:21 103:22 104:20	undermining 138:11
120:17 121:17 122:11	108:13,18 111:2,18,20	108:9 114:8 117:6	<b>understand</b> 42:2 47:20
134:19 144:23 146:25	111:24	119:9,20 120:12	48:3 51:11 52:19 54:5
147:22 149:1,6 151:21	<b>trustee</b> 5:3 7:3 13:3 14:4	123:18 128:19 129:7	58:10 59:21 61:17
151:24 163:16,17,21	107:10,12,15 108:14	133:24 135:3 166:4	67:25 68:1 75:4 79:16
164:3,4,13 168:25	111:15,21 117:6 158:6	180:19 185:20 187:7	85:2 89:6 92:8 94:7
171:4 172:23 175:1,3	158:9,10,23	189:3 190:23 194:15	95:1 117:23 125:17
177:23 178:5,6 181:1	trustees 93:15 94:9	201:19 203:16 207:16	126:13 127:19 128:2
192:8 194:9 198:16	183:15 209:6	214:11 217:21 218:15	131:24 134:16 156:8
199:6 206:4 208:21	<b>truth</b> 60:8	224:19 225:23 226:15	183:14 195:7 207:10
221:10 223:19 226:7	try 58:25 59:22 89:5	227:17,20 230:19,20	211:10 216:18 222:25
229:19,25 230:12	95:12 170:18 180:13	two-thirds 151:25	229:17 231:9 232:2
233:1	187:7 191:23 196:14	<b>TX</b> 6:17 19:6 22:20	understanding 64:11
<b>Treasury's</b> 50:5 53:8	201:6,8,20 204:8	27:15 31:6 36:15 38:6	94:20 102:24 104:8,23
146:24 210:8 231:21	207:11 208:9,23	<b>type</b> 54:2 213:15	130:9 189:7 192:6
treat 87:24 88:14	<b>trying</b> 46:13 51:8 79:17	types 150:20	205:24 216:7,12
treated 88:6 118:20,22	84:19,20 94:5 97:4,10	Typically 107:24	222:16 232:3
118:23 136:7 163:22	127:21 133:22 195:19	<b>typo</b> 102:3	understandings 64:23
165:21,22 200:6,7,7	212:4 223:23 230:16	<b>T's</b> 123:24	188:14 224:23
treating 88:9,11	231:7,12	U	understands 186:3
treatment 48:1 71:13	Tuesday 75:24		228:25
97:3,8 137:11 194:3	tuned 103:15	U 235:3	understates 60:22
196:7	<b>turn</b> 139:8 165:2 175:24	<b>UAW</b> 66:20 67:8 73:11	understating 94:15
<b>TRENT</b> 12:8	202:22 205:3 213:1	86:17,19 134:16,17 142:2,19 143:20 144:5	understood 95:4 109:18
Trenton 26:18	turned 49:13 56:13 57:2	,	119:3 126:2 129:5
triage 94:6	<b>turning</b> 151:17 154:22	144:12 145:2 147:4,5 149:7 153:11,19	199:6
<b>triaging</b> 46:14	168:17 207:22	154:21 172:25 173:8	undertake 139:16
trial 143:14	turns 135:17 163:8	173:11,13 182:18,20,25	undertaken 138:22
tribal 114:11	185:20 188:13 218:21	183:4 219:7 227:22	underway 210:2
<b>Tribe</b> 33:19	<b>TWA</b> 95:23,25 139:7,8	UAWs 178:9	Underwriters 157:25
tribunals 160:9 Trico 30:3	139:10 140:11 155:20	<b>UAW's</b> 68:13 144:8	158:4
	161:24 162:7 164:25	UCC 78:11,13 80:8,9	undetermined 209:8
tried 151:22,23 155:14	198:9 <b>TWA's</b> 140:11	82:10	<b>undisputed</b> 146:24 164:16
triggered 121:15		UCC-1 181:15	
tripartite 217:19 TROSTLE 4:8	tweak 192:12 twenty 68:14 87:23	ultimately 136:4 207:11	<b>undoing</b> 46:12 <b>undone</b> 66:22
<b>Trouble</b> 83:11	98:12 108:6 183:5	Um 93:10	undoubtedly 158:2
<b>Trouweko</b> 135:20	198:25 210:3	Um-hum 140:13 150:22	unequivocal 143:14,16
<b>Troy</b> 32:16 38:15	twenty-eight 108:9 120:9	unable 114:17	unequivocal 143:14,16 unequivocally 127:10
true 56:13 57:2 97:9	twenty-five 172:12	unambiguous 138:4	129:16 130:23,24
125:14 163:4 175:5	twenty-four 225:7	unanimous 51:13	131:4 142:21 157:1
143.17 103.7 173.3	1		131.7 172.21 13/.1

<b>F</b>			5
<b>unfair</b> 173:12	136:7 146:2 153:15	177:1,17	199:3
unfold 152:14	161:9 162:18 177:11	value 48:14 54:2 55:16	violate 82:14 195:10
unforeseen 105:16	unsupported 56:6	55:17 56:2,15,18 58:14	violation 182:2
unfortunate 173:1	<b>unusual</b> 54:8 55:19	58:15,16 70:15 72:14	Virginia 37:12
unfortunately 110:20,21	unwaivable 143:24	72:18,19 73:7,13	vocal 55:9
170:14 187:17	unwritten 64:23	110:22 117:12 119:15	<b>voice</b> 108:13 112:19
unheard 167:4	update 201:17 202:14	124:4,7,10,14,14,15,16	voluntarily 187:4
<b>UNIDENTIFIED</b> 75:18	upheld 159:12	124:22,23,24 125:2,3,4	voluntary 154:20
82:25 90:3 211:6 233:3	upholding 63:21	125:12,16 137:16,19,20	vote 142:22 143:4
uniformity 193:19	upset 46:2	143:16,17 146:20	votes 51:3
unimpaired 216:10	upsized 103:1	151:4 153:17 166:24	voting 142:20,20
<b>union</b> 9:3 11:3 13:11	urge 88:18 140:21	170:24 185:18,19,21,24	
49:23 50:20 67:16	<b>urges</b> 145:3	186:1,16,25 187:15	W
72:23 153:23 157:25	<b>USA</b> 36:3	values 49:10 73:5 74:11	<b>W</b> 16:18
168:25 169:25 170:19	usage 117:22 118:1,1	118:5	Wabash 4:12
182:21 215:21,23	<b>use</b> 40:2 47:11 53:21	variety 124:3 131:25	Wacker 10:6 15:13 30:4
unionized 171:23	66:2 72:13,13 77:20	various 47:17 53:9	37:13
<b>unions</b> 2:4 170:5 172:11	83:22 84:3,7,8,8,10,20	107:20 110:4 175:14	wage 154:3 169:21
226:20,25 227:3,4,10	100:18 117:18 118:3,4	176:18 177:15 180:13	195:12,13
227:17,18,20 228:23	118:5 128:13 175:7	185:10 215:24	waiting 214:23 231:21
235:8	182:13 183:24 187:11	vastly 137:15	waive 155:9 227:23
<b>unique</b> 47:14 49:7 73:13	208:10 209:14	<b>VEBA</b> 67:11,18,18,23,24	waivers 191:4
98:7	useful 52:15 103:16	68:4,6,7,13 69:2 86:17	waiving 75:6
<b>unit</b> 115:13	196:16	86:19 87:10,22 88:4,11	Waldorf 102:3
<b>United</b> 1:2,14 5:2,3,12	usual 148:24	142:6,9,13,20 143:1,5	walk 61:16 62:8 146:8
9:3,21 13:12 19:20	usually 85:10	143:17,23 144:9	202:13 204:22 205:12
55:2 79:13 85:7 89:15	<b>Utah</b> 150:11 151:6	153:11,13,24,25 154:21	walks 96:24 174:17
90:10 134:24 135:1	<b>utter</b> 49:1	169:18,18,24,24,25	Walsh 149:21 150:14
148:25 166:6 175:2	<b>U.S</b> 1:24 5:11 7:10,17	170:10 182:25 183:4	161:24 162:1
211:25	28:10 62:5 69:23 70:6	<b>Vedder</b> 23:2 141:5	wand 59:8
<b>universe</b> 109:17	90:12 122:11 132:11	<b>vehicle</b> 27:13 80:16	want 40:8,14 46:2,3,9
<b>University</b> 14:13 155:7	134:18 147:21 158:1	179:14	48:8,12 52:16 53:23
<b>unknown</b> 45:23 139:11	163:16,16 175:3 181:1	vehicles 178:2,3 205:17	61:14,18 65:17 66:6
unlawful 195:6	181:12 206:4 228:23	<b>vendor</b> 126:21 155:25	71:20 75:20 78:1 85:1
<b>unofficial</b> 17:14 18:12,20		<b>VENTO</b> 27:18	88:19,23 89:2,7 94:4
19:3 47:7	<b>U.S.A</b> 203:15	<b>venture</b> 175:7 212:1	94:16,20 95:3,13,22
unreasonable 163:19	<b>U.S.C</b> 2:3	Veritext 236:15	96:7,9 100:10 101:2
207:13	V	<b>Verizon</b> 24:13 203:9,16	106:11,23 117:9 118:3
unrebutted 138:5	· · · · · · · · · · · · · · · · · · ·	viable 58:9 62:2 147:18	118:4 126:8 133:10
unreceptive 155:24	<b>v</b> 30:17 79:2,4,8,9 81:14	148:10 174:15 180:4	140:16 141:7 142:2
unreported 156:12	90:11 91:3,5 99:17 135:12 141:18 156:10	186:20	145:18 146:10,18
<b>unsecured</b> 4:18 22:17	157:25 181:18,21	victims 20:19 21:3	175:10,23 183:20 186:13 188:17 193:10
51:6 86:15 87:12,20,21	vacation 131:20	107:23 148:15,16	193:12 201:2,4 202:13
87:25 88:5,6,7,9,25	vacation 151:20 valid 151:9	<b>VICTOR</b> 33:7	203:8 204:22 209:3,18
92:14 101:25 107:16	Validation 80:18	<b>view</b> 51:13 67:16,20,21	203:8 204:22 209:3,18 213:20 214:5 216:22
109:21 110:5 117:3,4	valuable 179:7	68:21 107:3 109:9	213:20 214:3 210:22 218:15 224:22 228:20
118:22 120:6,12,21	valuation 76:10,11,15	134:3 157:6 166:14	229:25 232:8 233:22
121:12,16 125:4,13	valuation /0.10,11,13	168:12 193:21 198:9	<i>223.23 232</i> .0 <i>233.22</i>
	•	•	•

			- )
wanted 93:8,23 94:3	ways 62:25 64:10 193:16	231:21 232:12 233:23	176:4,12
98:2 112:9 128:10	194:16	231.21 232.12 233.23	Wilson's 57:20 64:6
134:23 185:14 196:9	weak 149:18	we've 42:19 66:5 69:6,13	176:13
214:17 215:9 216:16	weave 133:5	71:23 76:11 93:21	wind 103:11
218:12,23 219:22	Web 212:3 217:15	96:12 101:18 110:7	WINDELS 23:17
233:18	week 93:22 100:4 130:1	114:17 116:11 122:10	window 49:18 151:3
wants 48:8 145:19	131:20 156:25 204:7	128:25 132:24 133:1	wind-down 102:15,24
156:21 163:21 181:2	209:13	177:23 186:23,25	103:1,10,17 109:25
213:24 214:4 221:23	weekend 52:3 106:9	196:13 201:15 203:6	110:1,2,6,8 137:25
213.24 214.4 221.23	Weil 3:3 42:12 45:17	204:13 205:7 206:4,4	184:22,25 213:13
WARD 35:18	131:12 140:15 231:20	209:7 212:12,14	229:5,11,12 230:6
WARDWELL 28:2	231:25	217:11 220:13 225:10	Wing 26:16 35:5
warning 58:2	Weiss 3:20 9:20 19:11	232:20	wings 70:8
warrant 127:8	39:6,6,9,10 40:8,12,20	<b>Wharton</b> 19:11 233:14	winners 88:16,17
warranties 57:10	40:24 41:10,17,18,19	whatsoever 99:6 164:12	winers 88.10,17 wiped 152:19
warrants 71:7 109:20	41:25 42:2,7 108:5	191:15	Wireless 203:9
110:3,6	109:5 210:3,10 229:19	whereabouts 99:15	wish 75:22 81:20 122:11
warranty 196:10	233:14,20	white 24:19 43:19 54:7	156:24
Warren 3:12 14:2 42:11	welfare 146:21	65:1,13 66:4 95:23	wished 168:20
42:11 43:5,6,18,21	Wells 7:3 12:12 93:16	97:16 98:3 123:19	wishes 52:14 128:5
44:3,6,16 111:20 202:2	209:4	142:23,24 143:6	Wisler 10:18 125:21,22
Washington 7:19 8:14	went 79:18 97:18,25 98:9	179:24,25	126:2 127:13,17,23
12:14 16:23 17:8,17	102:18 105:11 160:7	Whitehall 5:4	128:4,12,19 129:5,7
18:22 19:22	170:7 184:24 196:6	Whittaker 153:1	130:18 131:5,6,8,13
wasn't 49:14 61:8,10	weren't 70:13 117:5	whoever's 232:24	withdraw 102:7 111:12
64:22 67:9 69:25 70:23	196:1 210:19	whoever \$232.24 who've 76:9 144:13	111:25 116:13 173:9
72:5 116:20 127:24	West 9:15,22 10:6 21:13	WICKERSHAM 7:9,16	192:3,8 208:1,7 216:12
168:1	23:21 25:13 26:6,16	Wickouski 12:16 93:5,5	218:18 220:9
wasting 55:22 57:13	27:14 29:15 30:13	93:10,13,14,25 94:7,23	withdrawal 102:11,14
186:15	32:14 34:4 35:4	95:3,4	107:3 204:16
water 198:11	Westchester 16:14	wide 99:13	withdrawing 105:24
WATERS 20:10	Western 23:20	widely 108:1	106:18 218:24
Watkins 15:9 209:25	we'll 40:15,18 44:13	wife 102:4	withdrawn 107:2 159:8
wavier 163:16	132:14 174:16,18	WILLIAM 22:14	202:23 203:2,22
way 47:1,23 48:15 51:7	203:25 207:13 209:15	Williams 13:7 21:12	207:19,19
51:24 64:3 66:4,6,21	211:15 231:23	26:4 33:18	withdrew 206:20
67:3,18 68:17 70:14	we're 41:3,24 44:11	willing 111:11 154:19	witness 43:8 143:15
71:6 73:10 78:18 80:2	51:23 60:1,3,4 61:12	178:25 215:2	153:22 176:6
81:19 84:23 85:8,16,23	66:7 87:21 99:19,23	<b>Willis</b> 163:11	witnesses 64:7 110:4
86:11,15 87:15 88:7	100:13,14 111:11	<b>WILMER</b> 23:10	176:6
92:6,17,18 94:6 105:25	129:2 132:25 134:25	Wilmington 10:16 13:3	<b>WOLFSON</b> 38:11,17
113:24 130:4 132:5	154:2 170:12 174:23	21:6 34:15 107:11,18	<b>Wolicki</b> 236:12
133:21 136:9 162:8	177:24 178:5,6,9	108:13,18 111:2,24	wondering 93:25
168:20 169:5 170:15	187:11,12,13 188:9,23	Wilson 44:10 51:11 56:4	<b>WONG</b> 19:25
170:19,25 178:14	195:2 199:4 201:10	56:23 57:25 64:4 67:4	Woodland 36:13
180:22,23 183:21	207:5,9,11,24 209:12	80:14 83:11 92:24	Woodward 3:17 29:5
184:5 194:6,18 197:18	212:4,15 223:3,4,22	118:13 138:13 142:12	33:12
205:4 228:7 233:18	225:23 229:8 230:16	164:10,10,14 171:3	word 57:24 117:18

132:14 173:7,9	Y	184:5 203:9 213:8,12	<b>1099</b> 20:12
words 55:6 65:16 96:8	yeah 41:22 121:7 192:4	1collective 142:14	11 2:3 47:16 48:1,4,13
133:24 146:9 156:6,20	212:16,22 213:1	1st 51:21 87:16 180:4	49:24 50:4,7,12 51:13
161:12 166:14 192:15	225:16	<b>1,050</b> 227:7	54:4,7 55:22,23 56:5
work 43:21 53:16 105:12	year 45:9 57:6 72:3	<b>1.1</b> 80:20	56:25 57:25 58:1,19
110:12 129:8,13	118:6	<b>1.1(e)</b> 144:6	60:9 61:18 63:22 72:10
133:22 154:2 159:15	years 61:5,5 98:12 99:1	<b>1.175</b> 103:3 229:13	72:11,11,13,16,25 74:2
161:10 172:21 173:15	99:25 130:12 161:14	<b>1.2</b> 80:20	104:3,5 142:19 145:1
176:7 185:4 188:25	163:1 167:10,12	<b>1:24:32</b> 89:17	150:2,25 155:6 173:25
206:24 207:8 208:9,23	177:13 185:20,21	<b>1:42</b> 188:24	174:18 176:17,19,21,22
209:12 212:4,15	year-over-year 57:6	<b>10</b> 56:2 59:18 65:2,11	176:22,23 178:12,21,21
224:21 230:16	<b>yellow</b> 43:23	66:23 67:9,15 68:25	180:14,20 193:17
worked 144:13,13 194:8	<b>Yep</b> 223:18	69:3 71:7 73:3 76:21	<b>11:10</b> 101:22
204:11 222:2 230:14	yesterday 42:13 49:15	144:2 163:15	<b>1100</b> 8:13
workers 9:4,21 104:22	60:10 92:3,24 96:20	<b>10th</b> 65:15 138:6 141:10	<b>111</b> 78:15,19 99:9
104:25 105:1,6,6 122:3	104:21 112:23 135:6	<b>10:00</b> 198:19	<b>1113</b> 171:21,24
122:5,9,19,24 220:14	141:8 155:19 157:6	<b>10:47</b> 101:22	<b>1114</b> 69:12 82:23,23
221:4,7,10,12 222:4,13	164:10 178:11 194:7	<b>100</b> 25:13 87:13	171:21,24 172:4,6,8
222:21 223:5,10,15	194:20 198:4 221:8	<b>10003</b> 14:15	227:10
workforce 142:11,15	yesterday's 210:1	<b>10004</b> 5:6 13:15	<b>1129</b> 72:21 88:5
working 45:21 94:2	<b>York</b> 1:3,16,16 3:6 4:6	<b>10006</b> 9:7	<b>113</b> 14:13
105:14 106:5 112:10	4:20 5:6,13,15 6:9 7:5	<b>10007</b> 5:15	<b>114</b> 82:20,21,22
123:22 131:15 132:24	7:12 8:6 9:7,16,23 11:4	<b>1001</b> 21:5	<b>115</b> 207:25
203:6 207:6 220:13	11:6 13:5,15 14:3,6,15	<b>10017</b> 28:5	<b>11501</b> 236:18
224:24 232:12	14:23 16:6 18:6,15	<b>10018</b> 11:6 16:6	<b>1152</b> 17:16
Workman's 171:10,12	19:14 20:3,6 21:19	<b>10019</b> 6:9 9:16 19:14	<b>1177</b> 4:19
works 196:8	22:2,5 23:6,13,22 28:5	23:6,22	<b>1185</b> 18:13
world 7:11 124:18,19	76:23,23 111:21 113:5	<b>10022</b> 4:6 7:5 14:23	<b>12/31/08</b> 181:13
194:14 195:1	113:12,16 114:8,20	23:13	<b>120</b> 22:4 215:17
worldwide 34:12 178:10	117:21 135:12 174:4	<b>10036</b> 4:20 9:23 18:15	<b>1200</b> 19:21 24:15
worries 57:23	185:3,19	<b>1007</b> 10:15 22:11	<b>1201</b> 7:18
<b>worry</b> 225:6	York's 218:15	<b>101</b> 14:5 181:15	<b>12201</b> 33:21
worse 92:5	<b>Yps</b> 80:16	<b>101S</b> 13:12	<b>12224</b> 21:22
worth 85:3,4 111:10	Ypsilanti 80:16	<b>10103</b> 18:6	<b>12548</b> 6:16
119:9 124:18 210:13		<b>10105</b> 20:6	<b>128.8</b> 150:4
<b>Worth's</b> 86:7	Z	<b>1015</b> 198:7	<b>1285</b> 19:13
wouldn't 42:6 72:4 81:14	<b>zero-sum</b> 148:21	<b>10152</b> 8:6	<b>13</b> 157:17 161:24
99:5 166:7,8 192:20	<b>ZIEVE</b> 17:11	<b>10153</b> 3:6	<b>13.4</b> 120:17
208:25		<b>10166</b> 13:5	<b>130</b> 158:16
wrap 183:20	0	<b>10178</b> 14:6	<b>132</b> 87:7,9
WRIGHT 12:2	<b>02110</b> 31:15	<b>1024</b> 33:4	<b>13202</b> 13:23
writing 64:23 67:2	<b>07652</b> 12:22	<b>10271</b> 22:5	<b>1345</b> 20:5
115:17,20	<b>08625</b> 26:18	<b>10281</b> 7:12	<b>1350</b> 16:4
written 53:16 117:8	<b>09-50026</b> 1:4	<b>104</b> 86:9	<b>140</b> 38:5
<b>WYRON</b> 17:19	1	<b>104.5</b> 85:8,13 87:6	<b>1408</b> 76:22
<b>v</b>		<b>105</b> 97:23 101:7	<b>15</b> 56:15 61:25 71:8 85:3
$\frac{X}{-1.5, 10, 225, 1}$	1 77:1 80:19 142:18,18	<b>105(a)</b> 2:7 160:11	85:6 86:7 147:11 235:5
<b>x</b> 1:5,12 235:1	158:1 168:3 180:3	<b>10573</b> 16:16	<b>15th</b> 17:16 27:14
	I		1

	1		•
<b>150</b> 34:4 227:7	<b>20009</b> 17:8	203:10 204:17 215:15	<b>364</b> 2:7
<b>1500</b> 12:13 34:14	<b>2001</b> 19:4	<b>3:57</b> 234:19	<b>367</b> 90:12
<b>15223</b> 22:12	<b>2002</b> 2:7 156:11 161:24	<b>30</b> 35:14 80:2,2 180:3	<b>37th</b> 4:5
<b>153</b> 14:22	<b>2003</b> 77:3,5 158:15,17	225:21	<b>37202</b> 27:6
<b>156</b> 23:21	217:16	<b>30th</b> 18:14	375 8:4
<b>1600</b> 17:7 20:20	<b>20036</b> 16:23	<b>300</b> 13:22 27:14 36:14	<b>378</b> 90:13
<b>162</b> 235:5	<b>20037</b> 18:22	135:13 154:8,15	<b>39533</b> 33:12
<b>16200</b> 38:4	<b>2006</b> 169:17,23 170:1	<b>3000</b> 19:5 30:5	<b>399</b> 7:4 23:12
<b>1633</b> 23:4	<b>2008</b> 77:14 78:2 120:13	<b>301</b> 12:4	
<b>1675</b> 6:8	174:2 186:6	<b>30363</b> 24:16	4
<b>169</b> 143:6	<b>2009</b> 1:18 87:17 174:12	<b>31</b> 9:15 120:13	<b>4</b> 12:21 203:13
<b>17</b> 13:13 80:15 217:16	186:8 236:20	<b>31st</b> 77:14 78:2 87:16	<b>4th</b> 13:14
<b>17th</b> 24:14 35:15	<b>201</b> 32:14	<b>311</b> 30:4	<b>4.01</b> 79:9
<b>171</b> 24:14	<b>2019</b> 108:6,7	<b>312</b> 156:10	<b>4.01(a)</b> 78:5
<b>174</b> 135:13	<b>20207</b> 27:5	<b>3150</b> 38:13	<b>4.02</b> 78:10
<b>18S</b> 13:12	<b>2030</b> 16:21	<b>33</b> 5:4	<b>400</b> 31:14 36:4
<b>18th</b> 20:12 32:5	<b>2033</b> 77:4	<b>33.3</b> 85:24	<b>400,000</b> 116:25
<b>181</b> 135:13	<b>21st</b> 5:5	<b>330</b> 4:12 9:22	<b>4001</b> 2:8
<b>18510</b> 37:5	<b>2100</b> 29:16	<b>33308</b> 15:22	<b>402</b> 78:14
<b>19th</b> 76:13 77:5,5	<b>2200</b> 22:19 31:4	<b>35</b> 77:16 87:7,14	<b>4025</b> 36:13
<b>19.4</b> 63:24 70:17,18	<b>225</b> 110:8	<b>35th</b> 8:5	<b>40507</b> 30:15
85:23 119:8,21	<b>2290</b> 3:16	<b>353</b> 149:20	<b>406</b> 76:23
<b>19102</b> 15:5	<b>23</b> 77:5	<b>36</b> 78:14,15	<b>407</b> 29:15
<b>19103</b> 20:22 32:7	<b>2300</b> 11:16 28:13	<b>3600</b> 20:21	<b>41</b> 222:9,17 223:3
<b>19312</b> 36:6	<b>2323</b> 22:18	<b>361</b> 2:7	<b>42nd</b> 9:22
<b>1978</b> 163:1	<b>233</b> 15:13 37:13	<b>362</b> 2:7	<b>421</b> 15:21
<b>19801</b> 21:6 34:15	<b>235,000</b> 178:10	<b>363</b> 2:7,10 47:11 48:7	<b>43</b> 169:12
<b>1987</b> 98:3	<b>25</b> 26:17	49:8 50:7 52:22 53:10	<b>431</b> 150:10
<b>19899</b> 10:16	<b>25th</b> 83:24	53:12,15,22 54:1,13,21	<b>43215</b> 35:16
<b>1990</b> 107:12	<b>250</b> 30:13	57:22 58:16 60:17 63:7	<b>436</b> 37:4
<b>1994</b> 98:4	<b>2500</b> 34:5	63:10,14 66:3,14 69:11	<b>44</b> 169:11
<b>1995</b> 76:20 77:9 81:9	<b>2550</b> 18:21	73:15,18 81:25 82:16	<b>450</b> 28:4
107:12 120:20	<b>26</b> 77:3 170:15	82:19 84:25 95:17	<b>47th</b> 23:5
	<b>26,000</b> 170:5 178:8	97:16,22 113:21,22	<b>475,000</b> 144:12
2	<b>260</b> 15:4	139:3,23 140:24	<b>48</b> 86:10 87:7,7
<b>2</b> 1:18 80:19 102:19	<b>2600</b> 20:13 24:6	145:21,25 146:3,6	<b>48.4</b> 86:14 87:13
168:7 175:6 184:6	<b>27</b> 87:15	147:6 148:3,13 150:4	<b>48.7</b> 85:17 86:6 87:11
203:10,13,15 204:15,15	<b>27th</b> 32:6	150:18,20 161:22	<b>4800</b> 10:7
<b>2:54</b> 188:24	<b>2700</b> 29:6	164:5 165:15 170:25	<b>48084</b> 32:16 38:15
<b>20</b> 86:21 87:18	<b>275</b> 38:14	172:3 175:7 177:9	<b>48104</b> 12:6
<b>20th</b> 17:7	<b>28</b> 87:14,17,17	178:14 182:24 186:21	<b>48226</b> 3:18 24:7 29:7
<b>20,000</b> 170:7	<b>2800</b> 30:14 31:5	187:24	34:6
<b>20.5</b> 86:20,21,22 87:3,10	<b>281</b> 156:10	<b>363(b)</b> 2:3 161:15 162:4	<b>48304</b> 33:13
<b>200</b> 13:4 236:16	<b>283</b> 156:11	162:16,20 187:20	<b>48602</b> 33:5
2000 158:1	<b>286</b> 150:10	<b>363(e)</b> 115:5	<b>48909</b> 21:15 26:7
20004 7:19		<b>363(f)</b> 157:14 161:1,9,14	<b>4900</b> 15:20
<b>20005</b> 8:14 12:14 17:17	$\frac{3}{200,10,05,2,1(0,0)}$	162:13 167:16	5
19:22	<b>3</b> 80:19 85:3 168:8	<b>363(f)(3)</b> 124:3,11,21	3
	1		1

	I	I	l
<b>5</b> 203:14	<b>60611</b> 4:13	<b>900</b> 154:6,14	
<b>500</b> 12:5 29:5 34:13	<b>61,000</b> 144:14	<b>90071</b> 11:17 28:14	
<b>500,000</b> 147:4	<b>62,000</b> 183:12	<b>919</b> 4:4	
<b>501</b> 16:5	<b>620</b> 11:5	<b>92101</b> 29:17	
<b>502</b> 90:12	<b>620606</b> 30:6	<b>94244</b> 25:6	
<b>506(c)</b> 61:2 158:3,5,11	<b>650</b> 98:25	<b>950</b> 64:20 71:8 141:19	
159:2	<b>660</b> 3:17	<b>95110</b> 35:6	
<b>507</b> 2:7	<b>6600</b> 37:14	<b>96</b> 87:7	
<b>51</b> 78:19	<b>666</b> 18:5	<b>97</b> 87:7	
<b>52</b> 222:2	<b>677</b> 33:20	<b>99</b> 162:10	
<b>52nd</b> 9:15		<b>99.6</b> 194:23,25	
<b>524</b> 97:8	7	· · · · · · · · · · · · · · · · · · ·	
<b>524(g)</b> 96:23 97:2 98:4,4	7 14:14 102:19 157:17		
98:16 100:1,16,18	7th 26:5		
	<b>7.4</b> 87:18		
165:5,5,10,12,14	<b>7.4(h)</b> 144:1		
<b>525</b> 21:13 26:6	<b>70</b> 35:4 70:16		
<b>53rd</b> 14:22			
<b>530</b> 158:1	<b>700,000</b> 201:14		
<b>535</b> 24:5	744255 25:5		
<b>54(b)</b> 89:23	<b>75001</b> 38:6		
<b>544(b)</b> 158:21 159:12	<b>75201</b> 19:6 22:20 31:6		
<b>545</b> 158:16	<b>76013</b> 36:15		
<b>55</b> 184:4	<b>767</b> 3:5 31:13		
<b>550</b> 11:15 28:12	77 10:6		
<b>56th</b> 23:21	<b>78701</b> 27:15		
<b>566</b> 141:19	<b>78711</b> 6:17		
<b>573</b> 162:11			
<b>580</b> 236:17	8		
<b>5800</b> 15:12	8th 16:22 26:16		
	<b>80</b> 12:21		
6	<b>800</b> 16:14		
<b>6</b> 77:12,16 78:7 80:19	<b>80202</b> 20:14		
85:24 236:20	<b>82</b> 56:15		
6th 21:14	<b>820</b> 149:20		
<b>6,000</b> 170:12	<b>824</b> 21:4		
<b>6,600</b> 202:4	<b>83.4</b> 87:12		
<b>6.09</b> 78:16,19	<b>832S</b> 13:12		
<b>6.25</b> 80:8 82:11	<b>850</b> 94:5		
	<b>86</b> 5:14		
<b>6.29</b> 78:17,17,18,19,21	<b>899</b> 36:5		
78:22,23	877 50:5		
<b>6.30</b> 79:23	9		
<b>60(b)</b> 90:14,14	<b>9</b> 169:13		
<b>60,000</b> 147:3	<b>9th</b> 35:5		
<b>600</b> 32:15 154:15 201:6	<b>9:02</b> 1:19		
<b>600,000</b> 178:9	<b>9:30</b> 198:22		
<b>6004</b> 2:8	<b>90</b> 70:16		
<b>60601</b> 10:8 25:14			
<b>60606</b> 15:14 37:15	<b>90.7</b> 124:8		
		1	

# Exhibit 7

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK		
	х	
	::	
IN RE:	::	CHAPTER 11
	::	CASE NO. 09-50026 (REG)
GENERAL MOTORS CORPORATION, ET AL.,	::	
, , ,	::	(JOINTLY
DEBTORS.	::	ADMINISTERED)
	Х	,

#### ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a), 361, 362, 363, 364 AND 507 AND BANKRUPTCY RULES 2002, 4001 AND 6004 (A) APPROVING AMENDMENT TO DIP CREDIT FACILITY <u>TO PROVIDE FOR DEBTORS' POST-PETITION WIND-DOWN FINANCING</u>

THIS MATTER having come before this Court by the motion dated June 29, 2009 (the "<u>Motion</u>") of General Motors Corporation ("<u>GM</u>") and its affiliated debtors in the above-captioned cases, as debtors and debtors-in-possession (collectively with GM, the "<u>Debtors</u>"),¹ seeking, among other things, entry of an order (the "<u>Order</u>") authorizing the Debtors,² pursuant to sections 105, 362, 363 and 364 of title 11 of the United States Code, as amended (the "<u>Bankruptcy Code</u>"), Rules 2002, 4001 and 6004 of the Federal Rules of Bankruptcy Procedure (the "<u>Bankruptcy Rules</u>"), and Rule 4001 of the Local Bankruptcy Rules for the Southern District of New York (the "<u>Local Bankruptcy Rules</u>"), on or substantially contemporaneously with the closing of the Related Section 363 Transactions, to enter into that certain Amended and Restated Superpriority Debtor-in-Possession Credit Facility providing for

¹ The Debtors in these cases include: GM, Saturn, LLC, Saturn Distribution Corporation, and Chevrolet-Saturn of Harlem, Inc.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Final DIP Order (as defined below).

the amendment and restatement of the terms applicable to the Tranche C Term Loan (as such term is defined in the DIP Credit Facility (as defined below)) funding the wind-down of the Debtors in an amount of \$1,175,000,000 pursuant to and in accordance with section 2.14 of the DIP Credit Facility (as so amended and restated, the "Amended DIP Facility")³; and this Court previously having entered an order (the "Final DIP Order"), dated June 25, 2009 (Docket No. 2529), authorizing the Debtors, pursuant to sections 105, 362, 363 and 364 of the Bankruptcy Code and Rules 2002, 4001 and 6004 of the Bankruptcy Rules, and Rule 4001 of the Local Bankruptcy Rules, to enter into the Secured Superpriority Debtor-in-Possession Credit Agreement, by and among GM, as borrower, and The United States Department of the Treasury ("U.S. Treasury") and Export Development Canada ("EDC"), as lenders (together, and including any successors-in-interest, assigns or transferees thereof, the "DIP Lenders"), in substantially the form annexed as Exhibit 1 to the Final DIP Order (as the same may be amended, supplemented, restated or otherwise modified from time to time, including, without limitation, by the Amended DIP Facility, and together with all related agreements and documents, the "DIP Credit Facility"), and to obtain post-petition financing on a secured and super-priority basis pursuant to the terms and conditions thereof, up to a maximum aggregate amount of \$33.3 billion (the "Commitment"); and the Final DIP Order having provided that the Amended DIP Facility, acceptable to the Debtors and the DIP Lenders, shall be subject to approval by this Court on three days notice after the filing of a motion seeking approval of the Amended DIP Facility; and this Court having considered the Motion, the Amended DIP Facility, and any pleadings in support thereof or in response thereto; and due and proper notice of the Motion having been provided in accordance with the Final DIP Order; and a hearing having been

³ A copy of the Amended DIP Facility is annexed hereto as <u>Exhibit 1</u>.

held and concluded on July 2, 2009 (the "<u>Hearing</u>") to consider the relief requested in the Motion; and it appearing that granting the relief requested in the Motion is appropriate, fair and reasonable and in the best interests of the Debtors, their estates, creditors and other parties in interest, and is essential for the Debtors' continued operations; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York of Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Official Committee of Unsecured Creditors (the "<u>Committee</u>") having been actively engaged in substantive negotiations of the Amended DIP Facility and the Wind-Down Budget (as defined in the DIP Credit Facility); and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved or overruled on the merits by this Court; and after due deliberation and consideration and good and sufficient cause appearing therefor; it is hereby

**ORDERED** that the Findings of Fact and Conclusions of Law set forth in the Final DIP Order are herein incorporated by reference and shall have the same force and effect as though fully set forth in this Order; and it is further

**ORDERED** that the Motion is granted, and all objections, if any, to the Motion heretofore not withdrawn or resolved are overruled on the merits in all respects; and it is further

**ORDERED** that the Amended DIP Facility, substantially in the form annexed hereto as <u>Exhibit 1</u>, is approved in all respects such that the Debtors are authorized to obtain post-petition financing in accordance with the Amended DIP Facility of

-3-

\$1,175,000,000, on a super-priority and secured basis, pursuant and subject to the terms and conditions of the Amended DIP Facility, the Final DIP Order and this Order; and it is further

**ORDERED** that upon the execution of the Amended DIP Facility, the defined term "DIP Credit Facility" as used in the Final DIP Order and this Order is deemed to mean and refer to such credit facility, as amended by the Amended DIP Facility; and it is further

**ORDERED** that, except as modified by the Amended DIP Facility or this Order,

the Final DIP Order shall remain in full force and effect; and it is further

**ORDERED** that the claims and liens granted to the DIP Lenders under the Final DIP Order shall apply as set forth therein to the Amended DIP Facility except as explicitly modified by the following upon the Effective Date (as defined in the Amended DIP Facility):

the claims of the DIP Lenders arising from the Amended (a) DIP Facility, pursuant to sections 364(c)(1) and 507(b) of the Bankruptcy Code, and all other obligations owing to the DIP Lenders under the DIP Credit Facility shall be and are accorded a super-priority administrative expense status in each of these cases, and, subject only to the Carve-Out, shall have priority over any and all other administrative expenses and unsecured claims arising in these cases; provided, however, that subsequent to the closing of the Related Section 363 Transactions, claims against the Debtors' estates that have priority under Sections 503(b) or 507(a) of the Bankruptcy Code, including costs and expenses of administration that are attendant to the formulation and confirmation of a liquidating chapter 11 plan, whether incurred prior or subsequent to the consummation of the Related Section 363 Transactions shall have priority over such obligations (up to the aggregate amount of \$1,175,000,000; provided, however, that any greater amount shall be subject to approval by the DIP Lenders) owing to the DIP Lenders under the Amended DIP Facility; and

the DIP Liens granted under the Final DIP Order (i) shall (b) continue under the Amended DIP Facility on the Property in the same force, effect and priority as set forth in the Final DIP Order to the extent any such Property remains Property of the Debtors (but, for the avoidance of doubt, shall not extend to any Property that has been transferred to a non-Debtor pursuant to the Related Section 363 Transaction), (ii) shall continue to be subject to the Carve-Out, and (iii) shall include the proceeds of the Amended DIP Facility; provided, however, notwithstanding anything to the contrary in this Order, the Final DIP Order, DIP Credit Facility or the Amended DIP Facility, the DIP Liens shall not include security interests in or liens on avoidance actions arising under chapter 5 of the Bankruptcy Code against the Prepetition Senior Facilities Secured Parties (as defined in the DIP Credit Facility) or any stock, warrants, options or other equity interests in New CarCo (as defined in the Amended DIP Facility) issued to or held by any Debtor (or any of its subsidiaries) pursuant to the Related Section 363 Transactions including any dividends, payments or other distributions thereon and any proceeds or securities received or receivable upon any disposition or exercise thereof (the "New GM **Equity Interests**").

**ORDERED** that substantially contemporaneously with the execution of the Amended DIP Facility, the amount of \$1,175,000,000 in immediately available federal funds shall be deposited into a segregated bank account at a nationally recognized financial institution acceptable to the DIP Lenders; and it is further

**ORDERED** that, except as expressly permitted by this Order or the Amended DIP Facility or as otherwise permitted by the Wind-Down Budget, the proceeds of the Amended DIP Facility shall be used solely to finance the working capital needs and other general corporate purposes of the Debtors incurred in connection with the Wind-Down (as defined in the Amended DIP Facility), including the payment of expenses associated with the post-petition administration of the Debtors' cases; <u>provided</u>, <u>however</u>, that any allowed secured claims against the Debtors' estates may be paid or otherwise satisfied (including pursuant to a plan of liquidation) from the proceeds of the Amended DIP

Facility (other than the "TPC Excess Secured Claim" as defined in the Section 363 Sale Order (as defined in the Amended DIP Facility)); and provided, further, however, that any unused proceeds of the Amended DIP Facility shall be repaid to the Lender on the Maturity Date (as defined in the Amended DIP Facility); and it is further

**ORDERED** that, except as otherwise provided in the immediately preceding decretal paragraph of this Order, the proceeds of the Amended DIP Facility shall be unavailable to pay or otherwise satisfy any prepetition, general unsecured claims against the Debtors' estates; and it is further

**ORDERED** that the Loans (as defined in the Amended DIP Facility) shall be non-recourse to the Borrower and the Guarantors, such that the DIP Lenders' recourse under the Amended DIP Facility shall be only to the Collateral (as defined in the Amended DIP Facility) securing the DIP Loans, and nothing in this Order, the Final DIP Order, the DIP Credit Facility or the Amended DIP Facility shall, or shall be construed in any way, to authorize or permit the DIP Lenders to seek recourse against the New GM Equity Interests at any time; and it is further

**ORDERED** that the Debtors are authorized to take such other and further action as is necessary to implement the decretal provisions of this Order with respect to the Amended DIP Facility, subject only to the consent of the DIP Lenders as provided under the Amended DIP Facility or this Order; and it is further

**ORDERED** that Section 5.26 of the Amended DIP Facility shall not be amended without the prior written consent of the Required Lenders, the Creditors' Committee and New CarCo; and it is further

-6-

**ORDERED** that prior to the making of any optional prepayments by the Debtors under the Amended DIP Facility, the Committee shall have received prior written notice of such prepayment at least fourteen (14) days prior to the date such prepayment is to be made; and it is further

**ORDERED** that the Committee shall receive the same reports and financial statements provided by the Debtors to the DIP Lenders under sections 5.1 and 5.2 of the Amended DIP Facility in the same manner and at the same time provided to the DIP Lenders; and it is further

**ORDERED** that the Debtors have provided adequate and sufficient notice of the this Order as required under the Final DIP Order; and it is further

**ORDERED** that this Court shall retain exclusive jurisdiction to interpret and enforce the provisions of the Amended DIP Facility, the DIP Credit Facility, the Final DIP Order and this Order in all respects; <u>provided</u>, <u>however</u>, that in the event this Court abstains from exercising or declines to exercise jurisdiction with respect to any matter provided for in this paragraph or is without jurisdiction, such abstention, refusal, or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

Dated: New York, New York July <u>5</u>, 2009

> <u>s/ Robert E. Gerber</u> HON. ROBERT E. GERBER UNITED STATES BANKRUPTCY JUDGE

# Exhibit 1

[Amended DIP Facility]

### PRIVILEGED AND CONFIDENTIAL <u>CWT DRAFT 7/4/09</u>

### \$1,175,000,000 AMENDED AND RESTATED SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT

among

### MOTORS LIQUIDATION COMPANY (f/k/a GENERAL MOTORS CORPORATION) a Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code, as the Borrower,

#### THE GUARANTORS

and

### THE LENDERS PARTIES HERETO FROM TIME TO TIME

Dated as of July __, 2009

#### TABLE OF CONTENTS

## SECTION 1

#### DEFINITIONS

1.1	Defined Terms	2
	Other Definitional Provisions	
1.3	Conversion of Foreign Currencies	23

## SECTION 2

#### AMOUNT AND TERMS OF THE LOANS

Loans	24
[Intentionally Omitted]	24
Repayment of Loans; Evidence of Debt	24
Optional Prepayments	24
[Intentionally Omitted]	25
Interest Rates and Payment Dates/Fee Payment Dates/Fees	25
Computation of Interest and Fees	25
Inability to Determine Interest Rate; Illegality	26
Treatment of Borrowings and Payments; Evidence of Debt	26
Indemnity	27
Superpriority Nature of Obligations and Lenders' Liens	27
Taxes	27
	Loans [Intentionally Omitted] Repayment of Loans; Evidence of Debt Optional Prepayments [Intentionally Omitted] Interest Rates and Payment Dates/Fee Payment Dates/Fees Computation of Interest and Fees Inability to Determine Interest Rate; Illegality Treatment of Borrowings and Payments; Evidence of Debt Indemnity Superpriority Nature of Obligations and Lenders' Liens Taxes

## **SECTION 3**

## REPRESENTATIONS AND WARRANTIES

3.1	Existence	30
3.2	[Intentionally Omitted]	30
3.3	[Intentionally Omitted]	30
3.4	[Intentionally Omitted]	30
3.5	Action, Binding Obligations	30
3.6	Approvals	
3.7	[Intentionally Omitted]	31
3.8	Investment Company Act	31
3.9	[Intentionally Omitted]	31
3.10	Chief Executive Office; Chief Operating Office	31
3.11	Location of Books and Records	31
3.12	[Intentionally Omitted]	31

3.13	[Intentionally Omitted]	31
3.14	Expense Policy	31
3.15	Subsidiaries	31
3.16	Capitalization	31
3.17	Fraudulent Conveyance	31
3.18	USA PATRIOT Act	31
3.19	Embargoed Person	32
3.20	Use of Proceeds	33
3.21	Representations Concerning the Collateral	33
3.22	[Intentionally Omitted]	34
3.23	[Intentionally Omitted]	34
3.24	Lien Priority	34
3.25	[Intentionally Omitted]	35
3.26	[Intentionally Omitted]	35
3.27	[Intentionally Omitted]	35
3.28	Excluded Collateral	35
3.29	Mortgaged Real Property	35
3.30	[Intentionally Omitted]	35
3.31	The Final Order	
3.32	Wind-Down Budget	35

## **SECTION 4**

## CONDITIONS PRECEDENT

4.1	Conditions to Effectiveness	3	6
-----	-----------------------------	---	---

## SECTION 5

## AFFIRMATIVE COVENANTS

5.1	Financial Statements	
5.2	Notices; Reporting Requirements	
5.3	Existence	
5.4	Payments of Taxes	42
5.5	Use of Proceeds	42
5.6	Maintenance of Existence; Payment of Obligations; Compliance with Law	42
5.7	Further Identification of Collateral	43
5.8	Defense of Title	43
5.9	Preservation of Collateral	43
5.10	Maintenance of Papers, Records and Files	43
5.11	Maintenance of Licenses	44
5.12	Payment of Obligations	44
5.13	OFAC	
5.14	Investment Company	44
5.15	Further Assurances.	

Executive Privileges and Compensation	45
Aircraft	46
Restrictions on Expenses	46
Employ American Workers Act	47
Internal Controls; Recordkeeping; Additional Reporting	47
Waivers	47
[Intentionally Omitted]	48
Additional Guarantors	48
Provide Additional Information	
Inspection of Property; Books and Records; Discussions	
[Governance of Borrower]	49
	Aircraft Restrictions on Expenses Employ American Workers Act Internal Controls; Recordkeeping; Additional Reporting Waivers [Intentionally Omitted] Additional Guarantors Provide Additional Information Inspection of Property; Books and Records; Discussions

## SECTION 6

## NEGATIVE COVENANTS

6.1	Prohibition on Fundamental Changes	49
6.2	Lines of Business	49
6.3	Transactions with Affiliates	49
6.4	Limitation on Liens	50
6.5	Restricted Payments	50
6.6	Amendments to Transaction Documents	51
6.7	Changes in Fiscal Periods	51
6.8	Negative Pledge	51
6.9	Indebtedness	51
6.10	Investments	51
6.11	Action Adverse to the Collateral	51
6.12	Limitation on Sale of Assets	51
6.13	[Intentionally Omitted]	
6.14	JV Agreements	52
6.15	Swap Agreements	
6.16	Clauses Restricting Subsidiary Distributions	
6.17	Sale/Leaseback Transactions	52
6.18	[Intentionally Omitted]	53
6.19	Modification of Organizational Documents	53

#### SECTION 7

## EVENTS OF DEFAULT

7.1	Events of Default	.53
7.2	Remedies upon Event of Default	.55

## **SECTION 8**

## MISCELLANEOUS

8.1	Amendments and Waivers	57
8.2	Notices	58
8.3	No Waiver; Cumulative Remedies	60
8.4	Survival of Representations and Warranties	60
8.5	Payment of Expenses	60
8.6	Successors and Assigns; Participations and Assignments	61
8.7	Adjustments; Set-off	
8.8	Counterparts	63
8.9	Severability	
8.10	Integration	63
8.11	Governing Law	63
8.12	Submission to Jurisdiction; Waivers	63
8.13	Acknowledgments	64
8.14	Release of Guaranties	64
8.15	Confidentiality	64
8.16	Waivers of Jury Trial	65
8.17	USA PATRIOT Act	65
8.18	Orders	65
8.19	Effect of Amendment and Restatement of the Existing Credit Agreement	65
8.20	New GM Equity Interests	66

#### ANNEXES:

I Form of Wind-Down Budget

### SCHEDULES:

- 1.1A Outstanding Amounts of Tranche C Term Loans
- 1.1B Guarantors
- 1.1C Mortgaged Property
- 1.1D Pledgors
- 1.1E [Intentionally Omitted]
- 1.1F [Intentionally Omitted]
- 1.1G Certain Excluded Subsidiaries
- 3.3 [Intentionally Omitted]
- 3.10 Chief Executive Office and Chief Operating Office
- 3.11 Location of Books and Records
- 3.15 Subsidiaries
- 3.16 Ownership of North American Group Members
- 3.21 Jurisdictions and Recording Offices
- 3.25 [Intentionally Omitted]
- 3.26 [Intentionally Omitted]
- 3.28 Excluded Collateral

### EXHIBITS:

- A Form of Amended and Restated Guaranty and Security Agreement
- B-1 Form of Secretary's Certificate
- B-2 Form of Officer's Certificate
- C Form of Assignment and Assumption
- D-1 Form of Waiver for the Loan Parties
- D-2 Form of Waiver of SEO to Treasury
- D-3 Form of Consent and Waiver of SEO to Borrower
- D-4 Form of Waiver of Senior Employee to Treasury
- D-5 Form of Consent and Waiver of Senior Employee to Borrower
- E Form of Legal Opinion of Weil, Gotshal & Manges LLP
- F Form of Compliance Certificate
- G Form of Amended and Restated Note
- H [Intentionally Omitted]
- I Form of Amended and Restated Environmental Indemnity Agreement
- J Form of Amended and Restated Mortgage
- K [Intentionally Omitted]
- L Form of Amended and Restated Equity Pledge Agreement

AMENDED AND RESTATED SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this "<u>Agreement</u>"), dated as of July ___, 2009, by and among MOTORS LIQUIDATION COMPANY (f/k/a General Motors Corporation), a Delaware corporation and a debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code (as defined below) (the "<u>Borrower</u>"), the Guarantors (as defined below), and the several lenders from time to time parties to this Agreement (the "<u>Lenders</u>").

### $\underline{W} \underline{I} \underline{T} \underline{N} \underline{E} \underline{S} \underline{S} \underline{E} \underline{T} \underline{H}$ :

WHEREAS, on June 1, 2009 (the "<u>Petition Date</u>"), the Borrower, Saturn, LLC, a Delaware limited liability company, Saturn Distribution Corporation, a Delaware corporation, and Chevrolet-Saturn of Harlem, Inc., a Delaware corporation (each an "<u>Initial Debtor</u>" and collectively, the "<u>Initial Debtors</u>") filed voluntary petitions in the Bankruptcy Court (as defined below) for relief, and commenced cases (each an "<u>Initial Case</u>" and collectively, the "<u>Initial Cases</u>") under the Bankruptcy Code and have continued in the possession of their assets and in the management of their businesses pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, on June 3, 2009, the Borrower entered into the Secured Superpriority Debtor-In-Possession Credit Agreement, among the Borrower, the guarantors party thereto and the Lenders (the "Existing Credit Agreement");

WHEREAS, pursuant to the Existing Credit Agreement, the Lenders provided the Borrower with (i) term loans in an aggregate amount equal to \$_____ (the "<u>Tranche B</u> <u>Term Loans</u>") and (ii) term loans in an aggregate amount equal to \$1,175,000,000 (the "<u>Tranche C Term Loans</u>");

WHEREAS, on June 25, 2009, the Bankruptcy Court entered the Final Order pursuant to the Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (the "<u>Final Order</u>") approving the terms and conditions of the Existing Credit Agreement and the Loan Documents (as defined in the Existing Credit Agreement);

WHEREAS, on July __, 2009, the Bankruptcy Court entered the Wind-Down Order pursuant to the Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (the "<u>Wind-Down Order</u>") approving the amendment to the Existing Credit Agreement to provide for Debtors' with post-petition, wind-down financing;

WHEREAS, pursuant to the Master Transaction Agreement (as defined below), on [July __, 2009] [the date hereof] the Treasury (as defined below) exchanged a portion of its Tranche B Term Loans in an amount equal to \$______ together with its Additional Notes (as defined in the Existing Credit Agreement) and its rights under the Existing UST Term Loan Agreement including the Warrant Note (as defined in the Existing UST Loan Agreement as defined below) and the Additional Notes (as defined in the Existing UST Loan Agreement) to New CarCo (as defined below) in exchange for common and preferred Capital Stock (as defined below) of New CarCo;

WHEREAS, pursuant to the Master Transaction Agreement, on [July __, 2009] [the date hereof] the Canadian Lender exchanged a portion of its Tranche B Term Loans in an amount equal to \$______ together with its Additional Notes to New CarCo in exchange for common and preferred Capital Stock of New CarCo;

WHEREAS, pursuant to the Master Transaction Agreement and in accordance with the Section 363 Sale Order (as defined below), the Borrower sold to New CarCo certain of its assets and property, and New CarCo assumed certain liabilities of the Borrower and its Subsidiaries (as defined below), including a portion of the Treasury's Tranche B Term Loans in an aggregate amount equal to \$7,072,488,605 pursuant to the Assignment and Assumption Agreement, dated as of the date hereof (the "<u>New CarCo Assignment and Assumption</u>"), between the Borrower and New CarCo (collectively, and together with the other transactions contemplated by the Transaction Documents, the "<u>Related Section 363 Transactions</u>");

WHEREAS, after giving effect to the Related Section 363 Transactions, the remaining obligations of the Borrower to the Lenders are comprised solely of the Tranche C Term Loans; and

WHEREAS, the Borrower has requested, and the Lenders have agreed, to amend and restate the portion of the Existing Credit Agreement relating to the Tranche C Term Loans on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, the parties hereto agree that on the Effective Date, as provided in Section 8.19, the Existing Credit Agreement shall be amended and restated in its entirety as follows:

### **SECTION 1**

#### **DEFINITIONS**

1.1. <u>Defined Terms</u>. As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

"<u>ABR</u>": for any day, a rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the greater of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day <u>plus</u> ½ of 1% and (c) the three month Eurodollar Rate (for the avoidance of doubt after giving effect to the provisos in the definition thereof) <u>plus</u> 1.00%; <u>provided</u> that, in the event the Required Lenders shall have determined that adequate and reasonable means do not exist for ascertaining the calculation of clause (c), such calculation shall be replaced with the last available calculation of the three month Eurodollar Rate <u>plus</u> 1.00%. Any change in the ABR due to a change in the Prime Rate, the Federal Funds Effective Rate or the three month Eurodollar Rate shall be effective as of the opening of business on the effective

day of such change in the Prime Rate, the Federal Funds Effective Rate or the three month Eurodollar Rate, respectively.

"<u>ABR Loans</u>": Loans the rate of interest applicable to which is based upon the ABR.

"Additional Guarantor": as defined in Section 5.23.

"<u>Administrative/Priority Claim Payment Amount</u>": any positive amount equal to the difference between \$200,000,000 and the aggregate amount paid or payable (or specifically reserved for payment as such) to satisfy all of the administrative and priority claims comprising the Administrative/ Priority Claim Tranche.

"<u>Administrative/ Priority Claim Payment Date</u>": the first Business Day after which the administrative and priority claims that comprise the Administrative/ Priority Claim Tranche are satisfied in full or otherwise finalized so that no such claims remain outstanding and unsatisfied, but in no case later than the date on which a liquidation plan with respect to the Debtors is approved by the Bankruptcy Court and declared effective.

"<u>Administrative/Priority Claim Tranche</u>": an amount under the Wind-Down Budget up to \$200,000,000 that was allocated as of the Effective Date to cover anticipated (i) administrative claims related to contract rejections by the Debtors and (ii) priority claims against the Debtors, each as further described in the Wind-Down Budget. The description of the administrative and priority claims that are to be set forth in the Wind-Down Budget shall reflect such categories, provisions and assumptions such that a good faith estimate, as of the Effective Date, of the sum of the obligations arising from the claims referenced in clauses (i) and (ii) above shall be at least equal to \$200,000,000.

"<u>Affiliate</u>": with respect to any Person, any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such Person. For purposes of this Agreement, "control" (together with the correlative meanings of "controlled by" and "under common control with") means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract, or otherwise. For the avoidance of doubt, pension plans of a Person and entities holdings the assets of such plans, shall not be deemed to be Affiliates of such Person.

"<u>Aggregate Exposure Percentage</u>": with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender's aggregate but unpaid principal amount of such Lender's Loans at such time to the sum of the aggregate but unpaid principal amount of all Lenders' Loans at such time.

"<u>Agreement</u>": as defined in the preamble hereto.

"<u>Anti-Money Laundering Laws</u>": as defined in Section 3.18(d).

"<u>Applicable Law</u>": as to any Person, all laws (including common law), statutes, regulations, ordinances, treaties, judgments, decrees, injunctions, writs and orders of any court,

governmental agency or authority and rules, regulations, orders, directives, licenses and permits of any Governmental Authority applicable to such Person or its property or in respect of its operations.

"<u>Applicable Margin</u>": (A) 2.0% per annum in the case of ABR Loans and (B) 3.0% per annum in the case of Eurodollar Loans.

"<u>Assignee</u>": as defined in Section 8.6(b).

"<u>Assignment and Assumption</u>": an Assignment and Assumption, substantially in the form of Exhibit C.

"<u>Bankruptcy Code</u>": the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq.

"<u>Bankruptcy Court</u>": the United States Bankruptcy Court for the Southern District of New York (together with the District Court for the Southern District of New York, where applicable).

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

"<u>Bankruptcy Rules</u>": the Federal Rules of Bankruptcy Procedure and local rules of the Bankruptcy Court, each as amended, and applicable to the Cases.

"<u>Benefitted Lender</u>": as defined in Section 8.7(a).

"<u>Board</u>": the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Borrower": as defined in the recitals.

"<u>Business Day</u>": any day other than a Saturday, Sunday or other day on which banks in New York City or Ottawa, Ontario, Canada are permitted to close; <u>provided</u>, <u>however</u>, that when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London Interbank market.

"<u>Canadian Lender</u>": Export Development Canada, a corporation established pursuant to the laws of Canada, and its successors and assigns.

"<u>Canadian Lender Consortium Members</u>": each of the Export Development Canada, the Government of Canada and the Government of Ontario. "<u>Canadian Post-Sale Facility</u>": the Amended and Restated Loan Agreement, dated as of the [Effective Date], by and among General Motors of Canada Limited, as borrower, the other loan parties thereto, and the Canadian Lender.

"<u>Canadian PV Loan Agreement</u>": the Loan Agreement, dated as of the [Effective Date], by and among New CarCo, as borrower, the other loan parties thereto, and the Canadian Lender.

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

"<u>Capital Stock</u>": any and all equity interests, including any shares of stock, membership or partnership interests, participations or other equivalents whether certificated or uncertificated (however designated) of a corporation, limited liability company, partnership or any other entity, and any and all similar ownership interests in a Person and any and all warrants or options to purchase any of the foregoing.

#### "<u>Carve-Out</u>": as defined in the Orders.

"<u>Cases</u>": the Initial Cases and each other case of a Debtor filed with the Bankruptcy Court and joined with the Initial Cases.

"Cash Equivalents": shall mean (a) Dollars, or money in other currencies received in the ordinary course of business, (b) securities with maturities of one (1) year or less from the date of acquisition issued or fully guaranteed or insured by the United States or Canadian government or any agency thereof, (c) securities with maturities of one (1) year or less from the date of acquisition issued or fully guaranteed by any state, province, commonwealth or territory of the United States or Canada, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least "A" by S&P or "A" by Moody's or equivalent rating, (d) demand deposit, certificates of deposit and time deposits with maturities of one (1) year or less from the date of acquisition and overnight bank deposits of any commercial bank, supranational bank or trust company having capital and surplus in excess of \$500,000,000, (e) repurchase obligations with respect to securities of the types (but not necessarily maturity) described in clauses (b) and (c) above, having a term of not more than 90 days, of banks (or bank holding companies) or subsidiaries of such banks (or bank holding companies) and non-bank broker-dealers listed on the Federal Reserve Bank of New York's list of primary and other reporting dealers ("Repo Counterparties"), which Repo Counterparties have capital, surplus and undivided profits aggregating in excess of \$500,000,000 (or the foreign equivalent thereof) and which Repo Counterparties or their parents (if the Repo Counterparties are not rated) will at the time of the transaction be rated "A-1" by S&P (or such similar equivalent rating) or higher by at least one nationally recognized statistical rating organization, (f) commercial paper rated at least A-1 or the equivalent thereof by S&P or P-1 or the equivalent thereof by Moody's and in either case maturing within one (1) year after the day of acquisition, (g) short-term marketable securities of comparable credit quality, (h) shares of money market mutual or similar funds which invest at least 95% in assets satisfying the requirements of clauses (a) through (g) of this definition, and (i) in the case of a Foreign Subsidiary, substantially similar investments, of comparable credit quality, denominated in the currency of any jurisdiction in which such Person conducts business.

"<u>Change of Control</u>": with respect to the Borrower, the acquisition, after the Closing Date, by any other Person, or two or more other Persons acting in concert other than the Permitted Holders, the Lenders or any Affiliate of the Lenders, of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of outstanding shares of voting stock of the Borrower at any time if after giving effect to such acquisition such Person or Persons owns twenty percent (20%) or more of such outstanding voting stock.

"<u>Closing Date</u>": June 3, 2009.

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

"<u>Collateral</u>": all property and assets of the Loan Parties of every kind or type whatsoever, including tangible, intangible, real, personal or mixed, whether now owned or hereafter acquired or arising, wherever located, all property of the estates of each Debtor within the meaning of section 541 of the Bankruptcy Code (including avoidance actions arising under Chapter 5 of the Bankruptcy Code and applicable state law except avoidance actions against the Prepetition Senior Facilities Secured Parties (as defined in the Final Order)), all property pledged to secure the Obligations under each Collateral Document (other than the Orders) and all proceeds, rents and products of the foregoing other than Excluded Collateral. For the avoidance of doubt, the proceeds of the Tranche C Term Loans constitute Collateral.

"<u>Collateral Documents</u>": means, collectively, the Orders, the Guaranty, the Equity Pledge Agreement, each Mortgage, collateral assignment, security agreement, pledge agreement or similar agreements delivered to the Lenders to secure the Obligations. The Collateral Documents (other than the Orders) shall supplement, and shall not limit, the grant of Collateral pursuant to the Orders.

"<u>Committee</u>": any statutory committee appointed in the Cases.

"<u>Compensation Regulations</u>": as defined in Section 5.16(a)(i).

"<u>Compliance Certificate</u>": a certificate duly executed by a Responsible Officer, substantially in the form of Exhibit F, for the immediately prior calendar month and on a cumulative basis from the Petition Date.

"<u>Contractual Obligation</u>": as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control": as defined in the definition of "Affiliate".

"<u>Controlled Affiliate</u>": as defined in Section 3.18(a).

"<u>Convention</u>": as defined in Section 2.12(d).

"<u>Debtor</u>": each of the Initial Debtors and, subject to the written consent of the Required Lenders, each other Subsidiary of the Initial Debtors to the extent that (i) such Subsidiary files with the Bankruptcy Court, (ii) such case is joined with the Cases and (iii) such Subsidiary is subject, by order of the Bankruptcy Court, to the previously issued orders relating to the Cases (including the Orders).

"<u>Debtor Successor</u>": with respect to any Debtor, (i) a "liquidating trust," within the meaning of Treas. Reg. § 301.7701-4, to which such Debtor's assets are distributed, or (ii) any other entity established for the sole purpose of liquidating the assets of such Debtor.

"<u>Default</u>": any event, that with the giving of notice, the lapse of time, or both, would become an Event of Default.

"<u>Disposition</u>": with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof; and the terms "Dispose" and "Disposed of" shall have correlative meanings.

"<u>Dollar Equivalent</u>": on any date of determination, (a) with respect to any amount denominated in Dollars, such amount and (b) with respect to an amount denominated in any other currency, the equivalent in Dollars of such amount as determined by the Treasury in accordance with normal banking industry practice using the Exchange Rate on the date of determination of such equivalent. In making any determination of the Dollar Equivalent, the Treasury shall use the relevant Exchange Rate in effect on the date on which a Dollar Equivalent is required to be determined pursuant to the provisions of this Agreement. As appropriate, amounts specified herein as amounts in Dollars shall include any relevant Dollar Equivalent amount.

"Dollars" and "<u>\$</u>": the lawful money of the United States.

"<u>Domestic 956 Subsidiary</u>": any U.S. Subsidiary substantially all of the value of whose assets consist of equity of one or more Foreign 956 Subsidiaries for U.S. federal income tax purposes.

"<u>Domestic Subsidiary</u>": any Subsidiary that is organized or existing under the laws of the United States or Canada or any state, province, commonwealth or territory of the United States or Canada.

"<u>EAWA</u>": the Employ American Workers Act (Section 1611 of Division A, Title XVI of the American Recovery and Reinvestment Act of 2009), Public Law No. 111-5, effective as of February 17, 2009, as may be amended and in effect from time to time.

"<u>EESA</u>": the Emergency Economic Stabilization Act of 2008, Public Law No. 110-343, effective as of October 3, 2008, as amended by Section 7000 *et al.* of Division A,

Title VII of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, effective as of February 17, 2009, as may be further amended and in effect from time to time.

"<u>Effective Date</u>": the date on which the conditions precedent set forth in Section 4.1 shall have been satisfied, which date shall not be later than the date on which the Related Section 363 Transactions are consummated.

"<u>EISA</u>": the Energy Independence and Security Act of 2007, Public Law No. 110-140, effective as of January 1, 2009, as may be amended and in effect from time to time.

"<u>Embargoed Person</u>": as defined in Section 3.19.

"<u>Environmental Agreement</u>": the Environmental Agreement dated as of the date hereof, executed by the Loan Parties for the benefit of the Lenders, substantially in the form of Exhibit I.

"<u>Environmental Laws</u>": any and all foreign, Federal, state, provincial, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or natural resources, as now or may at any time hereafter be in effect.

"<u>Environmental Permits</u>": any and all permits, licenses, approvals, registrations, notifications, exemptions and other authorizations required under any Environmental Law.

"<u>Environmental Tranche</u>" an amount under the Wind-Down Budget up to \$500,000,000 that was allocated as of the Effective Date to cover anticipated environmental related expenses and claims.

"<u>Equity Pledge Agreement</u>": the Amended and Restated Equity Pledge Agreement dated as of the date hereof, made by each Pledgor in favor of the Lenders, substantially in the form of Exhibit L.

"<u>ERISA</u>": the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Eurocurrency Reserve Requirements": for any day as applied to a Eurodollar Loan, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including basic, supplemental, marginal and emergency reserves) under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board) maintained by a member bank of the Federal Reserve System; <u>provided</u> that the Eurocurrency Reserve Requirements shall be \$0 with respect to the Canadian Lender.

"<u>Eurodollar Base Rate</u>": with respect to each day during each Interest Period pertaining to a Eurodollar Loan, the rate per annum determined on the basis of the rate for deposits in Dollars for a period equal to such Interest Period commencing on the first day of such

Interest Period appearing on page LIBOR01 of the Reuters screen as of 11:00 a.m. (London time) two Business Days prior to the beginning of such Interest Period. In the event that such rate does not appear on such page of the Reuters screen (or otherwise on such screen), the Eurodollar Base Rate shall be determined by reference to such other comparable publicly available service for displaying eurodollar rates as may be selected by the Treasury or, in the absence of such availability, by reference to the rate at which a reference institution selected by the Treasury is offered Dollar deposits at or about 11:00 a.m. (New York City time) two Business Days prior to the beginning of such Interest Period in the interbank eurodollar market where its eurodollar and foreign currency and exchange operations are then being conducted for delivery on the first day of such Interest Period for the number of days comprised therein.

"<u>Eurodollar Loans</u>": Loans the rate of interest applicable to which is based upon the Eurodollar Rate.

"<u>Eurodollar Rate</u>": with respect to each day during each Interest Period pertaining to a Eurodollar Loan, a rate per annum determined for such day in accordance with the following formula (rounded upward to the nearest 1/100th of 1%):

Eurodollar Base Rate 1.00 – Eurocurrency Reserve Requirements

; provided that, in no event shall the Eurodollar Rate be less than 2.00%.

"Event of Default": as defined in Section 7.

"Exchange Act": the Securities and Exchange Act of 1934, as amended.

"Exchange Rate": for any day with respect to any currency (other than Dollars), the rate at which such currency may be exchanged into Dollars, as set forth at 11:00 a.m. (New York time) on such day on the applicable Bloomberg currency page with respect to such currency. In the event that such rate does not appear on the applicable Bloomberg currency page, the Exchange Rate with respect to such currency shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Treasury and the Borrower or, in the absence of such agreement, such Exchange Rate shall instead be the spot rate of exchange of a reference institution selected by the Treasury in the London Interbank market or other market where such reference institution's foreign currency exchange operations in respect of such currency are then being conducted, at or about 11:00 a.m. (New York time) on such day for the purchase of Dollars with such currency, for delivery two Business Days later; provided, however, that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Treasury may use any reasonable method it deems appropriate to determine such rate, and such determination shall be conclusive absent manifest error.

"<u>Excluded Collateral</u>": as defined in Schedule 3.28. For the avoidance of doubt, Excluded Collateral shall at all times include the New GM Equity Interests and tax refunds due to Canadian subsidiaries.

"Excluded Subsidiary": (i) any JV Subsidiary in which any Loan Party owns less than 80% of the voting or economic interest, (ii) any U.S. Subsidiary of the Borrower listed as one of the "Domestic Entities" on Annex 1 to <u>Schedule 3.28</u> other than the Loan Parties listed therein, (iii) any Subsidiary of the Borrower existing on the Closing Date that the Borrower does not Control as of the Closing Date (including, without limitation, dealerships wholly owned by the Borrower that are operated by a third party pursuant to an agreement in effect on the Petition Date), (iv) [intentionally omitted] and (v) any Subsidiary set forth on <u>Schedule 1.1G</u> as such <u>Schedule 1.1G</u> may be amended from time to time with the consent of the Required Lenders.

"Executive Order": as defined in Section 3.19.

"<u>Existing Agreements</u>": the agreements of the Loan Parties and their Subsidiaries in effect on the Closing Date and any extensions, renewals and replacements thereof so long as any such extension, renewal and replacement could not reasonably be expected to have a material adverse effect on the rights and remedies of the Lenders under any of the Loan Documents.

"Existing Credit Agreement": as defined in the recitals.

"<u>Existing UST Term Loan Agreement</u>": the Loan and Security Agreement, dated as of December 31, 2008, between the Borrower and the Treasury.

"<u>Expense Policy</u>": the Borrower's comprehensive written policy on corporate expenses maintained and implemented in accordance with the Treasury regulations contained in 31 C.F.R. Part 30.

"<u>Federal Funds Effective Rate</u>": for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by JPMorgan Chase Bank, N.A. from three federal funds brokers of recognized standing selected by it.

"<u>Final Order</u>": as defined in the recitals.

"Foreign Assets Control Regulations": as defined in Section 3.19.

"Foreign 956 Subsidiary": any Non-U.S. Subsidiary of the Borrower that is a "controlled foreign corporation" as defined in Code Section 957.

"<u>Foreign Subsidiary</u>": any Subsidiary that is not a Domestic Subsidiary.

"<u>Funding Office</u>": the office of each Lender specified in <u>Schedule 1.1A</u> or such other office as may be specified from time to time by such Lender as its funding office by written notice to the Borrower.

"<u>GAAP</u>": generally accepted accounting principles as in effect from time to time in the United States.

"<u>Governmental Authority</u>": any federal, state, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality, or any federal, state or municipal court, in each case whether of the United States or a foreign jurisdiction.

"Group Members": the collective reference to the Borrower and its Subsidiaries.

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

"<u>Guarantor</u>": each Person listed on <u>Schedule 1.1B</u> and each other Person that becomes an Additional Guarantor.

"<u>Guaranty</u>": the Amended and Restated Guaranty and Security Agreement dated as of the date hereof, executed and delivered by the Borrower and each Guarantor, substantially in the form of Exhibit A.

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

"Indemnified Liabilities": as defined in Section 8.5.

"Indemnitee": as defined in Section 8.5.

"<u>Initial Case</u>": as defined in the recitals.

"Initial Debtors": as defined in the recitals.

"<u>Interest Payment Date</u>": (a) as to any ABR Loan, the first day of each March, June, September and December to occur while such Loan is outstanding and the final maturity date of such Loan, (b) as to any Eurodollar Loan, the last day of such Interest Period, and (c) as to any Loan, the date of any repayment or prepayment made in respect thereof.

"Interest Period": as to any Eurodollar Loan, (i) initially, the period commencing on the Borrowing Date (as defined in the Existing Credit Agreement) with respect to such Loan and ending three months thereafter; and (ii) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Loan and ending three months thereafter; <u>provided</u> that all of the foregoing provisions relating to Interest Periods are subject to the following:

(A) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(B) any Interest Period that would otherwise extend beyond the Maturity Date shall end on the Maturity Date; and

(C) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period.

"Interim Order": the Interim Order entered June 2, 2009 by the Bankruptcy Court pursuant to Bankruptcy Code sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (a) approving this Agreement and authorizing the Loan Parties to obtain Postpetition financing pursuant thereto, (b) granting related Liens and Superpriority Claims, (c) granting adequate protection to certain Prepetition secured parties, and (d) scheduling a final hearing.

"Investments": as defined in Section 6.10.

"<u>JV Agreement</u>": each partnership or limited liability company agreement (or similar agreement) between a North American Group Member or one of its Subsidiaries and the relevant JV Partner as the same may be amended, restated, supplemented or otherwise modified from time to time, in accordance with the terms hereof.

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

"JV Subsidiary": any Subsidiary of a Group Member which is not a Wholly Owned Subsidiary and as to which the business and management thereof is jointly controlled by the holders of the Capital Stock therein pursuant to customary joint venture arrangements.

"<u>Lenders</u>": as defined in the preamble hereto.

"<u>Lien</u>": any mortgage, pledge, security interest, lien or other charge or encumbrance (in the nature of a security interest), including the lien or retained security title of a conditional vendor, upon or with respect to any property or assets.

"<u>Loan Documents</u>": this Agreement, the Notes, the Environmental Indemnity Agreement, the Collateral Documents and each post-closing letter or agreement now and hereafter entered into among the parties hereto.

"Loan Parties": the Borrower, each Guarantor and the Pledgors.

"Loans": as defined in Section 2.1.

"<u>Master Transaction Agreement</u>": that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009, among New CarCo and the sellers party thereto.

"<u>Material Adverse Effect</u>": a material adverse effect on (a) the business, operations, property, condition (financial or otherwise) or prospects of the Borrower and its Subsidiaries (taken as a whole), (b) the ability of the Loan Parties (taken as a whole) to perform any of their obligations under any of the Loan Documents to which they are a party, (c) the validity or enforceability in any material respect of any of the Loan Documents to which the Loan Parties are a party, (d) the rights and remedies of the Lenders under any of the Loan Documents, or (e) the Collateral (taken as a whole); provided that, (w) the taking of any action by the Borrower and its Subsidiaries, including the cessation of production, pursuant to and in accordance with the Wind-Down Budget, (x) the filing of the Cases, and (y) any sale pursuant to any Related Section 363 Transaction or any other action taken pursuant to the Orders, shall not be taken into consideration.

"<u>Material Environmental Amount</u>": \$50,000,000.

"<u>Maturity Date</u>": the first date on which each of the following shall have occurred (which date may be extended by the Lenders in their sole discretion in accordance with Section 8.1): (i) all claims against the Debtors have been resolved such that there are no remaining disputed claims, (ii) all assets of the Debtors (other than remaining cash) have been liquidated and (iii) all distributions on account of allowed claims have been made, and all other actions that are required under the plan of liquidation (other than the dissolution of the last remaining Debtor) have been completed. On the Maturity Date, the plan administrator or other individual or entity charged with administering the liquidation plan shall be entitled to retain a de minimis amount of funds to complete the dissolution of the last remaining Debtor. As used in this definition, references to a Debtor includes its Debtor Successor.

"<u>Moody's</u>": Moody's Investors Service, Inc. and its successors.

"<u>Mortgage</u>": each of the mortgages and deeds of trust made by the Borrower or any Guarantor in favor of, or for the benefit of, the Lenders, substantially in the form of Exhibit J, taking into consideration the law and jurisdiction in which such mortgage or deed of trust is to be recorded or filed, to the extent applicable.

"<u>Mortgaged Property</u>": each property listed on <u>Schedule 1.1C</u>, as to which the Lenders shall be granted a Lien pursuant to the Orders or the Mortgages.

"<u>New CarCo</u>": General Motors Company (formerly known as NGMCO, Inc.), a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings, LLC.

"<u>New CarCo Assignment and Assumption</u>": as defined in the recitals.

"<u>New GM Equity Interests</u>": any stock, warrants, options or other equity interests of New CarCo or any of its Subsidiaries issued to or held by any Debtor (or any of its Subsidiaries) pursuant to the Related Section 363 Transactions, including any (i) subsequent dividends, payment or other distribution thereon, and (ii) proceeds received or receivable upon any disposition thereof.

"<u>Non-Debtor</u>": each Subsidiary of the Borrower that is not a Debtor.

"<u>Non-Excluded Taxes</u>": as defined in Section 2.12(a).

"<u>Non-U.S. Lender</u>": as defined in Section 2.12(d).

"<u>Non-U.S. Subsidiary</u>": any Subsidiary of any Loan Party that is not a U.S. Subsidiary.

"<u>North American Group Members</u>": collectively, the Loan Parties and each Domestic Subsidiary that is not an Excluded Subsidiary.

"<u>Notes</u>": as defined in Section 4.1(a)(vi) and any promissory notes issued in connection with an assignment contemplated by Section 2.3(b).

"Obligations": the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans and all other obligations and liabilities of any Loan Party to any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including, without limitation, all fees, charges and disbursements of counsel to any Lender that are required to be paid by any Loan Party pursuant hereto) or otherwise.

"<u>OFAC</u>": the Office of Foreign Assets Control of the Treasury.

"Orders": the Interim Order, the Final Order and the Wind-Down Order.

"<u>Other Foreign 956 Subsidiary</u>": any Non-U.S. Subsidiary substantially all of the value of whose assets consist of equity of one or more Foreign 956 Subsidiaries for U.S. federal income tax purposes.

"<u>Other Taxes</u>": any and all present or future stamp or documentary taxes and any other excise or property taxes, intangible or mortgage recording taxes, charges or similar levies imposed by the United States or any taxing authority thereof or therein arising from any payment made, or from the execution, delivery or enforcement of, or otherwise with respect to this Agreement or any other Loan Document.

"<u>Participant</u>": as defined in Section 8.6(c).

"<u>Permitted Holders</u>": any holder of any Capital Stock of the Borrower as of the Closing Date.

"<u>Permitted Indebtedness</u>":

- (a) Indebtedness created under any Loan Document;
- (b) [intentionally omitted];
- (c) trade payables, if any, in the ordinary course of its business;

(d) Indebtedness existing on the Petition Date and any refinancings, refundings, renewals or extensions thereof (without any increase, or any shortening of the maturity, of any principal amount thereof);

(e) intercompany Indebtedness of a North American Group Member in the ordinary course of business; <u>provided</u> that, the right to receive any repayment of such Indebtedness (other than Indebtedness meeting the criteria of clause (d) above, or any extensions, renewals, exchanges or replacements thereof) shall be subordinated to the Lenders' rights to receive repayment of the Obligations;

- (f) [intentionally omitted];
- (g) [intentionally omitted];

(h) Swap Agreements permitted pursuant to Section 6.15 that are not entered into for speculative purposes;

(i) Indebtedness with respect to (x) letters of credit, bankers' acceptances and similar instruments issued in the ordinary course of business, including letters of credit, bankers' acceptances and similar instruments in respect of the financing of insurance premiums, customs, stay, performance, bid, surety or appeal bonds and similar obligations, completion guaranties, "take or pay" obligations in supply agreements, reimbursement obligations regarding workers' compensation claims, indemnification,

adjustment of purchase price and similar obligations incurred in connection with the acquisition or Disposition of any business or assets, and sales contracts, coverage of long-term counterparty risk in respect of insurance companies, purchasing and supply agreements, rental deposits, judicial appeals and service contracts and (y) appeal, bid, performance, surety, customs or similar bonds issued for the account of any Loan Party in the ordinary course of business;

(j) Indebtedness incurred in the ordinary course of business in connection with cash management and deposit accounts and operations, netting services, employee credit card programs and similar arrangements and Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, <u>provided</u> that such Indebtedness is extinguished within five Business Days of its incurrence;

- (k) any guarantee by any Loan Party of Permitted Indebtedness; and
- (l) Indebtedness entered into under Section 136 of EISA.

#### "Permitted Investments":

(a) any Investment in Cash Equivalents;

(b) any Investment by a Loan Party in the Borrower, another Loan Party, or a Pledged Entity that is a Domestic Subsidiary;

(c) [intentionally omitted];

(d) any Investment (i) existing on the Effective Date, or (ii) consisting of any extension, modification or renewal of any Investment existing on the Closing Date; <u>provided</u> that the amount of any such Investment is not increased through such extension, modification or renewal;

- (e) [intentionally omitted];
- (f) [intentionally omitted];
- (g) [intentionally omitted];
- (h) any Investment otherwise permitted under this Agreement;

(i) Investments in Indebtedness of, or Investments guaranteed by, Governmental Authorities, in connection with industrial revenue, municipal, pollution control, development or other bonds or similar financing arrangements;

- (j) [intentionally omitted];
- (k) Trade Credit;
- (l) [intentionally omitted];

(m) Investments (i) received in satisfaction or partial satisfaction of delinquent accounts and disputes with customers or suppliers in the ordinary course of business, or (ii) acquired as a result of foreclosure of a Lien securing an Investment or the transfer of the assets subject to such Lien in lieu of foreclosure;

(n) commercial transactions in the ordinary course of business with the Borrower or any of its Subsidiaries to the extent such transactions would constitute an Investment;

(o) conveyance of Collateral in an arm's-length transaction to a Subsidiary that is not a Loan Party or an Affiliate of the Borrower for non-cash consideration consisting of Trade Credit or other Property to become Collateral having a fair market value equal to or greater than the fair market value of the conveyed Collateral; and

(p) Investments after the Effective Date in (i) dealerships of the Borrower and its Subsidiaries in the United States in an aggregate amount not exceeding \$2,500,000 and (ii) General Motors Strasbourg, S.A. in an aggregate amount not exceeding \$7,500,000.

"<u>Permitted Liens</u>": with respect to any Property of any North American Group Member:

(a) Liens created under the Loan Documents;

(b) Liens on Property of a North American Group Member existing on the date hereof (including Liens on Property of a North American Group Member pursuant to Existing Agreements; <u>provided</u> that such Liens shall secure only those obligations and any permitted refinancing that they secure on the date hereof);

(c) [intentionally omitted];

(d) Liens for taxes and utility charges not yet due or that are being contested in good faith, by proper proceedings diligently pursued, and as to which adequate reserves have been provided;

(e) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business and securing obligations that are not due and payable or that are being contested in compliance with Section 5.8;

(f) Liens securing reimbursement obligations with respect to letters of credit that encumber documents and other property relating to such letters of credit and the proceeds thereof;

(g) Liens securing Swap Agreements permitted pursuant to Section 6.15;

(h) Liens created in the ordinary course of business in favor of banks and other financial institutions over balances of any accounts held at such banks or financial institutions or over investment property held in a securities account, as the case may be,

to facilitate the operation of cash pooling, cash management or interest set-off arrangements;

(i) customary Liens in favor of trustees and escrow agents, and netting and set-off rights, banker's liens and the like in favor of counterparties to financial obligations and instruments, including, without limitation, Swap Agreements permitted pursuant to Section 6.15;

(j) Liens securing Indebtedness incurred under Section 136 of EISA;

(k) pledges and deposits made in the ordinary course of business in compliance with workmen's compensation, unemployment or other insurance and other social security laws or regulations;

(l) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory obligations, surety, customs and appeal bonds, performance bonds and other obligations of a like nature, or to secure the payment of import or customs duties, in each case incurred in the ordinary course of business;

(m) zoning and environmental restrictions, easements, licenses, encroachments, covenants and servitudes, rights-of-way, restrictions on use of real property or groundwater, institutional controls and other similar encumbrances or deed restrictions incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and do not materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any North American Group Member;

- (n) [intentionally omitted];
- (o) judgment Liens securing judgments;

(p) any Lien consisting of rights reserved to or vested in any Governmental Authority by statutory provision;

(q) Liens securing Indebtedness described in clauses (d) and (e) of the definition of Permitted Indebtedness;

(r) pledges or deposits made to secure reimbursement obligations in respect of letters of credit issued to support any obligations or liabilities described in clauses (k) or (l) of this definition;

- (s) [intentionally omitted];
- (t) [intentionally omitted]; and

(u) other Liens created or assumed in the ordinary course of business of the North American Group Member; <u>provided</u> that the obligations secured by all such Liens shall not exceed the principal amount of \$10,000,000.

"<u>Person</u>": any individual, corporation, company, voluntary association, partnership, joint venture, limited liability company, trust, unincorporated association or government (or any agency, instrumentality or political subdivision thereof).

"<u>Petition Date</u>": as defined in the recitals hereto.

"<u>Pledged Entity</u>": a Subsidiary of a Loan Party whose Capital Stock is subject to a security interest in favor of the Lenders pursuant to the Orders or the Collateral Documents.

"<u>Pledgors</u>": the parties set forth on <u>Schedule 1.1D</u> and each other Person that makes a pledge in favor of the Lenders under the Equity Pledge Agreement.

"<u>Postpetition</u>": when used with respect to any agreement or instrument, any claim or proceeding or any other matter, shall refer to an agreement or instrument that was entered into or became effective, a claim or proceeding that first arose or was first instituted, or another matter that first occurred, after the commencement of the Cases.

"<u>Prepetition</u>": when used with respect to any agreement or instrument, any claim or proceeding or any other matter, shall refer to an agreement or instrument that was entered into or became effective, a claim or proceeding that arose or was instituted, or another matter that occurred, prior to the Petition Date.

"<u>Prepetition Payment</u>": a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any Prepetition Indebtedness or trade payables or other Prepetition claims against any Debtor.

"<u>Prime Rate</u>": the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A. as its prime rate in effect at its principal office in New York City (the Prime Rate not being intended to be the lowest rate of interest charged by JPMorgan Chase Bank, N.A. in connection with extensions of credit to borrowers).

"<u>Prohibited Jurisdiction</u>": any country or jurisdiction, from time to time, that is the subject of a prohibition order (or any similar order or directive), sanctions or restrictions promulgated or administered by any Governmental Authority of the United States.

"Prohibited Person": any Person:

(a) subject to the provisions of the Executive Order;

(b) that is owned or controlled by, or acting for or on behalf of, any person or entity that is subject to the provisions of the Executive Order;

(c) with whom a Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;

(d) who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order;

(e) that is named as a "specially designated national and blocked person" on the most current list published by the OFAC at its official website, http://www.treas.goofac/t11sdn.pdf or at any replacement website or other replacement official publication of such list; or

(f) who is an Affiliate or affiliated with a Person listed above.

"<u>Property</u>": any right or interest in or to property (other than tax refunds due to Canadian subsidiaries) of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

"<u>Quarterly Report</u>": as defined in Section 5.1(f).

"<u>Records</u>": all books, instruments, agreements, customer lists, credit files, computer files, storage media, tapes, disks, cards, software, data, computer programs, printouts and other computer materials and records generated by other media for the storage of information maintained by any Person with respect to the business and operations of the Loan Parties and the Collateral.

"<u>Register</u>": as defined in Section 8.6(b).

"<u>Regulation D</u>": Regulation D of the Board as in effect from time to time.

"<u>Related Section 363 Transactions</u>": as defined in the recitals.

"<u>Required Lenders</u>": at any time, Lenders with Loans constituting a majority of the Loans of all Lenders.

"<u>Requirements of Law</u>": as to any Person, the Certificate of Incorporation and By-Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court of competent jurisdiction or other Governmental Authority, in each case applicable to and binding upon such Person and any of its property, and to which such Person and any of its property is subject.

"<u>Responsible Officer</u>": as to any Person, the chief executive officer or, with respect to financial matters (including without limitation those matters set forth in Sections 5.1(f) and 5.2(h)), the chief financial officer, treasurer or assistant treasurer of such Person, an individual so designated from time to time by such Person's board of directors or, for the purposes of Section 5.2 only (other than Sections 5.1(f) and 5.2(h)), to include the secretary or an assistant secretary of the Borrower, or, in the event any such officer is unavailable at any time he or she is required to take any action hereunder, Responsible Officer shall mean any officer

authorized to act on such officer's behalf as demonstrated by a certificate of corporate resolution (or equivalent); <u>provided</u> that the Lenders are notified in writing of the identity of such Responsible Officer.

"<u>Restricted Payments</u>": as defined in Section 6.5.

"<u>S&P</u>": Standard & Poor's Ratings Services and its successors.

"Sale/Leaseback Transaction": as defined in Section 6.17.

"<u>SEC</u>": the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

"<u>Section 363 Sale Order</u>": an order of the Bankruptcy Court approving the Related Section 363 Transactions in form and substance substantially in the form attached to the Transaction Documents or otherwise satisfactory to the Required Lenders.

"<u>Senior Employee</u>": any of the 25 most highly compensated employees (including the SEOs) of the Loan Parties, as determined pursuant to the rules set forth in 31 C.F.R. Part 30.

"<u>SEO</u>": a Senior Executive Officer as defined in the EESA and any interpretation of such term by the Treasury thereunder, including the rules set forth in 31 C.F.R. Part 30.

"<u>Special Inspector General of the Troubled Asset Relief Program</u>": The Special Inspector General of the Troubled Asset Relief Program, as contemplated by Section 121 of the EESA.

"Specified Benefit Plan": any employee benefit plan within the meaning of section 3(3) of ERISA and any other plan, arrangement or agreement which provides for compensation, benefits, fringe benefits or other remuneration to any employee, former employee, individual independent contractor or director, including any bonus, incentive, supplemental retirement plan, golden parachute, employment, individual consulting, change of control, bonus or retention agreement, whether provided directly or indirectly by any Group Member or otherwise.

"Subsidiary": with respect to any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or shall have the right to have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person. Unless otherwise qualified, all references to a "Subsidiary" or "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower. "Superpriority Claim": a claim against the Borrower or any other Debtor in any of the Cases pursuant to section 364(c)(1) of the Bankruptcy Code having priority over any or all administrative expenses including administrative expenses specified in sections 503 and 507 of the Bankruptcy Code, whether or not such claim or expenses may become secured by a judgment lien or other non-consensual lien, levy or attachment.

"Swap Agreement": any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or any of its Subsidiaries shall be a "Swap Agreement."

"<u>Taxes</u>": as defined in Section 2.12(a).

"<u>Trade Credit</u>": accounts receivable, trade credit or other advances extended to, or investment made in, customers, suppliers, including intercompany, in the ordinary course of business.

"Trading With the Enemy Act": as defined in Section 3.19.

"<u>Tranche B Term Loan</u>": as defined in the recitals.

"Tranche C Term Loan": as defined in the recitals.

"<u>Transaction Documents</u>": each of, and collectively, (i) the Master Transaction Agreement, (ii) the Section 363 Sale Order, (iii) the Transition Services Agreement and (iv) the related manufacturing agreements, asset purchase agreements, organizational documents, finance support agreements and all other related documentation, each as amended, supplemented or modified from time to time in accordance with Section 6.6.

"Transferee": any Assignee or Participant.

"<u>Transition Services Agreement</u>": the Transition Services Agreement, dated as of the date hereof, among the Borrower, the other Initial Debtors, and New CarCo, substantially in the form of Exhibit T to the Master Transaction Agreement.

"<u>Treasury</u>": The United States Department of the Treasury.

"<u>Uniform Commercial Code</u>": the Uniform Commercial Code as in effect from time to time in the State of New York.

"<u>United States</u>": the United States of America.

"<u>USA PATRIOT Act</u>": as defined in Section 3.18(d).

"<u>U.S. Subsidiary</u>": any Subsidiary of any Loan Party that is organized or existing under the laws of the United States or any state thereof or the District of Columbia.

"<u>Wholly Owned Subsidiary</u>": as to any Person, any other Person all of the Capital Stock of which (other than directors' qualifying shares required by law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

"<u>Wind-Down</u>": the sale or shutdown of certain businesses and properties of the Debtors and the Subsidiaries thereof.

"<u>Wind-Down Budget</u>": the budget, attached as Annex I hereto, setting forth in reasonable detail all anticipated receipts and disbursements of the Borrower and certain of its U.S. Subsidiaries on a calendar year basis from the Effective Date through and including December 30, 2011, as amended by each Quarterly Report delivered pursuant to Section 5.1(f).

"<u>Wind-Down Order</u>": as defined in the recitals.

1.2. <u>Other Definitional Provisions</u>. (a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, (i) accounting terms relating to Group Members not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP, (ii) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," (iii) the word "incur" shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words "incurred" and "incurrence" shall have correlative meanings), (iv) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Capital Stock, securities, revenues, accounts, leasehold interests and contract rights, (v) references to agreements or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as amended, supplemented, restated or otherwise modified from time to time and (vi) references to any Person shall include its successors and assigns.

(c) The words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole (including the Schedules and Exhibits hereto) and not to any particular provision of this Agreement (or the Schedules and Exhibits hereto), and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

1.3. <u>Conversion of Foreign Currencies</u>. (a) For purposes of this Agreement and the other Loan Documents, with respect to any monetary amounts in a currency other than

Dollars, the Dollar Equivalent thereof shall be determined based on the Exchange Rate in effect at the time of such determination (unless otherwise explicitly provided herein).

(b) The Treasury may set up appropriate rounding off mechanisms or otherwise round-off amounts hereunder to the nearest higher or lower amount in whole Dollar or cent to ensure amounts owing by any party hereunder or that otherwise need to be calculated or converted hereunder are expressed in whole Dollars or in whole cents, as may be necessary or appropriate.

#### **SECTION 2**

#### AMOUNT AND TERMS OF THE LOANS

2.1. Loans. On the Effective Date, the Lenders made the Tranche C Term Loans in Dollars to the Borrower in the aggregate principal amount of \$1,175,000,000 (the "Loans"). The Loans shall be non-recourse to the Borrower and the Guarantors and recourse only to the Collateral. The Loans may from time to time be Eurodollar Loans or, solely in the circumstances specified in Section 2.8, ABR Loans. Loans repaid or prepaid may not be reborrowed.

### 2.2. [Intentionally Omitted].

2.3. <u>Repayment of Loans; Evidence of Debt</u>. (a) The Loans shall be payable on the Maturity Date; <u>provided</u> that, upon the Administrative/ Priority Claim Payment Date, the portion of the Loans equal to the Administrative/ Priority Claim Payment Amount as of such date shall be due. Except as otherwise expressly provided herein, the repayment of the Loans shall, subsequent to the closing of the Related Section 363 Transactions, be subject to claims against the Debtors' estates that have priority under Sections 503(b) or 507(a) of the Bankruptcy Code, including costs and expenses of administration that are attendant to the formulation and confirmation of a liquidating chapter 11 plan, whether incurred prior or subsequent to the consummation of the Related Section 363 Transactions, in an aggregate amount up to \$1,175,000,000, or such larger amount as approved by the Lenders.

(b) Pursuant to Section 4.1(a), the Borrower shall execute and deliver the Notes on the Effective Date. Following any assignment of the Loans pursuant to Section 8.6, the Borrower agrees that, upon the request of any Lender, the Borrower shall promptly execute and deliver to such Lender Notes reflecting the Loans assigned and the Loans retained by such Lender, if any.

2.4. <u>Optional Prepayments</u>. (a) The Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to each Lender no later than 12:00 noon (New York City time) three Business Days prior to the date such prepayment is requested to be made, which notice shall specify the date of such prepayment, the aggregate amount of such prepayment and such Lender's Aggregate Exposure Percentage of such payment; <u>provided</u> that, if a Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.10. If any such notice is given, the amount specified in

such notice shall be due and payable on the date specified therein, together with accrued interest to such date on the amount prepaid and shall be applied as provided in Section (b). Partial prepayments of Loans shall be in an aggregate principal amount of \$20,000,000 or a whole multiple thereof or, if less, the entire principal amount thereof then outstanding.

(b) Unless the Required Lenders shall otherwise agree, amounts to be applied in connection with prepayments made pursuant to Section 2.4 shall be applied, (i) <u>first</u>, to pay accrued and unpaid interest on, and expenses in respect of, the Loans, and (ii) <u>second</u>, to repay the Loans. Any such prepayment shall be accompanied by a notice to each Lender specifying the aggregate amount of such prepayment and such Lender's Aggregate Exposure Percentage of such prepayment.

## 2.5. [Intentionally Omitted].

2.6. <u>Interest Rates and Payment Dates/Fee Payment Dates/Fees</u>. (a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Eurodollar Rate determined for such Interest Period <u>plus</u> the Applicable Margin.

(b) Each ABR Loan shall bear interest at a rate per annum equal to the ABR <u>plus</u> the Applicable Margin.

(c) [Intentionally Omitted].

(d) (i) At any time any Event of Default shall have occurred and be continuing, (i) all outstanding Loans shall bear interest at a rate per annum equal to the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section 2.6 <u>plus</u> 5% per annum, which, in the sole discretion of the Treasury, may be the rate of interest then applicable to ABR Loans, and (ii) all other outstanding Obligations shall bear interest at 5% above the rate per annum equal to the rate of interest then applicable to ABR Loans.

(e) [Intentionally Omitted].

(f) Interest shall be payable in arrears on each Interest Payment Date, <u>provided</u> that, interest on the Loans shall not be payable in cash on each Interest Payment Date but shall instead be added to the principal of the Loans on each Interest Payment Date and shall be payable in cash on the Maturity Date.

2.7. <u>Computation of Interest and Fees</u>. (a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that with respect to ABR Loans the rate of interest on which is calculated on the basis of the Prime Rate, the interest thereon shall be calculated on the basis of a 365- (or 366-) day year for the actual days elapsed. The Treasury shall, as soon as practicable, and promptly, notify the Borrower and the other Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Loan resulting from a change in the ABR or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective. The Treasury shall, as soon as practicable, and promptly, notify the

Borrower and the other Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Treasury pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Treasury shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Treasury in determining any interest rate pursuant to Section 2.7(a).

2.8. <u>Inability to Determine Interest Rate; Illegality</u>. (a) If prior to the first day of any Interest Period:

(i) any Lender shall have determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period, or

(ii) any Lender shall have determined that the Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lender (as conclusively certified by such Lender) of making or maintaining their affected Loans during such Interest Period;

such Lender shall give telecopy or telephonic notice thereof to the Borrower and the other Lenders as soon as practicable thereafter. If such notice is given pursuant to clause (i) or (ii) of this Section 2.8(a) in respect of Eurodollar Loans, then (1) any Eurodollar Loans requested to be made on the first day of such Interest Period shall be made by the affected Lenders as ABR Loans, and (2) any outstanding Eurodollar Loans of the affected Lender, shall be converted, on the last day of the then-current Interest Period, to ABR Loans. Until such relevant notice has been withdrawn by such Lender, no further Eurodollar Loans by the affected Lenders shall be made or continued as such, nor shall the Borrower have the right to convert ABR Loans to Eurodollar Loans.

(b) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof shall make it unlawful for any Lender to make or maintain Eurodollar Loans as contemplated by this Agreement, such Lender shall give notice thereof to the Borrower describing the relevant provisions of such Requirement of Law, following which, (i) in the case of Eurodollar Loans, (A) the commitment of such Lender hereunder to make Eurodollar Loans and continue such Eurodollar Loans as such and (B) such Lender's outstanding Eurodollar Loans shall be converted automatically on the last day of the then current Interest Periods with respect to such Loans (or within such earlier period as shall be required by law) to ABR Loans. If any such conversion or prepayment of a Eurodollar Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, the Borrower shall pay to such Lender such amounts, if any, as may be required pursuant to Section 2.10.

2.9. <u>Treatment of Borrowings and Payments; Evidence of Debt.</u> (a) [Intentionally Omitted]. (b) Each payment (including each prepayment) by the Borrower on account of principal of and interest on the Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Loans then held by the Lenders. Amounts paid on account of the Loans may not be reborrowed.

(c) [Intentionally Omitted].

(d) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without setoff or counterclaim and shall be made prior to 3:00 p.m. (New York City time) on the due date thereof to the Lenders at their respective Funding Offices, in Dollars and in immediately available funds. If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

2.10. Indemnity. The Borrower agrees to indemnify each Lender for, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment after the Borrower has given a notice thereof in accordance with the provisions of this Agreement or (c) the making of a prepayment of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto. Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, for the period from the date of such prepayment or of such failure to borrow to the last day of such Interest Period (or. in the case of a failure to borrow the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank Eurodollar market. A certificate as to any amounts payable pursuant to this Section 2.10 submitted to the Borrower by any Lender shall be conclusive in the absence of manifest error and shall be payable within 30 days of receipt of any such notice. The agreements in this Section 2.10 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

2.11. <u>Superpriority Nature of Obligations and Lenders' Liens</u>. The priority of Lenders' Liens on the Collateral owned by the Loan Parties shall be set forth in the Final Order entered with respect to the Cases.

2.12. Taxes. (a) All payments made by the Borrower under this Agreement or any other Loan Document shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereinafter imposed, levied, collected, withheld or assessed by any Governmental Authority (collectively, "Taxes"), except for any deduction or withholding required by law. If the Borrower is required to withhold any Non-Excluded Taxes from any amounts payable to any Lender (i) the Borrower shall make such deductions and shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable laws and (ii) the amounts so payable to such Lender shall be increased to the extent necessary to pay to such Lender such additional amounts as may be necessary so that the Lender receives, free and clear of all such Non-Excluded Taxes, a net amount equal to the amount it would have received from the Borrower under this Agreement or any other Loan Document if no such deduction or withholding had been made. For purposes of this Agreement or any other Loan Document, "Non-Excluded Taxes" are withholding Taxes imposed by the United States or any taxing authority thereof or therein on payments made by the Borrower under this Agreement or any other Loan Document other than (a) withholding Taxes imposed on any Lender as a result of a present or former connection between such Lender and the jurisdiction of the United States or any taxing authority thereof or therein imposing such Tax (other than any such connection arising solely from such Lender having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any other Loan Document), (b) any branch profits taxes imposed by the United States, (c) any withholding Taxes that exist on the date the Lender becomes a Lender or that arise as a result of a change in status of the Lender as a Governmental Authority which is an agency of the Canadian federal government that is exempt from withholding under the Convention as in effect on the date the Lender becomes a Lender, and (d) withholding Taxes that could be eliminated or reduced by the Lender providing tax forms, certifications, or other documentation.

(b) In addition, the Borrower shall pay any Other Taxes over to the relevant Governmental Authority in accordance with Applicable Law.

(c) Whenever any Non-Excluded Taxes or Other Taxes are payable by the Borrower, as promptly as possible thereafter, the Borrower shall send to the Lender, as the case may be, a certified copy of an original official receipt received by the Borrower showing payment thereof (or if an official receipt is not available, such other evidence of payment as shall be reasonably satisfactory to such Lender). If the Borrower fails to pay any Non-Excluded Taxes or Other Taxes required to be paid by the Borrower when due to the appropriate taxing authority or fails to remit to the Lender the required receipts or other required documentary evidence, in each case after receiving at least five days' advance written notice from the Lender, the Borrower shall indemnify the Lender, as the case may be, for any incremental taxes, Non-Excluded Taxes or Other Taxes, interest, additions to tax, expenses or penalties that may become payable by any Lender, as the case may be, as a result of such failure. The indemnification payments under this Section 2.12(c) shall be made within 30 days after the date such Lender, as the case may be, makes a written demand therefor (together with a reasonably detailed calculation of such amounts).

(d) Each Lender (or any Transferee) (other than the United States government (including the Treasury)) that either (i) is not incorporated under the laws of the United States,

any state thereof, or the District of Columbia or (ii) whose name does not include "Incorporated," "Inc.," "Corporation," "Corp.," "P.C.," "insurance company," or "assurance company" (a "Non-U.S. Lender") shall deliver to the Borrower, so long as such Lender is legally entitled to do so, two originals of either U.S. Internal Revenue Service Form W-9, Form W-8BEN, Form W-8EXP, Form W-8ECI, or in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payment of "portfolio interest", a Form W-8BEN (along with a statement as to certain requirements in order to claim an exemption for "portfolio interest" reasonably acceptable to the Borrower), or Form W-8IMY (with applicable attachments), or any subsequent versions thereof or successors thereto, properly completed and duly executed by such Non-U.S. Lender claiming a complete exemption from (or reduced rate of) United States federal withholding tax on all payments by the Borrower under this Agreement or any other Loan Document. In addition, each Lender shall provide any other U.S. tax forms (with applicable attachments) as will reduce or eliminate United States federal withholding tax on payments by the Borrower under this Agreement or any other Loan Document. For the avoidance of doubt, the Canadian Lender shall provide a Form W-8BEN claiming exemption from withholding under the Convention between the United States of America and Canada with respect to Taxes on Income and on Capital (the "Convention") on the Closing Date. Each Lender (other than the United States government (including the Treasury)) shall provide the appropriate documentation under this clause (d) at the following times (i) prior to the first payment date after becoming a party to this Agreement, (ii) upon a change in circumstances or upon a change in law, in each case, requiring or making appropriate a new or additional form, certificate or documentation, (iii) upon or before the expiration, obsolescence or invalidity of any documentation previously provided to the Borrower and (iv) upon reasonable request by the Borrower. If a Lender is entitled to an exemption from or a reduction of any non-U.S. withholding Tax under the laws of any jurisdiction imposing such Tax on any payments made by the Borrower under this Agreement, then the Lender shall deliver to the Borrower, at the time or times prescribed by Applicable Law and as reasonably requested by the Borrower, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate, provided that the Lender is legally entitled to complete, execute and deliver such documentation and without material adverse consequences to the Lender.

If any Lender determines, in its sole good faith discretion, that it has (e) received a refund, credit or other tax benefit in respect of any Non-Excluded Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.12, it shall pay over such refund to the Borrower (but only to the extent of Non-Excluded Taxes or Other Taxes paid by the Borrower plus any interest thereon paid by the relevant Governmental Authority with respect to such refund), net of all out of pocket third-party expenses of the Lender related to claiming such refund or credit, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund) within 30 days of the date of such receipt. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, upon the request of the Lender, as the case may be, the Borrower agrees to repay any amount paid over to the Borrower by such Lender pursuant to the immediately preceding sentence if such Lender, as the case may be, is required to repay such amount to such Governmental Authority. This paragraph shall not be construed to (i) interfere with the rights of any Lender to arrange its tax affairs in whatever manner it sees fit, (ii) obligate any Lender to claim any tax refund, (iii) require any Lender to make available its tax returns (or any other information relating to its taxes or any computation with respect thereof which it deems in its sole discretion to be confidential) to the Borrower or any other Person, or (iv) require any Lender to do anything that would in its sole discretion prejudice its ability to benefit from any other refunds, credits, reliefs, remissions or repayments to which it may be entitled.

(f) Each Lender that is an Assignee shall be bound by this Section 2.12.

(g) The agreements contained in this Section 2.12 shall survive the termination of this Agreement or any other Loan Document and the payments contemplated hereunder or thereunder.

### **SECTION 3**

### **REPRESENTATIONS AND WARRANTIES**

To induce the Lenders to enter into this Agreement, each Loan Party represents to the Lenders, with respect to itself and each of its Subsidiaries that is a North American Group Member, in each case subject to the Wind-Down, the Orders, the Related Section 363 Transactions, the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court issued in connection with the Cases, that as of the Effective Date:

3.1. Existence. Each North American Group Member (a) is a corporation, limited partnership or limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite corporate or other power, and has all governmental licenses, authorizations, consents and approvals, necessary to own its assets and carry on its business as now being or as proposed to be conducted, except where the lack of such licenses, authorizations, consents and approvals would not be reasonably likely to have a Material Adverse Effect, (c) is qualified to do business and is in good standing in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary, except where failure so to qualify would not be reasonably likely (either individually or in the aggregate) to have a Material Adverse Effect, and (d) is in compliance in all material respects with all Requirements of Law.

- 3.2. [Intentionally Omitted].
- 3.3. [Intentionally Omitted].
- 3.4. [Intentionally Omitted].

3.5. <u>Action, Binding Obligations</u>. (i) Each North American Group Member has all necessary corporate or other power, authority and legal right to execute, deliver and perform its obligations under each of the Loan Documents to which it is a party; (ii) the execution, delivery and performance by each North American Group Member of each of the Loan Documents to which it is a party has been duly authorized by all necessary corporate or other action on its part; and (iii) each Loan Document has been duly and validly executed and delivered by each North American Group Member party thereto and constitutes a legal, valid and binding obligation of all of the North American Group Members party thereto, enforceable against such North American Group Members in accordance with its terms, subject to the Bankruptcy Exceptions.

3.6. <u>Approvals</u>. Except as required under applicable state and federal bankruptcy rules, no authorizations, approvals or consents of, and no filings or registrations with, any Governmental Authority, or any other Person, are necessary for the execution, delivery or performance by each North American Group Member of the Loan Documents to which it is a party for the legality, validity or enforceability thereof, except with respect to North American Group Members other than the Debtors for filings and recordings or other actions in respect of the Liens pursuant to the Collateral Documents, unless the same has already been obtained and provided to the Lenders.

## 3.7. [Intentionally Omitted].

3.8. <u>Investment Company Act</u>. None of the Loan Parties is required to register as an "investment company", or is a company "controlled" by a Person required to register as an "investment company", within the meaning of the Investment Company Act of 1940, as amended. No Loan Party is subject to any Federal or state statute or regulation which limits its ability to incur Indebtedness.

# 3.9. [Intentionally Omitted].

3.10. <u>Chief Executive Office; Chief Operating Office</u>. The chief executive office and the chief operating office on the Closing Date for each North American Group Member is located at the location set forth on <u>Schedule 3.10</u> hereto.

3.11. <u>Location of Books and Records</u>. The location where the North American Group Members keep their books and records including all Records relating to their business and operations and the Collateral are located in the locations set forth in <u>Schedule 3.11</u>.

- 3.12. [Intentionally Omitted].
- 3.13. [Intentionally Omitted].

3.14. <u>Expense Policy</u>. The Borrower has taken steps necessary to ensure that (a) the Expense Policy conforms to the requirements set forth herein and (b) the Borrower and its Subsidiaries are in compliance with the Expense Policy.

3.15. <u>Subsidiaries</u>. All of the Subsidiaries of each Loan Party at the date hereof are listed on <u>Schedule 3.15</u>, which schedule sets forth the name and jurisdiction of formation of each of their Subsidiaries and, as to each such Subsidiary, the percentage of each class of Capital Stock owned by each Loan Party or any of their Subsidiaries except as set forth on <u>Schedule 3.15</u>.

3.16. <u>Capitalization</u>. One hundred percent (100%) of the issued and outstanding Capital Stock of each North American Group Member (other than Borrower) is owned by the Persons listed on <u>Schedule 3.16</u> and, to the knowledge of each Loan Party, such Capital Stock

are owned by such Persons, free and clear of all Liens other than Permitted Liens. No Loan Party has issued or granted any options or rights with respect to the issuance of its respective Capital Stock which is presently outstanding except as set forth on <u>Schedule 3.16</u> hereto.

3.17. <u>Fraudulent Conveyance</u>. Each North American Group Member acknowledges that it will benefit from the Loans contemplated by this Agreement. No North American Group Member is incurring Indebtedness or transferring any Collateral with any intent to hinder, delay or defraud any of its creditors.

3.18. <u>USA PATRIOT Act</u>. (a) Each North American Group Member represents and warrants that neither it nor any of its respective Affiliates over which it exercises management control (a "<u>Controlled Affiliate</u>") is a Prohibited Person, and such Controlled Affiliates are in compliance with all applicable orders, rules, regulations and recommendations of OFAC.

(b) Each North American Group Member represents and warrants that neither it nor any of its members, directors, officers, employees, parents, Subsidiaries or Affiliates: (1) are subject to U.S. or multilateral economic or trade sanctions currently in force; (2) are owned or controlled by, or act on behalf of, any governments, corporations, entities or individuals that are subject to U.S. or multilateral economic or trade sanctions currently in force; (3) is a Prohibited Person or is otherwise named, identified or described on any blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list or other list of individuals or entities with whom U.S. persons may not conduct business, including but not limited to lists published or maintained by OFAC, lists published or maintained by the U.S. Department of Commerce, and lists published or maintained by the U.S. Department of State.

(c) None of the Collateral are traded or used, directly or indirectly by a Prohibited Person or organized in a Prohibited Jurisdiction.

(d) Each North American Group Member has established an anti-money laundering compliance program as required by all applicable anti-money laundering laws and regulations, including without limitation the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (the "<u>USA PATRIOT Act</u>") (collectively, the "<u>Anti-Money Laundering Laws</u>").

3.19. <u>Embargoed Person</u>. As of the date hereof and at all times throughout the term of any Loan, (a) none of any North American Group Member's funds or other assets constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.* (the "<u>Trading With the Enemy Act</u>"), any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) (the "<u>Foreign Assets Control Regulations</u>") or any enabling legislation or regulations promulgated thereunder or executive order relating thereto (which for the avoidance of doubt shall include but shall not be limited to (i) Executive Order No. 13224, effective as of September 24, 2001 and relating to Blocking Property and Prohibiting

Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (ii) the USA PATRIOT Act), with the result that the investment in the Borrower (whether directly or indirectly), is prohibited by law or any Loan made by the Lenders is in violation of law ("Embargoed Person"); (b) no Embargoed Person has any interest of any nature whatsoever in it with the result that the investment in it (whether directly or indirectly), is prohibited by law or any Loan is in violation of law; (c) none of its funds have been derived from any unlawful activity with the result that the investment in it (whether directly or indirectly), is prohibited by law or any Loans is in violation of law; and (d) neither it nor any of its Affiliates (i) is or will become a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (ii) engages or will engage in any dealings or transactions, or be otherwise associated, with any such "blocked person". For purposes of determining whether or not a representation with respect to any indirect ownership is true or a covenant is being complied with under this Section 3.19, no North American Group Member shall be required to make any investigation into (i) the ownership of publicly traded stock or other publicly traded securities or (ii) the ownership of assets by a collective investment fund that holds assets for employee benefit plans or retirement arrangements.

3.20. <u>Use of Proceeds</u>. (a) The proceeds of the Loans shall be used (i) as permitted in the Wind-Down Order or (ii) to finance working capital needs and other general corporate purposes incurred in connection with the Wind-Down, including the payment of expenses associated with the administration of the Cases; <u>provided</u> that, the North American Group Members may not prepay Indebtedness without the prior written consent of the Required Lenders.

(b) Notwithstanding anything to the contrary herein, none of the proceeds of the Loans shall be used in connection with (i) any investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against any Lender, (ii) the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against any Lender, any of their respective affiliates or other Canadian Lender Consortium Member with respect to any loans or other financial accommodations made to any North American Group Member prior to the Petition Date, or (iii) any loans, advances, extensions of credit, dividends or other investments to any person not a North American Group Member; provided, however, that the limitations set forth in this Section 3.20(b) shall not preclude the use of the proceeds of the Loans in connection with any claims, causes of action, adversary proceedings or other litigations against any Governmental Authority (excluding the Canadian Lender Consortium Members) with respect to the imposition or administration of any Tax laws or Environmental Laws. For the avoidance of doubt, the limitations set forth in Section 3.20(b)(i) and (ii) above, shall not limit the use of proceeds with respect to any of the actions and claims described in such clauses against any Governmental Authority that is not (x) a Lender or (y) a Canadian Lender Consortium Member.

(c) The North American Group Members are the ultimate beneficiaries of this Agreement and the proceeds of Loans to be received hereunder. The use of the Loans will comply with all Applicable Laws, including Anti-Money Laundering Laws. No portion of any Loan is to be used, for the "purpose of purchasing or carrying" any "margin stock" as such terms are used in Regulations U and X of the Board, as amended, and the Borrower is not engaged in the business of extending credit to others for such purpose.

3.21. <u>Representations Concerning the Collateral</u>. Each Loan Party represents and warrants to the Lenders:

(a) No Loan Party has assigned, pledged, conveyed, or encumbered any Collateral to any other Person (other than Permitted Liens) and immediately prior to the pledge of any such Collateral, a Loan Party was the sole owner of such Collateral and had good and marketable title thereto, free and clear of all Liens (other than Permitted Liens), and no Person, other than the Lenders has any Lien (other than Permitted Liens) on any Collateral. No security agreement, financing statement, equivalent security or lien instrument or continuation statement covering all or any part of the Collateral which has been signed by any Loan Party or which any Loan Party has authorized any other Person to sign or file or record, is on file or of record with any public office, except such as may have been filed by or on behalf of a Loan Party in favor of the Lenders pursuant to the Loan Documents or in respect of applicable Permitted Liens.

(b) The provisions of the Loan Documents are effective to create in favor of the Lenders a valid security interest in all right, title, and interest of each Loan Party in, to and under the Collateral, subject only to applicable Permitted Liens.

(c) Upon the entry and effectiveness of the Orders and the filing of financing statements on Form UCC-1 naming the Lenders as "Secured Parties" and each Loan Party as "Debtor", and describing the Collateral, in the jurisdictions and recording offices listed on <u>Schedule 3.21</u> attached hereto, the security interests granted in the Collateral pursuant to the Collateral Documents will constitute perfected first priority security interests under the Uniform Commercial Code in all right, title and interest of the applicable Loan Party in, to and under such Collateral, which can be perfected by filing under the Uniform Commercial Code, in each case, subject to applicable Permitted Liens and as provided in Section 3.24.

(d) Each Loan Party has and will continue to have the full right, power and authority, to pledge the Collateral, subject to Permitted Liens, and the pledge of the Collateral may be further assigned without any requirement.

- 3.22. [Intentionally Omitted].
- 3.23. [Intentionally Omitted].

3.24. <u>Lien Priority</u>. (a) On and after the Closing Date, and the entry of the Orders and after giving effect thereto and the filing of financing statements on Form UCC-1 naming the Lenders as "Secured Parties" and each Loan Party as "Debtor", and describing the Collateral, in the jurisdictions and recording offices listed on <u>Schedule 3.21</u> attached hereto subject to the Permitted Liens, the provisions of the Loan Documents are effective to create in favor of the Lenders, legal, valid and perfected Liens on and security interests (having the priority provided for herein and in the Orders) in all right, title and interest in the Collateral, enforceable against each Loan Party that owns an interest in such Collateral and any other Person.

(b) On and after the entry of the Orders and after giving effect thereto and the filing of financing statements on Form UCC-1 naming the Lenders as "Secured Parties" and each Loan Party as "Debtor", and describing the Collateral, in the jurisdictions and recording offices listed on <u>Schedule 3.21</u> attached hereto, all Obligations owing by the Loan Parties will be secured by:

(i) valid, perfected, first-priority security interests in and liens (i) with respect to the Debtors, pursuant to section 364(c)(2) of the Bankruptcy Code and (ii) with respect to the Non-Debtor Loan Parties, pursuant to the Collateral Documents (other than the Orders), in each case, on the Collateral that is not subject to non avoidable, valid and perfected liens in existence as of the Petition Date (or to non avoidable valid liens in existence as of the Petition Date that are subsequently perfected as permitted by section 546(b) of the Bankruptcy Code), subject only to Permitted Liens (other than Liens permitted under clause (a) thereof) and the Carve-Out; and

(ii) valid, perfected, security, junior interests in and liens pursuant to (i) with respect to the Debtors, section 364(c)(3) of the Bankruptcy Code and (ii) with respect to the Non-Debtor Loan Parties, pursuant to the Collateral Documents (other than the Orders), in each case, on the Collateral that is subject to non avoidable, valid and perfected liens in existence as of the Petition Date, or to non avoidable valid liens in existence as of the Petition Date that are subsequently perfected as permitted by section 546(b) of the Bankruptcy Code, subject only to the Carve-Out.

(c) On and after the entry of the Orders and after giving effect thereto, all Obligations owing by the Debtors will be an allowed administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code in each of the Cases having priority over all administrative expenses of the kind specified in sections 503 and 507 of the Bankruptcy Code and any and all expenses and claims of the Borrower and the other Debtors, whether heretofore or hereafter incurred, including, but not limited to, the kind specified in sections 105, 326, 328, 506(c), 507(a) or 1114 of the Bankruptcy Code, subject only to the Carve-Out.

- 3.25. [Intentionally Omitted].
- 3.26. [Intentionally Omitted].
- 3.27. [Intentionally Omitted].

3.28. <u>Excluded Collateral</u>. Set forth on Annex I to <u>Schedule 3.28</u> is a complete and accurate list as of the Effective Date of all Excluded Collateral that is Capital Stock of domestic joint ventures, Domestic Subsidiaries, "first-tier" foreign joint ventures, and Foreign 956 Subsidiaries.

3.29. <u>Mortgaged Real Property.</u> After giving effect to the recording of the Mortgages, real property identified on <u>Schedule 1.1C</u> shall be subject to a recorded first lien mortgage, deed of trust or similar security instrument (subject to Permitted Liens).

3.30. [Intentionally Omitted].

3.31. <u>The Final Order</u>. Upon the maturity (whether by the acceleration or otherwise) of any of the Obligations, the Lenders shall, subject to the provisions of Section 7 and the applicable provisions of the Final Order, be entitled to immediate payment of such Obligations, and to enforce the remedies provided for hereunder, without further application to or order by the Bankruptcy Court.

3.32. <u>Wind-Down Budget</u>. All material facts in the Wind-Down Budget are accurate and the Borrower has disclosed to each Lender all assumptions in the Wind-Down Budget, it being understood that in the case of projections, such projections are based on reasonable estimates, on the date as of which such information is stated or certified.

### **SECTION 4**

### **CONDITIONS PRECEDENT**

4.1. <u>Conditions to Effectiveness</u>. The effectiveness of this Agreement is subject to the satisfaction of the following conditions precedent, satisfaction of such conditions precedent to be determined by the Required Lenders in their reasonable discretion, except as otherwise set forth below:

(a) <u>Loan Documents</u>. The Lenders shall have received the following documents, which shall be in form satisfactory to each Lender:

- (i) this Agreement executed and delivered by the Borrower;
- (ii) the Guaranty, executed and delivered by each Guarantor;
- (iii) the Equity Pledge Agreement, executed and delivered by each Pledgor;
- (iv) [intentionally omitted];

(v) the Environmental Indemnity Agreement, executed and delivered by each Loan Party party thereto; and

(vi) a promissory note of the Borrower evidencing the Loans of such Lender, substantially in the form of Exhibit G (the "<u>Note</u>"), with appropriate insertions as to date and principal amount.

(b) <u>Related Section 363 Transactions</u>. The Required Lenders and their counsel shall be reasonably satisfied that the terms of the Related Section 363 Transactions and of the Transaction Documents are consistent in all material respects with the information provided to the Lenders in advance of the date hereof or are otherwise reasonably satisfactory to the Required Lenders (the Required Lenders acknowledge that the form of Transaction Documents provided to them on or prior to the date hereof are satisfactory). The Transaction Documents shall have been duly executed and delivered by the parties thereto, all conditions precedent to the Related Section 363 Transactions set forth in the Transaction Documents shall have been satisfied, and the Related Section 363 Transactions shall have been consummated

pursuant to such Transaction Documents substantially contemporaneously with the conditions precedent set forth in this Section 4.1, and no provision thereof shall have been waived, amended, supplemented or otherwise modified, in each case in a manner adverse to the Lenders, without the Required Lender's consent.

(c) <u>Final Order</u>. (i) The Final Order shall have been entered by the Bankruptcy Court and shall have been in full force and effect.

(ii) The Final Order shall not have been reversed, modified, amended, stayed or vacated, in the case of any modification or amendment, in a manner, or relating to a matter, without the consent of the Lenders.

(iii) The Debtors and their respective Subsidiaries shall be in compliance in all respects with the Final Order.

- (iv) [Intentionally Omitted].
- (v) [Intentionally Omitted].

(d) <u>New CarCo Assignment and Assumption</u>. The Borrower and New CarCo shall have executed and delivered the New CarCo Assignment and Assumption, and all conditions precedent to New CarCo's \$7,072,488,605 First Lien Credit Agreement between New CarCo and Treasury shall have been satisfied or waived by the Treasury in accordance with the terms therewith substantially contemporaneously with the conditions precedent set forth in this Section 4.1.

(e) <u>Canadian Post-Sale Facility</u>. The Canadian Post-Sale Facility, in form and substance satisfactory to the Lenders, shall have become effective and the Lenders shall have received all documents, instruments and related agreements in connection with the Canadian Post-Sale Facility.

(f) <u>Canadian PV Loan Agreement</u>. The Canadian PV Loan Agreement, in form and substance satisfactory to the Lenders, shall have become effective and the Lenders shall have received all documents, instruments and related agreements in connection with the Canadian PV Loan Agreement.

- (g) [Intentionally Omitted].
- (h) [Intentionally Omitted].

(i) <u>Wind-Down Budget</u>. The Borrower shall have delivered to the Lenders the Wind-Down Budget in form and substance satisfactory to the Required Lenders.

(j) [Intentionally Omitted].

(k) <u>Litigation</u>. There shall not exist any action, suit, investigation, litigation or proceeding pending (other than the Cases) or threatened in any court or before any arbitrator or Governmental Authority that, in the sole discretion of the Required Lenders, materially or

adversely affects any of the transactions contemplated hereby, or that has or could be reasonably likely to have a Material Adverse Effect.

(l) [Intentionally Omitted].

(m) <u>Consents</u>. The Lenders shall have received all necessary third party and governmental waivers and consents, and each Loan Party shall have complied with all applicable laws, decrees and material agreements.

(n) <u>No Default</u>. No Default or Event of Default shall exist on the Effective Date or after giving effect to the transactions contemplated to be consummated on the Effective Date pursuant to the Transaction Documents and the Loan Documents.

(o) <u>Accuracy of Representations and Warranties</u>. All representations and warranties made by the North American Group Members in or pursuant to the Loan Documents shall be true and correct in all material respects.

(p) <u>Closing Certificate; Certified Certificate of Incorporation; Good Standing</u> <u>Certificates</u>. The Lenders shall have received (i) a certificate of the secretary or assistant secretary of each Loan Party, dated the Effective Date, substantially in the form of <u>Exhibit B-1</u>, with appropriate insertions and attachments, including the certificate of incorporation (or equivalent organizational document) of each Loan Party, certified by the relevant authority of the jurisdiction of organization of such Loan Party (<u>provided</u> that, to the extent applicable, in lieu of delivering the certificate of incorporation and other organizational documents, such certificate may include a certification that such documents not have been amended, supplemented or otherwise modified since the Closing Date), (ii) bring down good standing certifications for each Loan Party from its jurisdiction of organization and (iii) a certificate of the Borrower and each Guarantor, dated the Effective Date, to the effect that the conditions set forth in this Section 4.1 have been satisfied, substantially in the form of <u>Exhibit B-2</u>.

(q) <u>Legal Opinions</u>. The Lenders shall have received the executed legal opinion of Weil, Gotshal and Manges LLP, New York counsel to the Loan Parties, substantially in the form of Exhibit E, as to New York law, United States federal law and the Delaware General Corporation Law.

### **SECTION 5**

#### **AFFIRMATIVE COVENANTS**

Each Loan Party covenants and agrees to, and to cause each of its Subsidiaries that is a North American Group Member to, so long as any Loan is outstanding and until payment in full of all Obligations, in each case except as shall be required in connection with the Wind-Down, and subject to the Orders, the Related Section 363 Transactions, the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court issued in connection with the Cases:

#### 5.1. <u>Financial Statements</u>. The Borrower shall deliver to the Lenders:

(a) as soon as reasonably possible after receipt by the subject North American Group Member, a copy of any material report that may be prepared and submitted by such North American Group Member's independent certified public accountants at any time or any other material report with respect to the North American Group Members provided to the Borrower and its Subsidiaries pursuant to the Transition Services Agreement;

(b) from time to time such other information regarding the financial condition, operations, or business of any North American Group Member as any Lender may reasonably request;

(c) promptly upon their becoming available, copies of such other financial statements and reports, if any, as any North American Group Member may be required to publicly file with the SEC or any similar or corresponding governmental commission, department or agency substituted therefor, or any similar or corresponding governmental commission, department, board, bureau, or agency, federal or state;

(d) [intentionally omitted];

(e) notice of and copies of each Debtors' pleadings filed in the Cases in connection with any material contested matter or adversary proceeding in the Cases (but the foregoing may be satisfied by including each of the Lenders and their counsel in a "core service group," to receive copies of all pleadings under any order establishing notice and service requirements in the Cases), and such additional information with respect to such matters as either of the Lenders may reasonably request, and which notice shall also include sending copies of any pleadings or other documents that the Borrower or other Debtors seek to file under seal to each of the lenders and their counsel, <u>provided</u>, <u>however</u>, that if (in addition to the confidentiality provisions of this Agreement) additional confidentiality provisions are needed (i.e. if required by third parties), the Lenders and the Borrower shall endeavor to work out reasonable additional confidentiality terms;

(f) no later than the twentieth Business Day following the last day of each fiscal quarter, a report (a "<u>Quarterly Report</u>") setting forth in reasonable detail the anticipated receipts and disbursements of the North American Group Members for the immediately succeeding twelve-month period (on a calendar month basis) and the aggregate amount of cash and Cash Equivalents of the North American Group Members as of the last day of the immediately preceding fiscal quarter, in form and substance reasonably satisfactory to the

Required Lenders. Each Quarterly Report shall be accompanied by a certificate of a Responsible Officer certifying that such Quarterly Report was prepared in good faith and are based on reasonable estimates on the date as of which such information is certified; and

(g) on the first Business Day of February to occur each year from the Effective Date until the Maturity Date, a report setting forth in reasonable detail the three-year business plan of the Borrower.

5.2. <u>Notices; Reporting Requirements</u>. The relevant Loan Party shall deliver written notice to the Lenders of the following:

(a) <u>Defaults</u>. Promptly after a Responsible Officer or any officer of a North American Group Member with a title of at least executive vice president becomes aware of the occurrence of any Default or Event of Default, or any event of default under any publicly filed material Contractual Obligation of any Group Member;

(b) <u>Litigation</u>. Promptly after a Responsible Officer or an attorney in the general counsel's office of a North American Group Member obtains knowledge of any action, suit or proceeding instituted by or against such North American Group Member or any of its Subsidiaries in any federal or state court or before any commission, regulatory body or Governmental Authority (i) in which the amount in controversy, in each case, is an amount equal to \$25,000,000 or more, (ii) in which injunctive or similar relief is sought, or (iii) which relates to any Loan Document, the relevant Loan Party shall furnish to the Lenders notice of such action, suit or proceeding;

(c) <u>Material Adverse Effect on Collateral</u>. Promptly upon any North American Group Member becoming aware of any default or any event or change in circumstances related to any Collateral which, in each case, could reasonably be expected to have a Material Adverse Effect;

(d) <u>Judgments</u>. Promptly upon the entry of a judgment or decree against any Loan Party or any of its Subsidiaries in an amount in excess of \$15,000,000;

(e) <u>Environmental Events</u>. As soon as possible and in any event within seven Business Days of obtaining knowledge thereof: (i) any development, event, or condition occurring after the date hereof that, individually or in the aggregate with other developments, events or conditions occurring after the date hereof, could reasonably be expected to result in the payment by the Group Members, in the aggregate, of a Material Environmental Amount; and (ii) any notice that any Governmental Authority may deny any application for an Environmental Permit sought by, or revoke or refuse to renew any Environmental Permit held by, any Group Member; to the extent such Environmental Permit is material to the continued operations or business of the Group Members or of any manufacturing related facility;

(f) <u>Material Adverse Effect</u>. Any development or event that has had or could reasonably be expected to have a Material Adverse Effect;

(g) <u>Insurance</u>. Promptly upon any material change in the insurance coverage required of any Loan Party or any other Person pursuant to any Loan Document, with copy of evidence of same attached;

(h) <u>Compliance Certificate</u>. On the tenth Business Day of each calendar month, beginning with the first month to occur after the Effective Date, a Compliance Certificate, executed by a Responsible Officer of the Borrower, stating that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate;

(i) <u>Investment Reports</u>. With respect to any Investment made pursuant to clause (p)(i) or (ii) of the definition of Permitted Investments, on the tenth Business Day of each calendar month, beginning with the month immediately following the calendar month in which the first such Investment is made, a report executed by a Responsible Officer of the Borrower, setting forth (x) the amount of each Investment made pursuant to each of clause (p)(i) and/or (p)(ii), if any, in the immediately proceeding calendar month, (y) a description of each such Investment, if any, and (z) the aggregate amount of Investments made pursuant to each of clause (p)(i) and (p)(ii) since the Effective Date, if any, as of the end of the immediately preceding calendar month;

- (j) [Intentionally Omitted];
- (k) [Intentionally Omitted];

(1) <u>Expense Policy</u>. Within 15 days after the conclusion of each calendar month, beginning with the month in which the Effective Date occurs, the Borrower shall deliver to the Lenders a certification signed by a Responsible Officer of the Borrower and its Subsidiaries that (i) the Expense Policy conforms to the requirements set forth herein; (ii) the Borrower and its Subsidiaries are in compliance with the Expense Policy; and (iii) there have been no material amendments to the Expense Policy or deviations from the Expense Policy other than those that have been disclosed to and approved by the Lenders; <u>provided</u> that the requirement to deliver the certification referenced in this Section 5.2(1) may be qualified as to the best of such Responsible Officer's knowledge after due inquiry and investigation;

(m) <u>Executive Privileges and Compensation</u>. The Borrower shall submit a certification on the [last] day of each month beginning July 2009, certifying that the Borrower has complied with and is in compliance with the provisions set forth in Section 5.16. Such certification shall be made to the Lenders by an SEO of the Borrower, subject to the requirements and penalties set forth in Title 18, United States Code, Section 1001; and

(n) <u>Organizational Documents</u>. Subject to Section 6.6, each North American Group Member shall furnish prompt written notice to the Lenders of any material amendment to such entity's organizational documents and copies of such amendments.

Each notice required to be provided pursuant to this Section 5.2(a)-(f) above shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the Borrower proposes to take with respect thereto.

5.3. <u>Existence</u>. (a) Preserve and maintain its legal existence and all of its material rights, privileges, licenses and franchises;

(b) pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all their Postpetition obligations of whatever nature, except (i) where such payment, discharge or satisfaction is prohibited by the Orders, the Bankruptcy Code, the Bankruptcy Rules or an order of the Bankruptcy Court or by this Agreement or the Wind-Down Budget, or (ii) where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the Borrower or its Subsidiaries, as the case may be;

(c) comply with the requirements of all Applicable Laws, rules, regulations and orders of Governmental Authorities if failure to comply with such requirements could be reasonably likely (either individually or in the aggregate) to have a Material Adverse Effect on any Loan Party or the Collateral;

(d) keep adequate records and books of account, in which complete entries will be made in accordance with GAAP consistently applied, and maintain adequate accounts and reserves for all taxes (including income taxes), all depreciation, depletion, obsolescence and amortization of its properties, all contingencies, and all other reserves;

(e) (i) change the location of its chief executive office/chief place of business from that specified in Section 3.10, (ii) change its name, identity or corporate structure (or the equivalent) or change the location where it maintains records with respect to the Collateral, or (iii) reincorporate or reorganize under the laws of another jurisdiction, it shall give the Lenders written notice thereof not later than ten (10) days after such event occurs, and shall deliver to the Lenders all Uniform Commercial Code financing statements and amendments as the Lenders shall request and take all other actions deemed reasonably necessary by the Lenders to continue its perfected status in the Collateral with the same or better priority;

(f) keep in full force and effect the provisions of its charter documents, certificate of incorporation, by-laws, operating agreements or similar organizational documents; and

(g) comply (i) in the case of each North American Group Member that is not a Debtor, with all Contractual Obligations in a manner such that a Material Adverse Effect could not reasonably be expected to result and (ii) in the case of each Debtor, with all material Postpetition Contractual Obligations (including the Transition Services Agreement).

5.4. <u>Payments of Taxes</u>. Except as prohibited by the Bankruptcy Code, the Borrower will and will cause each Group Member (i) to timely file or cause to be filed all federal and material state and other Tax returns that are required to be filed and all such Tax returns shall be true and correct and (ii) to timely pay and discharge or cause to be paid and discharged promptly all Taxes, assessments and governmental charges or levies arising Postpetition and imposed upon the Borrower or any of the other Group Members or upon any of their respective incomes or receipts or upon any of their respective properties before the same shall become in default or past due, as well as all lawful claims for labor, materials and supplies or otherwise which, if unpaid, might result in the imposition of a Lien or charge upon such properties or any part thereof; <u>provided</u> that it shall not constitute a violation of the provisions of this Section 5.4 if the Borrower or any of the other Group Members shall fail to pay any such Tax, assessment, government charge or levy or claim for labor, materials or supplies which is being contested in good faith, by proper proceedings diligently pursued, and as to which adequate reserves have been provided.

5.5. <u>Use of Proceeds</u>. The Loan Parties and their Subsidiaries shall use the Loan proceeds only for the purposes set forth in Section 3.20 and in a manner generally consistent with the Wind-Down Budget, except as otherwise permitted in Section 3.20(a)(i)).

5.6. <u>Maintenance of Existence; Payment of Obligations; Compliance with</u> <u>Law</u>. Subject to the Orders, the Related Section 363 Transactions and the Cases, each Loan Party shall:

(a) keep all property useful and necessary in its business in good working order and condition; and

(b) maintain errors and omissions insurance and blanket bond coverage in such amounts as are in effect on the Closing Date (as disclosed to the Lenders in writing except in the event of self-insurance) and shall not reduce such coverage without the written consent of the Lenders, and shall also maintain such other insurance with financially sound and reputable insurance companies, and with respect to property and risks of a character usually maintained by entities engaged in the same or similar business similarly situated, against loss, damage and liability of the kinds and in the amounts customarily maintained by such entities. Notwithstanding anything to the contrary in this Section 5.6, to the extent that any North American Group Member is engaged in self-insurance with respect to any of its property as of the Closing Date, such Loan Party may, if consistent with past practices, continue to engage in such self-insurance throughout the term of this Agreement; provided, that the North American Group Members shall promptly obtain third party insurance that conforms to the criteria in this Section 5.6 at the request of the Lenders.

5.7. <u>Further Identification of Collateral</u>. Each Loan Party will furnish to the Lenders from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as any Lender may reasonably request, all in reasonable detail.

5.8. <u>Defense of Title</u>. Subject to the Wind-Down, the Orders, the Related Section 363 Transactions, the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court, each Loan Party warrants and will defend the right, title and interest of the Lenders in and to all Collateral against all adverse claims and demands of all Persons whomsoever, subject to (x) the restrictions imposed by the Existing Agreements to the extent that such restrictions are valid and enforceable under the applicable Uniform Commercial Code and other Requirements of Law and (y) the rights of holders of any Permitted Lien. 5.9. <u>Preservation of Collateral</u>. Subject to the Wind-Down, the Orders, the Related Section 363 Transactions, the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court, each Loan Party shall do all things necessary to preserve the Collateral so that the Collateral remains subject to a perfected security interest with the priority provided for such security interest under the Loan Documents. Without limiting the foregoing, each Loan Party will comply with all Applicable Laws, rules and regulations of any Governmental Authority applicable to such Loan Party or relating to the Collateral and will cause the Collateral to comply, with all Applicable Laws, rules and regulations of any such Governmental Authority, except where failure to so comply would not reasonably be expected to have a Material Adverse Effect. No Loan Party will allow any default to occur for which any Loan Party is responsible under any Loan Documents and each Loan Party shall fully perform or cause to be performed when due all of its obligations under the Loan Documents.

5.10. <u>Maintenance of Papers, Records and Files</u>. (a) each North American Group Member will maintain all Records in good and complete condition and preserve them against loss or destruction, all in accordance with industry and customary practices;

(b) each North American Group Member shall collect and maintain or cause to be collected and maintained all Records relating to its business and operations and the Collateral in accordance with industry custom and practice, including those maintained pursuant to the preceding subsection, and all such Records shall be in the possession of the North American Group Members or reasonably obtainable upon the request of any Lender unless the Lenders otherwise approve; and

(c) for so long as any Lender has an interest in or Lien on any Collateral, each North American Group Member will hold or cause to be held all related Records in trust for such Lender. Each North American Group Member shall notify, or cause to be notified, every other party holding any such Records of the interests and Liens granted hereby.

5.11. <u>Maintenance of Licenses</u>. Subject to the Wind-Down, the Orders, the Related Section 363 Transactions and the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court, except where the failure to do so could not reasonably be likely to have a Material Adverse Effect, each Loan Party shall (i) maintain all licenses, permits, authorizations or other approvals necessary for such Loan Party to conduct its business and to perform its obligations under the Loan Documents, (ii) remain in good standing under the laws of the jurisdiction of its organization, and in each other jurisdiction where such qualification and good standing are necessary for the successful operation of such Loan Party's business, and (iii) shall conduct its business in accordance with Applicable Law in all material respects.

5.12. <u>Payment of Obligations</u>. The Borrower will duly and punctually pay or cause to be paid the principal and interest on the Loans and each North American Group Member will duly and punctually pay or cause to be paid all fees and other amounts from time to time owing by it hereunder or under the other Loan Documents, all in accordance with the terms of this Agreement and the other Loan Documents. Each North American Group Member will, and will cause each of its Subsidiaries to, pay (i) with respect to each Debtor its Postpetition obligations; and (ii) with respect to each other Group Member its obligations, in each case including tax liabilities, assessments and governmental charges or levies imposed upon such

Person or upon its income and profits or upon any of its property, real, personal or mixed (including without limitation, the Collateral) or upon any part thereof, as well as any other lawful claims which, if unpaid, could reasonably be expected to become a Lien upon such properties or any part thereof, that, if not paid, could reasonably be expected to result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the relevant Loan Party, or such Subsidiary, has set aside on its books adequate reserves with respect thereto and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

5.13. <u>OFAC</u>. At all times throughout the term of this Agreement, each Loan Party and its Controlled Affiliates (a) shall be in full compliance with all applicable orders, rules, regulations and recommendations of OFAC and (b) shall not permit any Collateral to be maintained, insured, traded, or used (directly or indirectly) in violation of any United States statutes, rules or regulations, in a Prohibited Jurisdiction or by a Prohibited Person, and no lessee or sublessee shall be a Prohibited Person or a Person organized in a Prohibited Jurisdiction.

5.14. <u>Investment Company</u>. Each North American Group Member will conduct its operations in a manner which will not subject it to registration as an "<u>investment company</u>" as such term is defined in the Investment Company Act of 1940, as amended from time to time.

5.15. Further Assurances. Subject to the Wind-Down, the Orders, the Related Section 363 Transactions and the Cases, the Borrower shall, and shall cause each North American Group Member to, from time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take such actions, as the Lenders may reasonably request for the purposes of implementing or effectuating the provisions of this Agreement and the other Loan Documents, or of more fully perfecting or renewing the rights of the Lenders with respect to the Collateral (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets hereafter acquired by any Group Member which may be deemed to be part of the Collateral) pursuant hereto or thereto. Upon the exercise by any Lender of any power, right, privilege or remedy pursuant to this Agreement or the other Loan Documents that requires any consent, approval, recording, qualification or authorization of any Governmental Authority, the Borrower will execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that such Lender may be required to obtain from the Borrower or any Group Member such governmental consent, approval, recording, gualification or authorization.

5.16. <u>Executive Privileges and Compensation</u>. (a) Subject to the Wind-Down, the Orders, the Related Section 363 Transactions and the Cases, the Borrower shall comply with the following restrictions on executive privileges and compensation:

(i) the Borrower shall take all necessary action to ensure that its Specified Benefit Plans comply in all respects with the EESA, including, without limitation, the provisions of the Capital Purchase Program and the TARP Standards for Compensation and Corporate Governance, as implemented by any guidance or regulation thereunder, including the rules set forth in 31 C.F.R. Part 30, or any other guidance or regulations promulgated under the EESA, as the same shall be in effect from time to time (collectively, the "<u>Compensation Regulations</u>"), and shall not adopt any new Specified Benefit Plan (x) that does not comply therewith or (y) that does not expressly state and require that such Specified Benefit Plan and any compensation thereunder shall be subject to all relevant Compensation Regulations adopted, issued or released on or after the date any such Specified Benefit Plan is adopted. To the extent that the Compensation Regulations change, or are implemented in a manner that requires changes to thenexisting Specified Benefit Plans, the Borrower shall effect such changes to its Specified Benefit Plans as promptly as practicable after it has actual knowledge of such changes in order to be in compliance with this Section 5.16(a)(i) (and shall be deemed to be in compliance for a reasonable period within which to effect such changes);

(ii) the Borrower shall be subject to the limits on the deductibility of executive compensation imposed by section 162(m)(5) of the Code, as applicable;

(iii) the Borrower shall not pay or accrue any bonus or incentive compensation to the Senior Employees, except as may be permitted under the EESA or the Compensation Regulations;

(iv) the Borrower shall not adopt or maintain any compensation plan that would encourage manipulation of its reported earnings to enhance the compensation of any of its employees;

(v) the Borrower shall maintain all suspensions and other restrictions of contributions to Specified Benefit Plans that are in place or initiated as of the Closing Date; and

(vi) the Borrower shall otherwise comply with the provisions of the Capital Purchase Program and the TARP Standards for Compensation and Corporate Governance, as implemented by any guidance or regulation thereunder, including the rules set forth in 31 C.F.R. Part 30, including without limitation the prohibition on golden parachute and tax "gross up" payments, the requirement with respect to the establishment of a compensation committee of the board of directors, and the requirement that the Borrower provide certain disclosures to Treasury and the Borrower's primary regulator.

At all times throughout the term of this Agreement, the Required Lenders shall have the right to require any Group Member to claw back any bonuses or other compensation, including golden parachutes, paid to any Senior Employees in violation of any of the foregoing.

(b) On or prior to September 15, 2009, the Borrower shall cause (i) its principal executive officer and principal financial officer (or, in each case, a person acting in a similar capacity) and (ii) its compensation committee, as applicable, to provide the certifications to the Treasury and the Borrower's primary regulator required by the rules set forth in 31 C.F.R. Part 30. The Borrower shall preserve appropriate documentation and records to substantiate such certification in an easily accessible place for a period not less than three years following the Maturity Date.

From the Closing Date until the repayment of all Obligations, the Borrower shall comply with the provisions of this Section 5.16.

5.17. <u>Aircraft</u>. With respect to any private passenger aircraft or interest in such aircraft that is owned or held by the Borrower or any of its respective Subsidiaries immediately prior to the Closing Date, such party shall demonstrate to the satisfaction of the Treasury that it is taking all reasonable steps to divest itself of such aircraft or interest. In addition, the Borrower shall not acquire or lease any private passenger aircraft or interest in private passenger aircraft after the Closing Date.

5.18. <u>Restrictions on Expenses</u>. (a) The Borrower shall maintain and implement an Expense Policy, provide the Expense Policy to Treasury and the Borrower's primary regulatory agency, and post the text of the Expense Policy on its Internet website, if the Borrower maintains a company website, and distribute the Expense Policy to all employees covered under the Expense Policy. Any material amendments to the Expense Policy shall require the prior written consent of the Treasury, and any material deviations from the Expense Policy, whether in contravention thereof or pursuant to waivers provided for thereunder, shall promptly be reported to the Treasury.

(b) The Expense Policy shall, at a minimum: (i) require compliance with all Requirements of Law, (ii) apply to the Borrower and all of its Subsidiaries, (iii) govern (A) the hosting, sponsorship or other payment for conferences and events, (B) travel accommodations and expenditures, (C) consulting arrangements with outside service providers, (D) any new lease or acquisition of real estate, (E) expenses relating to office or facility renovations or relocations, and (F) expenses relating to entertainment or holiday parties, (iv) provide for (A) internal reporting and oversight, and (B) mechanisms for addressing non-compliance with the Expense Policy and (v) comply in all respects with the provisions of the Capital Purchase Program and the TARP Standards for Compensation and Corporate Governance, as implemented by any guidance or regulation thereunder, including the rules set forth in 31 C.F.R. Part 30.

5.19. <u>Employ American Workers Act</u>. The Borrower shall comply, and the Borrower shall take all necessary action to ensure that its Subsidiaries comply, in all respects with the provisions of the EAWA in all respects.

5.20. Internal Controls; Recordkeeping; Additional Reporting. (a) The Borrower shall promptly establish internal controls to provide reasonable assurance of compliance in all material respects with each of the Borrower's covenants and agreements set forth in Sections 5.16, 5.17, 5.18, 5.19 and 5.20(b) hereof and shall collect, maintain and preserve reasonable records evidencing such internal controls and compliance therewith, a copy of which records shall be provided to the Lenders promptly upon request. On the 15th day after the last day of each calendar quarter (or, if such day is not a Business Day, on the first Business Day after such day) commencing with September 30, 2009, the Borrower shall deliver to the Treasury (at its address set forth in Section 8.2) a report setting forth in reasonable detail (x) the status of implementing such internal controls and (y) the Borrower's compliance (including any instances of material non-compliance) with such covenants and agreements. Such report shall be accompanied by a certification duly executed by an SEO of the Borrower stating that such quarterly report is accurate in all material respects to the best of such SEO's knowledge, which

certification shall be made subject to the requirements and penalties set forth in Title 18, United States Code, Section 1001.

(b) The Borrower shall use its reasonable best efforts to account for the use and expected use of the proceeds from the Loans. On the 30th day after the last day of each month (or, if such day is not a Business Day, on the first Business Day after such day) commencing with July 31, 2009, the Borrower shall deliver to the Lenders (at their respective addresses set forth in Section 8.2) a report setting forth in reasonable detail the actual results of the operations of the Borrower and its Subsidiaries for such month, which shall include (without limitation) a budget-to-actual variance analysis. Such report shall be accompanied by a certification duly executed by an SEO of the Borrower that such monthly report is accurate in all material respects to the best of such SEO's knowledge, which certification shall be made subject to the requirements and penalties set forth in Title 18, United States Code, section 1001.

(c) The Borrower shall collect, maintain and preserve reasonable records relating to the implementation of all Federal support programs provided to the Borrower or any of its Subsidiaries pursuant to the EESA, the use of the proceeds thereunder and the compliance with the terms and provisions of such programs; <u>provided</u> that the Borrower shall have no obligation to comply with the foregoing in connection with any such program to the extent that such program independently requires, by its express terms, the Borrower to collect, maintain and preserve any records in connection therewith. The Borrower shall provide the Treasury with copy of all such reasonable records promptly upon request.

5.21. <u>Waivers</u>. (a) For any Person who is a Loan Party as of the Closing Date and any Person that becomes a Loan Party after the Closing Date, the Borrower shall cause a waiver, in substantially the form attached hereto as Exhibit D-1, to be duly executed by such North American Group Member and promptly delivered to the Treasury.

(b) For any Person who is an SEO as of the Closing Date and any Person that becomes an SEO after the Closing Date, the Borrower shall cause a waiver, in substantially the form attached hereto as Exhibit D-2, to be duly executed by such SEO, and promptly delivered to the Treasury.

(c) For any Person who is an SEO as of the Closing Date and any Person that becomes an SEO after the Closing Date, the Borrower shall cause a consent and waiver, in substantially the form attached hereto as Exhibit D-3, to be duly executed by such SEO, and promptly delivered to the Borrower (with a copy to the Treasury).

(d) For any Person who is a Senior Employee as of the Closing Date and any Person that becomes an Senior Employee after the Closing Date, the Borrower shall cause a waiver, in substantially the form attached hereto as Exhibit D-4, to be duly executed by such Senior Employee, and promptly delivered to the Treasury.

(e) For any Person who is a Senior Employee as of the Closing Date and any Person that becomes an Senior Employee after the Closing Date, the Borrower shall cause a consent and waiver, in substantially the form attached hereto as Exhibit D-5, to be duly executed by such Senior Employee, and promptly delivered to the Borrower (with a copy to the Treasury).

(f) For the avoidance of doubt, this requirement will be deemed satisfied for the United States with respect to Loan Parties that are party to the Existing UST Term Loan Agreement and any SEO or Senior Employee, to the extent such Loan Party, SEO or Senior Employee has previously provided such a waiver to the Treasury.

5.22. [Intentionally Omitted].

5.23. <u>Additional Guarantors</u>. Except as otherwise agreed to by the Required Lenders, the Borrower shall cause each Domestic Subsidiary of a North American Group Member who becomes a Debtor after the Closing Date to become a Guarantor (each, an "<u>Additional Guarantor</u>") in accordance with Section 4.24 of the Guaranty, other than (i) [intentionally omitted], (ii) any Foreign 956 Subsidiary, (iii) any Other Foreign 956 Subsidiary and (iv) any Non-U.S. Subsidiary owned in whole or in part by a Foreign 956 Subsidiary, except in the case of clauses (i) through (iv), any Subsidiaries that were guarantors under the Existing UST Term Loan Agreement.

5.24. <u>Provide Additional Information</u>. Each North American Group Member shall, promptly, from time to time and upon request of any Lender, furnish to such Lender such information, documents, records or reports with respect to the Collateral, the Indebtedness of the North American Group Members or any Subsidiary thereof or the corporate affairs, conditions or operations, financial or otherwise, of such North American Group Member as any Lender may reasonably request, including without limitation, providing to such Lender reasonably detailed information with respect to each inquiry of such Lender raised with the North American Group Members prior to the Closing Date.

5.25. Inspection of Property; Books and Records; Discussions. Subject to the Wind-Down, the Orders, the Related Section 363 Transactions and the Cases, the Borrower shall, and shall cause each Group Member to, (a) keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities, and (b) permit representatives of any Lender, the Special Inspector General of the Troubled Asset Relief Program or the Comptroller General of the United States to visit and inspect any of its properties and examine and make abstracts from any of its books and records and other data delivered to them pursuant to the Loan Documents at any reasonable time and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of the Group Members with officers and employees of the Group Members and with its independent certified public accountants.

5.26. [Governance of Borrower]. [The Borrower shall, at all times (subject to turnover thereof), maintain a Board of Directors comprised of five (5) members, three (3) of which shall be chosen by New CarCo and two (2) of which shall be chosen by the Official Committee of Unsecured Creditors in the Borrower's Case (the "Creditors' Committee"). All members of the Board of Directors shall be subject to the prior review by and shall be found to be reasonably acceptable to the Required Lenders, New CarCo, and such Creditors' Committee.]

#### **SECTION 6**

#### **NEGATIVE COVENANTS**

Each Loan Party hereby covenants and agrees to, and to cause itself and each of its Subsidiaries that is a North American Group Member to, so long as any Loan or any interest or fee payable hereunder is owing to any Lender, each North American Group Member will abide by the following negative covenants, in each case except as shall be required in connection with the Wind-Down and subject to the Orders, the Related Section 363 Transactions, the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court issued in connection with the Cases:

6.1. <u>Prohibition on Fundamental Changes</u>. No North American Group Member shall, at any time, directly or indirectly, (i) enter into any transaction of merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation, winding up or dissolution) or Dispose of all or substantially all of its Property without the Lender's prior consent, <u>provided</u>, any Guarantor may merge, consolidate, amalgamate into, or Dispose of all or substantially all of its Property to another North American Group Member; or (ii) form or enter into any partnership, syndicate or other combination (other than joint ventures permitted by Section 6.14) that could reasonably be expected to have a Material Adverse Effect.

6.2. <u>Lines of Business</u>. No North American Group Member will engage to any substantial extent in any line or lines of business activity other than the businesses generally carried on by the North American Group Members as of the Closing Date or businesses reasonably related thereto.

Transactions with Affiliates. No North American Group Member will 6.3. (a) enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property (including Collateral) or the rendering of any service, with any Affiliate unless such transaction is (i) in the ordinary course of such North American Group Member's business, and (ii) generally upon fair and reasonable terms and, with respect to any transaction with an Affiliate that is not a Group Member, no less favorable to such North American Group Member than it would obtain in an arm's length transaction with a Person which is not an Affiliate (other than any transaction that occurs pursuant to an agreement in effect as of the Petition Date), and in either case, is otherwise permitted under this Agreement, or (b) make a payment that is not otherwise permitted by this Section 6.3 to any Affiliate. Irrespective of whether such transactions comply with the provisions of this Section 6.3, but subject to the other restrictions set forth elsewhere in this Agreement, the Loan Parties shall be permitted to (x) transact business in the ordinary course with (i) the joint ventures in which the Loan Parties or their Subsidiaries participate and (ii) [intentionally omitted], and (y) make Restricted Payments permitted under Section 6.5.

6.4. <u>Limitation on Liens</u>. No North American Group Member will, create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except Permitted Liens.

6.5. <u>Restricted Payments</u>. Without the Lenders' consent, no North American Group Member shall, (i) declare or pay any dividend (other than dividends payable solely in

common Capital Stock of the Person making such dividend) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of any Capital Stock of any North American Group Member, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any North American Group Member and (ii) optionally prepay, repurchase, redeem or otherwise optionally satisfy or defease with cash or Cash Equivalents any Indebtedness (any such payment referred to in clauses (i) and (ii), a "<u>Restricted Payment</u>"), other than:

(a) redemptions, acquisitions or the retirement for value or repurchases (or loans, distributions or advances to effect the same) of shares of Capital Stock from current or former officers, directors, consultants and employees, including upon the exercise of stock options or warrants for such Capital Stock, or any executive or employee savings or compensation plans, or, in each case to the extent applicable, their respective estates, spouses, former spouses or family members or other permitted transferees;

(b) any Subsidiary (including an Excluded Subsidiary) may make Restricted Payments to its direct parent or to the Borrower or any Guarantor that is a Wholly Owned Subsidiary;

(c) any JV Subsidiary may make Restricted Payments required or permitted to be made pursuant to the terms of the joint venture arrangements in effect on the Closing Date (or otherwise as approved by the Required Lenders) of holders of its Capital Stock, <u>provided</u> that, the Borrower and its Subsidiaries have received their *pro rata* portion of such Restricted Payments; and

(d) any Subsidiary that is not a North American Group Member may make Restricted Payments to any other Subsidiary or Subsidiaries that are not North American Group Members.

For the avoidance of doubt this Section 6.5 shall not restrict in any manner any North American Group Member from Disposing of any New GM Equity Interests.

6.6. <u>Amendments to Transaction Documents</u>. (a) No North American Group Member will amend, supplement or otherwise modify (pursuant to a waiver or otherwise) the terms and conditions of the indemnities and licenses furnished to New CarCo and its successors or any of its Subsidiaries pursuant to the Transaction Documents such that after giving effect thereto such indemnities or licenses, taken as a whole, shall be materially less favorable to the interests of the Lenders with respect thereto or (b) otherwise amend, supplement or otherwise modify the terms and conditions of the Transaction Documents.

6.7. <u>Changes in Fiscal Periods</u>. No North American Group Member will permit its fiscal year to end on a day other than December 31 or change its method of determining fiscal quarters, in each case, unless otherwise agreed by the Required Lenders.

6.8. <u>Negative Pledge</u>. No North American Group Member will, enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any North American Group Member to create, incur, assume or permit to exist any Lien upon any of the

Collateral, whether now owned or hereafter acquired, other than this Agreement, the other Loan Documents, the Existing Agreements, and Permitted Liens; <u>provided</u> that the agreements excepted from the restrictions of this Section shall include customary negative pledge clauses in agreements providing refinancing Indebtedness or permitted unsecured Indebtedness.

6.9. <u>Indebtedness</u>. No North American Group Member will, create, incur, assume or suffer to exist any Indebtedness except Permitted Indebtedness.

6.10. <u>Investments</u>. No North American Group Member will make any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting a business unit of, or make any other investment in, any Person (all of the foregoing, "<u>Investments</u>"), except Permitted Investments.

6.11. <u>Action Adverse to the Collateral</u>. Except as permitted under any provision of this Agreement, no Loan Party shall or shall permit any Pledged Entity that is a Subsidiary to take any action that would directly or indirectly materially impair or materially adversely affect such North American Group Member's title to, or the value of, the Collateral, or materially increase the duties, responsibilities or obligation of any North American Group Member.

6.12. <u>Limitation on Sale of Assets</u>. Subject to the Wind-Down, the Orders, the Related Section 363 Transactions and the Cases and any other applicable provision of any Loan Document, each North American Group Member shall have the right to Dispose freely of any of its Property (including, without limitation, receivables and leasehold interests) whether now owned or hereafter acquired.

# 6.13. [Intentionally Omitted].

6.14. <u>JV Agreements</u>. No North American Group Member or Pledged Entity shall allow any modification or amendment to any JV Agreement, except that any such party that is not a Debtor may modify or amend any JV Agreement; <u>provided</u> that such amendment or modification could not reasonably be expected to have a Material Adverse Effect.

6.15. <u>Swap Agreements</u>. The North American Group Members will not itself, and will not permit any of their respective Subsidiaries to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which the Borrower or any Subsidiary has actual or anticipated exposure (other than those in respect of Capital Stock) and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates with respect to any interest-bearing liability or investment of the Borrower or any Subsidiary.

6.16. <u>Clauses Restricting Subsidiary Distributions</u>. The Borrower will not, and will not permit any Guarantor to, enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any such Guarantor to (a) make Restricted Payments in respect of any Capital Stock of such Guarantor held by, or pay any Indebtedness owed to, the Borrower or any other Guarantor, (b) make loans or advances to, or other Investments in, the Borrower or any other Guarantor or (c) transfer any of its assets to the Borrower or any other Guarantor, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions with respect to a Guarantor

imposed pursuant to an agreement that has been entered into in connection with the Disposition of all or substantially all of the Capital Stock or assets of such Guarantor, (iii) any agreement or instrument governing Indebtedness assumed in connection with the acquisition of assets by the Borrower or any Guarantor permitted hereunder or secured by a Lien encumbering assets acquired in connection therewith, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired, (iv) restrictions on the transfer of assets subject to any Lien permitted by Section 6.4 imposed by the holder of such Lien or on the transfer of assets subject to a Disposition permitted by Section 6.12 imposed by the acquirer of such assets, (v) provisions in joint venture agreements and other similar agreements (in each case relating solely to the respective joint venture or similar entity or the Capital Stock therein) entered into in the ordinary course of business, (vi) restrictions contained in the terms of any agreements governing purchase money obligations, Capital Lease Obligations or attributable obligations not incurred in violation of this Agreement; provided that, such restrictions relate only to the property financed with such Indebtedness, (vii) restrictions on cash or other deposits imposed by customers under contracts or other arrangements entered into or agreed to in the ordinary course of business, or (viii) customary non-assignment provisions in leases, contracts, licenses and other agreements entered into in the ordinary course of business and consistent with past practices.

6.17. <u>Sale/Leaseback Transactions</u>. No North American Group Member will enter into any arrangement with any Person providing for the leasing by any such North American Group Member of real or personal property that has been or is to be sold or transferred by any such North American Group Member to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of any such North American Group Member (a "<u>Sale/Leaseback Transaction</u>") other than any Sale/Leaseback Transaction in effect on the Closing Date.

6.18. [Intentionally Omitted].

6.19. <u>Modification of Organizational Documents</u>. No North American Group Member will modify any organizational documents, except (i) as required by the Bankruptcy Code or (ii) in connection with a Disposition permitted by Section 6.12.

## **SECTION 7**

## **EVENTS OF DEFAULT**

7.1. <u>Events of Default</u>. Notwithstanding the provisions of section 362(c) of the Bankruptcy Code, and without notice, application or motion to, hearing before, or order of the Bankruptcy Court, or any notice to any of the North American Group Members, and subject to the provisions of this Section 7, each of the following events shall constitute an "<u>Event of Default</u>", provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied:

(a) the Borrower shall default in the payment of any principal of or interest on any Loan when due (whether at stated maturity or upon acceleration), including the failure to pay

the Administrative Priority Claim Payment Amount on or before the Administrative/Priority Claim Payment Date; or

- or
- (b) any Guarantor shall default in its payment obligations under the Guaranty;

(c) any Loan Party shall default in the payment of any other amount payable by it hereunder or under any other Loan Document after notification by the Lenders of such default, and such default shall have continued unremedied for three (3) Business Days; or

(d) any North American Group Member shall breach any covenant contained in Section 5.16 (Executive Privileges and Compensation), Section 5.17 (Aircraft), Section 5.18 (Restrictions on Expenses), Section 5.19 (Employ American Workers Act), Section 5.20 (Internal Controls; Recordkeeping; Additional Reporting), Section 5.21 (Waivers) or Section 6 hereof; or

(e) any North American Group Member shall default in performance of or otherwise breach non-payment obligations or covenants under any of the Loan Documents not covered by another clause in this Section 7, and such default has not been remedied within the applicable grace period provided therein, or if no grace period, within ten (10) Business Days; or

(f) any representation, warranty or certification made or deemed made herein or in any other Loan Document by any North American Group Member or any certificate furnished to the Lenders pursuant to the provisions hereof or thereof, shall prove to have been false or misleading in any material respect as of the time made or furnished; or

- (g) [intentionally omitted]; or
- (h) [intentionally omitted]; or
- (i) [intentionally omitted]; or
- (j) [intentionally omitted]; or

(k) any of the Cases shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code; a trustee or interim trustee under chapter 7 or chapter 11 of the Bankruptcy Code, a receiver and manager, or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases; or an application shall be filed by the Borrower or any of its Subsidiaries for the approval of any other Superpriority Claim (other than the Carve-Out) in any of the Cases which is *pari passu* with or senior to the claims of the Lenders against any Borrower or any other Loan Party hereunder or under any of the other Loan Documents, or there shall arise or be granted any such *pari passu* or senior Superpriority Claim; or

(1) except as expressly agreed in writing by the Required Lenders, any Debtor shall make any Prepetition Payment to any general unsecured creditor other than any such

Prepetition Payments that are (i) payable pursuant to an order by the Bankruptcy Court or (ii) permitted by the Wind-Down Budget; or

- (m) [intentionally omitted]; or
- (n) [intentionally omitted]; or
- (o) [intentionally omitted]; or

(p) any Loan Document shall for whatever reason be terminated, any default or event of default shall have occurred under any Loan Document, the Loan Documents shall for any reason cease to create a valid, security interest in any of the Collateral purported to be covered hereby or thereby, or any North American Group Member's material obligations (including the Borrower's Obligations hereunder) shall cease to be in full force and effect, or the enforceability thereof shall be contested by any North American Group Member; or

(q) the filing of a motion, pleading or proceeding by any of the other Loan Parties which could reasonably be expected to result in a material impairment of the rights or interests of any Lender under any Loan Document, or a determination by a court with respect to a motion, pleading or proceeding brought by another party which results in a material impairment of the rights or interests of any Lender under any Loan Document; or

(r) (i) any order shall be entered reversing, amending, supplementing, staying for a period in excess of five days, vacating or otherwise modifying in any material respect the Final Order without the prior written consent of the Lenders, (ii) the Final Order shall cease to create a valid and perfected Lien or to be otherwise in full force and effect or (iii) any Debtor shall fail to, or fail to cause any North American Group Member to, comply with the Orders; or

(s) the North American Group Members or any other material Subsidiaries of the Borrower shall take any action in support of any of the events set forth in clauses (k), (l), (m), (q) or (s) or any person other than the North American Group Members or any other material Subsidiaries of the Borrower shall do so, and such application is not contested in good faith by the North American Group Members or any other material Subsidiaries of the Borrower and the relief requested is granted in an order that is not stayed pending appeal; or

(t) [intentionally omitted]; or

(u) any Change of Control shall have occurred without the prior consent of the Lenders other than pursuant to the Related Section 363 Transaction; or

(v) any North American Group Member shall grant, or suffer to exist, any Lien on any Collateral other than Permitted Liens; or the Liens contemplated under the Loan Documents shall cease to be perfected Liens on the Collateral in favor of the Lenders of the requisite priority hereunder with respect to such Collateral (subject to the Permitted Liens); or

- (w) [intentionally omitted]; or
- (x) [intentionally omitted]; or

- (y) [intentionally omitted]; or
- (z) [intentionally omitted]; or
- (aa) [intentionally omitted]; or

(bb) any North American Group Member (other than a Debtor) shall admit its inability to, or intention not to, perform any of such party's material Obligations hereunder; or

(cc) a plan shall be confirmed in any of the Cases that does not, or any order shall be entered which dismisses any of the Cases and which order does not comply with the repayment provisions of this Agreement; or any of the Debtors shall seek support, or fail to contest in good faith the filing or confirmation of such a plan or the entry of such an order.

7.2. <u>Remedies upon Event of Default</u>. (a) If any Event of Default occurs and is continuing under Section 7.1(l), the Required Lenders may, by written notice to the Borrower, take any action set forth in Section 7.2(c).

(b) After the Maturity Date, if any Obligations remain outstanding, the Required Lenders may, by written notice to the Borrower, take any action set forth in Section 7.2(c).

(c) Upon (but only upon) the occurrence of an event set forth in Section 7.2(a) and (b), the Required Lenders may take any or all of the following actions, at the same or different times, in each case without further order of or application to the Bankruptcy Court (provided that (x) with respect to clause (iii) below and the enforcement of Liens or other remedies with respect to the Collateral under clause (v) below, the Lenders shall provide the Borrower (with a copy to counsel for each Committee and to the United States Trustee for the Southern District of New York) with five Business Days' written notice prior to taking the action contemplated thereby, (y) upon receipt of any such notice, the Borrower may only make disbursements in the ordinary course of business and with respect to the Carve-Out, but may not disburse any other amounts, and (z) in any hearing after the giving of the aforementioned notice, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, the specific Event of Default giving rise to the enforcement has occurred and is continuing):

(i) declare the principal of and accrued interest on the outstanding Loans to be immediately due and payable;

(ii) [intentionally omitted]

(iii) set-off any amounts (other than Excluded Collateral) held in any accounts maintained by any Loan Party with respect to which any Lender is a party to a control agreement;

(iv) compel any Debtor to or to cause any North American Group Member to sell any or all of its assets (other than the Excluded Collateral) that comprise collateral consistent with Section 363(b) of the Bankruptcy Code or any other applicable law, and

credit bid the Loans in any such sale pursuant to Section 363(k) of the Bankruptcy Code or other Applicable Law; or

(v) take any other action or exercise any other right or remedy (including, without limitation, with respect to the Liens in favor of the Lenders) permitted under and consistent with the Loan Documents or by applicable law.

(d) Notwithstanding any other provision in this Agreement or the other Loan Documents, the Lenders' rights and remedies set forth in Section 7.2(a), (b) and (c) shall for all purposes be the sole and exclusive remedy of the Lenders and their respective Affiliates under this Agreement and the other Loan Documents, at law or in equity, for all purposes against the Borrower, any of its direct or indirect Subsidiaries (including, the Guarantors), the Pledgors, and any of their respective former, current and future direct or indirect equity holders, controlling persons, stockholders, directors, officers, employees, agents, members, managers, general or limited partners or assignees upon any Event of Default or for any loss or damage suffered as a result of the breach of any representation, warranty, covenant or agreement contained in this Agreement, the other Loan Documents or otherwise by the Borrower or any of its direct or indirect Subsidiaries, any Pledgor or any Guarantor.

#### **SECTION 8**

#### MISCELLANEOUS

Amendments and Waivers. Neither this Agreement, any other Loan 8.1. Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 8.1 or as otherwise expressly provided herein. The Required Lenders and the Borrower (on its own behalf and as agent on behalf of any other Loan Party party to the relevant Loan Document) may, from time to time, (a) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights or obligations of the Lenders or of the Loan Parties hereunder or thereunder or (b) waive, on such terms and conditions as the Lenders may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; except that (x) the consent of each Lender directly affected thereby shall be required with respect to (i) reductions in the amount or extensions of the Maturity Date of any Loan or any change to the definition of "Maturity Date", (ii) reductions in the rate of interest or any fee or extensions of any due date thereof, (iii) [intentionally omitted], (iv) imposition of any additional restrictions on assignments and participations, (v) [intentionally omitted] and (vi) modifications to the pro rata treatment and sharing provisions of the Loan Documents, and (y) the consent of 100% of the Lenders shall be required with respect to (i) modifications to this Section of any of the voting percentages, the definition of "Required Lenders", or the minimum requirement necessary for all Lenders or Required Lenders to take action hereunder, (ii) prior to the consummation of the Related Section 363 Transactions, the release or subordination of any of the Guarantors or a material portion of the Collateral other than in connection with the Related Section 363 Transactions, (iii) after the consummation of the Related Section 363 Transactions, the release or subordination of all or substantially all of the Guarantors or all or substantially all of the Collateral, (iv) the assignment, delegation or other transfer by any Loan Party of any of its rights and obligations under this Agreement and (v) amendments, supplements, modifications or waivers of Sections 2.12 (or the rights and obligations contained therein), 4.1(a), 4.1(c)(ii), 4.1(e), 4.1(f), 4.1(m) or 7.1(r), the definition of "ABR" or the minimum notice requirements contained in Section 2.4.

Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders and all future holders of the Loans. In the case of any waiver, the Loan Parties and the Lenders shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Any such waiver, amendment, supplement or modification shall be effected by a written instrument signed by the parties required to sign pursuant to the foregoing provisions of this Section 8.1; <u>provided</u> that, delivery of an executed signature page of any such instrument by facsimile transmission shall be effective as delivery of a manually executed counterpart thereof.

8.2. <u>Notices</u>. (a) All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy or electronic transmission), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three Business Days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice or electronic transmission or overnight or hand delivery, when received, addressed as follows in the case of the Borrower and the Lenders, or to such other address as may be hereafter notified by the respective parties hereto:

Borrower:

GM Global Headquarters Att. Mail Code 482-C37-A99 300 Renaissance Center Detroit, MI 48265-3000 Telecopy: 248-262-8491

with a copy to:

Motors Liquidation Company 767 Fifth Avenue, 14th Floor New York, NY 10153 Attention: Treasurer Telecopy: 212-418-3630 and

Motors Liquidation Company 300 Renaissance Center Detroit, MI 48265-3000 Attention: General Counsel Telecopy: 248-267-4584

and:

Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, NY 10153-0119 Attention: Stephen Karotkin Richard Ginsburg Soo-Jin Shim Telecopy: 212-310-8007

#### Treasury:

The United States Department of the Treasury 1500 Pennsylvania Avenue, NW Washington, D.C. 20220 Attention: Chief Counsel Office of Financial Stability Telecopy: 202-927-9225 Email: OFSChiefCounselNotices@do.treas.gov

with a copy to:

Cadwalader, Wickersham & Taft LLP One World Financial Center New York, NY 10281 Attention: John J. Rapisardi Telecopy: 212-504-6666 Telephone: 212-504-6000

Canadian Lender:

Export Development Canada 151 O'Connor Street Ottawa, Ontario Canada K1A 1K3 Attention: Loans Services Telecopy: 613-598-2514 with a copy to:

Export Development Canada 151 O'Connor Street Ottawa, Ontario Canada K1A 1K3 Attention: Asset Management/Covenants Officer Telecopy: 613-598-3186

provided that any notice, request or demand to or upon the Lenders shall not be effective until received.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by each Lender in its sole discretion. The Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; <u>provided</u> that approval of such procedures may be limited to particular notices or communications.

8.3. <u>No Waiver; Cumulative Remedies</u>. No failure to exercise and no delay in exercising, on the part of any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

8.4. <u>Survival of Representations and Warranties</u>. All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

8.5. Payment of Expenses. The Borrower agrees (a) to pay or reimburse the Lenders and any other Canadian Lender Consortium Member for all their (i) reasonable out-ofpocket costs and expenses incurred in connection with the development, preparation and execution of, and any amendment, supplement or modification to, this Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby (including the reasonable out-of-pocket costs and expenses of the advisors and counsel to each Lender and each other Canadian Lender Consortium Member, but excluding the professional fees of such advisors and counsel to each Lender and each other Canadian Lender Consortium Member), and (ii) costs and expenses incurred in connection with the enforcement or preservation of any rights or exercise of remedies under this Agreement, the other Loan Documents and any other documents prepared in connection herewith or therewith in respect of any Event of Default or otherwise, including the fees and disbursements of counsel (including the allocated fees and disbursements and other charges of in-house counsel) to each Lender and each other Canadian Lender Consortium Member, (b) to pay, indemnify, or reimburse each

Lender and each other Canadian Lender Consortium Member for, and hold each Lender and each other Canadian Lender Consortium Member harmless from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying such fees, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Loan Documents and any such other documents, and (c) to pay, indemnify or reimburse each Lender and each other Canadian Lender Consortium Member, their respective affiliates, and their respective officers, directors, partners, employees, advisors, agents, controlling persons and trustees (each, an "Indemnitee") for, and hold each Indemnitee harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever incurred by an Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of, the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or the consummation of the transactions contemplated hereby or thereby, including any of the foregoing relating to the use or proposed use of proceeds of the Loans or the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations or assets of any Group Member, including any of the Mortgaged Properties, and the reasonable fees and expenses of legal counsel in connection with claims, actions or proceedings by any Indemnitee against any Loan Party under any Loan Document or any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by any third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto (all the foregoing in this clause (c), collectively, the "Indemnified Liabilities"), provided that the Borrower shall have no obligation hereunder to any Indemnitee (x) for Taxes (it being understood that the Borrower's obligations with respect to Taxes are set forth in Section 2.12) or (y) with respect to Indemnified Liabilities to the extent such Indemnified Liabilities resulted from the gross negligence or willful misconduct of, in each case as determined by a final and nonappealable decision of a court of competent jurisdiction, such Indemnitee, any of its affiliates or its or their respective officers, directors, partners, employees, agents or controlling persons. No Indemnitee shall be liable for any damages arising from the use by unauthorized persons of information or other materials sent through electronic, telecommunications or other information transmission systems that are intercepted by such persons or for any special, indirect, consequential or punitive damages in connection with the Loans. Without limiting the foregoing, and to the extent permitted by applicable law, the Borrower agrees not to assert and to cause its Subsidiaries not to assert, and hereby waives and agrees to cause its Subsidiaries to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnitee. All amounts due under this Section 8.5 shall be payable not later than 30 days after written demand therefor. Statements payable by the Borrower pursuant to this Section 8.5 shall be submitted to the Treasurer of the Borrower as set forth in Section 8.2, or to such other Person or address as may be hereafter

designated by the Borrower in a written notice to the Lenders. The agreements in this Section 8.5 shall survive repayment of the Loans and all other amounts payable hereunder.

8.6. <u>Successors and Assigns; Participations and Assignments</u>. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, all future holders of the Loans and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder (except to its Debtor Successor) without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 8.6.

(b) Any Lender may, without the consent of the Borrower, assign to one or more assignees (each, an "<u>Assignee</u>") all or a portion of its rights and obligations under this Agreement (including all or a portion of its Loans at the time owing to it) pursuant to an Assignment and Assumption, executed by such Assignee and such Lender and delivered to the Borrower for its records, to any other branch, division or agency of the United States or Canadian governments or any government of any state, province, commonwealth or territory of the United States or Canada or to New CarCo, together with any related rights and obligations thereunder, without the consent of the Borrower. The Borrower or its agent will maintain a register ("<u>Register</u>") of each Lender and Assignee. The Register shall contain the names and addresses of the Lenders and Assignees and the principal amount of the loans (and stated interest thereon) held by each such Lender and Assignee from time to time. The entries in the Register shall be conclusive and binding, absent manifest error.

Any Lender may, without the consent of the Borrower, sell participations (c) to any other branch, division or agency of the United States or Canadian governments or any government of any state, province, commonwealth or territory of the United States or Canada (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (C) the Borrower and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to the proviso to the second sentence of Section 8.1 and (2) directly affects such Participant. Subject to paragraph (c) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Section 2.10 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 8.6. To the extent permitted by law, and subject to paragraph (c) of this Section, each Participant also shall be entitled to the benefits of Section 8.7 as though it were a Lender. Notwithstanding anything to the contrary in this Section 8.6, each Lender shall have the right to sell one or more participations in all or any part of its Loans or other Obligations to one or more lenders or other Persons that provide financing to such Lender in the form of sales

and repurchases of participations without having to satisfy the foregoing requirements. In the event that a Lender sells a participation in such Lender's rights and obligations under this Agreement, the Lender, on behalf of Borrower, shall maintain a register on which it enters the name, address and interest in this Agreement of all Participants.

Adjustments; Set-off. (a) Except to the extent that this Agreement 8.7. expressly provides for payments to be allocated to a particular Lender or to the Lenders, if any Lender (a "Benefitted Lender") shall, at any time after the Loans and other amounts payable hereunder shall immediately become due and payable pursuant to Section 7, receive any payment of all or part of the Obligations owing to it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefitted Lender shall purchase for cash in Dollars from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such collateral or the proceeds thereof, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) In addition to any rights and remedies of the Lenders provided by law, subject to any notice or other requirement contained in the Orders, each Lender shall have the right, without (i) further order of or application to the Bankruptcy Court, or (ii) prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, upon all amounts owing hereunder becoming due and payable (whether at the stated maturity, by acceleration or otherwise) to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the Borrower. Each Lender agrees promptly to notify the Borrower and the other Lenders after any such set-off and application made by such Lender; <u>provided</u> that, the failure to give such notice shall not affect the validity of such set off and application.

8.8. <u>Counterparts</u>. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Lenders.

8.9. <u>Severability</u>. Any provision of this Agreement that is held to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.10. <u>Integration</u>. This Agreement and the other Loan Documents represent the entire agreement of the Borrower and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents. Subject to Section 8.18, in the event of any conflict between this Agreement or any other Loan Document and the Orders, the Orders shall control.

## 8.11. <u>Governing Law</u>. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

8.12. <u>Submission to Jurisdiction; Waivers</u>. All judicial proceedings brought against any Loan Party hereto arising out of or relating to this Agreement or any other Loan Document, or any Obligations hereunder and thereunder, may be brought in the Bankruptcy Court and, if the Bankruptcy Court does not have (or abstains from) jurisdiction, the courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof. Each Loan Party hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any such legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non exclusive general jurisdiction of the courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such party at its address set forth in Section 8.2 or at such other address of which the Lenders shall have been notified pursuant thereto; and

(d) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

8.13. <u>Acknowledgments</u>. The Loan Party hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) no Lender has any fiduciary relationship with or duty to any Group Member arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Lenders, on one hand, and any Group Member, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower or any Subsidiary and the Lenders.

8.14. <u>Release of Guaranties</u>. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Lenders hereby agree to take promptly, any action requested by the Borrower having the effect of releasing, or evidencing the release of, any guarantee by any Loan Party of the Obligations to the extent necessary to permit consummation of any transaction not prohibited by any Loan Document or that has been consented to in accordance with Section 8.1.

8.15. Confidentiality. Each of the Lenders agrees to keep confidential all non-public information provided to it by any Loan Party or any other Lender pursuant to this Agreement that is designated by such Loan Party as confidential; provided that nothing herein shall prevent any Lender from disclosing any such information (a) to any other Lender or any affiliate of any thereof, (b) subject to an agreement to comply with the provisions of this Section 8.15 (or other provisions at least as restrictive as this Section), to any actual or prospective Transferee or any pledgee of Loans or any direct or indirect contractual counterparty (or the professional advisors thereto) to any swap or derivative transaction relating to the Loan Party and its obligations, (c) to its affiliates, employees, directors, trustees, agents, attorneys, accountants and other professional advisors, or those of any of its affiliates for performing the purposes of a Loan Document, subject to such Lender, as the case may be, advising such Person of the confidentiality provisions contained herein, (d) upon the request or demand of any Governmental Authority or regulatory agency (including self-regulated agencies) having jurisdiction (or purporting to have jurisdiction) over it upon notice (other than in connection with routine examinations or inspections by regulators) to the Borrower thereof unless such notice is prohibited or the Governmental Authority or regulatory agency shall require otherwise, (e) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law, after notice to the Borrower if reasonably feasible, and, if applicable, after exhaustion of the Group Members' rights and remedies under Section 1.6 of the Department of the Treasury Regulations, 31 C.F.R. Part 1, Subpart A; Sections 27-29 inclusive and 44 of the Access to Information Act, R.S.C., ch A-1 (1985) and Section 28 and Part IV (Sections 50-56 inclusive) of the Freedom of Information and Protection of Privacy Act, R.S.O., ch. F.31 (1990), after notice to the Borrower if reasonably feasible, (f) if requested or required to do so in connection with any litigation or similar proceeding, after notice to the Borrower if reasonably feasible, (g) that has been publicly disclosed, other than in breach of this Section, (h) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender or (i) in connection with the exercise of any remedy hereunder or under any other Loan Document.

### 8.16. <u>Waivers of Jury Trial</u>. THE BORROWER AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN

#### ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

8.17. <u>USA PATRIOT Act</u>. Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the USA PATRIOT Act.

8.18. <u>Orders</u>. The terms and conditions hereunder shall be subject to the terms and conditions of the Final Order. In the event of any inconsistency between the terms or conditions of this Agreement and the terms and conditions of the Orders, the terms and conditions of the Orders shall control. Notwithstanding the foregoing, in the event of any inconsistency between the terms or conditions of Section 8.1 and the terms and conditions of the Orders, the terms and conditions of the Orders, the terms or conditions of Section 8.1 shall control.

8.19. Effect of Amendment and Restatement of the Existing Credit Agreement. On the Effective Date, the Existing Credit Agreement shall be amended, restated and superseded in its entirety. The parties hereto acknowledge and agree that (a) this Agreement and the other Loan Documents, whether executed and delivered in connection herewith or otherwise, do not constitute a novation, payment and reborrowing, or termination of the "Obligations" (as defined in the Existing Credit Agreement) under the Existing Credit Agreement as in effect prior to the Effective Date and (b) such "Obligations" are in all respects continuing (as amended and restated hereby) with only the terms thereof being modified as provided in this Agreement.

8.20. <u>New GM Equity Interests.</u> Each Lender hereby acknowledges and agrees that it, and each Affiliate of any Lender, (a) shall have no right, in any manner whatsoever, to the New GM Equity Interests or any proceeds received from the sale or distribution thereof in satisfaction or repayment of the Loans and (b) will not initiate or prosecute any claims, causes of action, adversary proceedings or other litigation seeking recourse against the New GM Equity Interests or any proceeds from the sale or distribution thereof in satisfaction or repayment of the Loans or other litigation seeking recourse against the New GM Equity Interests or any proceeds received from the sale or distribution thereof in satisfaction or repayment of the Loans or otherwise.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

## MOTORS LIQUIDATION COMPANY

By:_____

Name: Title:

## [GUARANTOR]

By:_____ Name: Title:

#### UNITED STATES DEPARTMENT OF THE TREASURY, as a Lender

By:______ Title: Interim Assistant Secretary of the Treasury for Financial Stability

## EXPORT DEVELOPMENT CANADA, as a Lender

By:_____

Name: Title:

By:_____

Name:

Title:

# Exhibit 8

#### **EXECUTION VERSION**

#### \$1,175,000,000 AMENDED AND RESTATED SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT

among

### MOTORS LIQUIDATION COMPANY (f/k/a GENERAL MOTORS CORPORATION) a Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code, as the Borrower,

#### THE GUARANTORS

and

### THE LENDERS PARTIES HERETO FROM TIME TO TIME

Dated as of July 10, 2009

#### TABLE OF CONTENTS

## SECTION 1

#### DEFINITIONS

1.1	Defined Terms	2
1.2	Other Definitional Provisions	.23
1.3	Conversion of Foreign Currencies	.24

## SECTION 2

#### AMOUNT AND TERMS OF THE LOANS

Loans	24
[Intentionally Omitted]	24
Repayment of Loans; Evidence of Debt	24
Optional Prepayments	25
[Intentionally Omitted]	25
Interest Rates and Payment Dates/Fee Payment Dates/Fees	25
Computation of Interest and Fees	25
Inability to Determine Interest Rate; Illegality	26
Treatment of Borrowings and Payments; Evidence of Debt	27
Indemnity	27
Superpriority Nature of Obligations and Lenders' Liens	28
Taxes	28
	[Intentionally Omitted]

## **SECTION 3**

## REPRESENTATIONS AND WARRANTIES

3.1	Existence	30
3.2	[Intentionally Omitted]	30
3.3	[Intentionally Omitted]	30
3.4	[Intentionally Omitted]	30
3.5	Action, Binding Obligations	31
3.6	Approvals	
3.7	[Intentionally Omitted]	
3.8	Investment Company Act	
3.9	[Intentionally Omitted]	
3.10	Chief Executive Office; Chief Operating Office	31
3.11	Location of Books and Records	
3.12	[Intentionally Omitted]	31

3.13	[Intentionally Omitted]	31
3.14	Expense Policy	31
3.15	Subsidiaries	31
3.16	Capitalization	32
3.17	Fraudulent Conveyance	32
3.18	USA PATRIOT Act	32
3.19	Embargoed Person	32
3.20	Use of Proceeds	33
3.21	Representations Concerning the Collateral	34
3.22	[Intentionally Omitted]	34
3.23	[Intentionally Omitted]	
3.24	Lien Priority	34
3.25	[Intentionally Omitted]	35
3.26	[Intentionally Omitted]	35
3.27	[Intentionally Omitted]	35
3.28	Excluded Collateral	35
3.29	Mortgaged Real Property	36
3.30	[Intentionally Omitted]	
3.31	The Final Order	
3.32	Wind-Down Budget	36

## **SECTION 4**

## CONDITIONS PRECEDENT

4.1	Conditions to Effectiveness	3	6
-----	-----------------------------	---	---

## SECTION 5

## AFFIRMATIVE COVENANTS

5.1	Financial Statements	
5.2	Notices; Reporting Requirements	40
5.3	Existence	
5.4	Payments of Taxes	42
5.5	Use of Proceeds	
5.6	Maintenance of Existence; Payment of Obligations; Compliance with Law	43
5.7	Further Identification of Collateral	43
5.8	Defense of Title	43
5.9	Preservation of Collateral	
5.10	Maintenance of Papers, Records and Files	44
5.11	Maintenance of Licenses	44
5.12	Payment of Obligations	44
5.13	OFAC	45
5.14	Investment Company	45
5.15	Further Assurances	

5.16	Executive Privileges and Compensation	45
5.17	Aircraft	46
5.18	Restrictions on Expenses	47
5.19	Employ American Workers Act	47
5.20	Internal Controls; Recordkeeping; Additional Reporting	47
5.21	Waivers	48
5.22	[Intentionally Omitted]	48
5.23	Additional Guarantors	49
5.24	Provide Additional Information	49
5.25	Inspection of Property; Books and Records; Discussions	49
5.26	Governance of Borrower	49

## SECTION 6

## NEGATIVE COVENANTS

6.1	Prohibition on Fundamental Changes	51
6.2	Lines of Business	51
6.3	Transactions with Affiliates	51
6.4	Limitation on Liens	51
6.5	Restricted Payments	51
6.6	Amendments to Transaction Documents	52
6.7	Changes in Fiscal Periods	52
6.8	Negative Pledge	52
6.9	Indebtedness	
6.10	Investments	53
6.11	Action Adverse to the Collateral	53
6.12	Limitation on Sale of Assets	53
6.13	[Intentionally Omitted]	53
6.14	JV Agreements	53
6.15	Swap Agreements	53
6.16	Clauses Restricting Subsidiary Distributions	53
6.17	Sale/Leaseback Transactions	
6.18	[Intentionally Omitted]	54
6.19	Modification of Organizational Documents	54

#### SECTION 7

## EVENTS OF DEFAULT

7.1	Events of Default	54
7.2	Remedies upon Event of Default	57

## **SECTION 8**

## MISCELLANEOUS

8.1	Amendments and Waivers	58
8.2	Notices	59
8.3	No Waiver; Cumulative Remedies	61
8.4	Survival of Representations and Warranties	61
8.5	Payment of Expenses	61
8.6	Successors and Assigns; Participations and Assignments	62
8.7	Adjustments; Set-off	
8.8	Counterparts	64
8.9	Severability	
8.10	Integration	64
8.11	Governing Law	64
8.12	Submission to Jurisdiction; Waivers	64
8.13	Acknowledgments	65
8.14	Release of Guaranties	65
8.15	Confidentiality	65
8.16	Waivers of Jury Trial	66
8.17	USA PATRIOT Act	66
8.18	Orders	66
8.19	Effect of Amendment and Restatement of the Existing Credit Agreement	66
8.20	New GM Equity Interests	67

#### SCHEDULES:

- 1.1A Outstanding Amounts of Tranche C Term Loans
- 1.1B Guarantors
- 1.1C Mortgaged Property
- 1.1D Pledgors
- 1.1E [Intentionally Omitted]
- 1.1F [Intentionally Omitted]
- 1.1G Certain Excluded Subsidiaries
- 3.3 [Intentionally Omitted]
- 3.10 Chief Executive Office and Chief Operating Office
- 3.11 Location of Books and Records
- 3.15 Subsidiaries
- 3.16 Ownership of North American Group Members
- 3.21 Jurisdictions and Recording Offices
- 3.25 [Intentionally Omitted]
- 3.26 [Intentionally Omitted]
- 3.28 Excluded Collateral

### EXHIBITS:

- A Form of Amended and Restated Guaranty and Security Agreement
- B-1 Form of Secretary's Certificate
- B-2 Form of Officer's Certificate
- C Form of Assignment and Assumption
- D-1 Form of Waiver for the Loan Parties
- D-2 Form of Waiver of SEO to Treasury
- D-3 Form of Consent and Waiver of SEO to Borrower
- D-4 Form of Waiver of Senior Employee to Treasury
- D-5 Form of Consent and Waiver of Senior Employee to Borrower
- E Form of Legal Opinion of Weil, Gotshal & Manges LLP
- F Form of Compliance Certificate
- G Form of Amended and Restated Note
- H [Intentionally Omitted]
- I Form of Environmental Agreement
- J Form of Amended and Restated Mortgage
- K [Intentionally Omitted]
- L Form of Amended and Restated Equity Pledge Agreement

AMENDED AND RESTATED SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this "<u>Agreement</u>"), dated as of July 10, 2009, by and among MOTORS LIQUIDATION COMPANY (f/k/a General Motors Corporation), a Delaware corporation and a debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code (as defined below) (the "<u>Borrower</u>"), the Guarantors (as defined below), and the several lenders from time to time parties to this Agreement (the "<u>Lenders</u>").

#### $\underline{W} \underline{I} \underline{T} \underline{N} \underline{E} \underline{S} \underline{S} \underline{E} \underline{T} \underline{H}$ :

WHEREAS, on June 1, 2009 (the "<u>Petition Date</u>"), the Borrower, Saturn, LLC, a Delaware limited liability company, Saturn Distribution Corporation, a Delaware corporation, and Chevrolet-Saturn of Harlem, Inc., a Delaware corporation (each an "<u>Initial Debtor</u>" and collectively, the "<u>Initial Debtors</u>") filed voluntary petitions in the Bankruptcy Court (as defined below) for relief, and commenced cases (each an "<u>Initial Case</u>" and collectively, the "<u>Initial Cases</u>") under the Bankruptcy Code and have continued in the possession of their assets and in the management of their businesses pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, on June 3, 2009, the Borrower entered into the Secured Superpriority Debtor-In-Possession Credit Agreement, among the Borrower, the guarantors party thereto and the Lenders (the "Existing Credit Agreement");

WHEREAS, pursuant to the Existing Credit Agreement, the Lenders provided the Borrower with (i) term loans in an aggregate amount equal to \$32,125,000,000 (the "<u>Tranche B</u> <u>Term Loans</u>") and (ii) term loans in an aggregate amount equal to \$1,175,000,000 (the "<u>Tranche C Term Loans</u>");

WHEREAS, on June 25, 2009, the Bankruptcy Court entered the Final Order pursuant to the Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (the "<u>Final Order</u>") approving the terms and conditions of the Existing Credit Agreement and the Loan Documents (as defined in the Existing Credit Agreement);

WHEREAS, on July 5, 2009, the Bankruptcy Court entered the Wind-Down Order pursuant to the Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (the "<u>Wind-Down Order</u>") approving the amendment to the Existing Credit Agreement to provide the Debtors with post-petition, wind-down financing;

WHEREAS, pursuant to the Master Transaction Agreement (as defined below), on July 10, 2009 the Treasury (as defined below) exchanged a portion of its Tranche B Term Loans in an amount equal to \$25,052,511,395 together with its Additional Notes (as defined in the Existing Credit Agreement) and its rights under the Existing UST Term Loan Agreement including the Warrant Note (as defined in the Existing UST Loan Agreement as defined below) and the Additional Notes (as defined in the Existing UST Loan Agreement) to New CarCo (as

defined below) in exchange for common and preferred Capital Stock (as defined below) of New CarCo;

WHEREAS, pursuant to the Master Transaction Agreement, on July 10, 2009 the Canadian Lender exchanged a portion of its Tranche B Term Loans in an amount equal to \$3,010,805,085 together with its Additional Notes to New CarCo in exchange for common and preferred Capital Stock of New CarCo;

WHEREAS, pursuant to the Master Transaction Agreement and in accordance with the Section 363 Sale Order (as defined below), the Borrower sold to New CarCo certain of its assets and property, and New CarCo assumed certain liabilities of the Borrower and its Subsidiaries (as defined below), including a portion of the Treasury's Tranche B Term Loans in an aggregate amount equal to \$7,072,488,605 pursuant to the Assignment and Assumption Agreement, dated as of the date hereof (the "<u>New CarCo Assignment and Assumption</u>"), between the Borrower and New CarCo (collectively, and together with the other transactions contemplated by the Transaction Documents, the "<u>Related Section 363 Transactions</u>");

WHEREAS, after giving effect to the Related Section 363 Transactions, the remaining obligations of the Borrower to the Lenders are comprised solely of the Tranche C Term Loans; and

WHEREAS, the Borrower has requested, and the Lenders have agreed, to amend and restate the portion of the Existing Credit Agreement relating to the Tranche C Term Loans on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, the parties hereto agree that on the Effective Date, as provided in Section 8.19, the Existing Credit Agreement shall be amended and restated in its entirety as follows:

### **SECTION 1**

#### **DEFINITIONS**

1.1. <u>Defined Terms</u>. As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

"<u>ABR</u>": for any day, a rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day <u>plus</u> ½ of 1% and (c) the three month Eurodollar Rate (for the avoidance of doubt after giving effect to the provisos in the definition thereof) <u>plus</u> 1.00%; <u>provided</u> that, in the event the Required Lenders shall have determined that adequate and reasonable means do not exist for ascertaining the calculation of clause (c), such calculation shall be replaced with the last available calculation of the three month Eurodollar Rate <u>plus</u> 1.00%. Any change in the ABR due to a change in the Prime Rate, the Federal Funds Effective Rate or the three month Eurodollar Rate shall be effective as of the opening of business on the effective

day of such change in the Prime Rate, the Federal Funds Effective Rate or the three month Eurodollar Rate, respectively.

"<u>ABR Loans</u>": Loans the rate of interest applicable to which is based upon the ABR.

"Additional Guarantor": as defined in Section 5.23.

"<u>Administrative/Priority Claim Payment Amount</u>": any positive amount equal to the difference between \$200,000,000 and the aggregate amount paid or payable (or specifically reserved for payment as such) to satisfy all of the administrative and priority claims comprising the Administrative/Priority Claim Tranche.

"<u>Administrative/Priority Claim Payment Date</u>": the first Business Day after which the administrative and priority claims that comprise the Administrative/Priority Claim Tranche are satisfied in full or otherwise finalized so that no such claims remain outstanding and unsatisfied, but in no case later than the date on which a liquidation plan with respect to the Debtors is approved by the Bankruptcy Court and declared effective.

"<u>Administrative/Priority Claim Tranche</u>": an amount under the Wind-Down Budget up to \$200,000,000 that was allocated as of the Effective Date to cover anticipated (i) administrative claims related to contract rejections by the Debtors and (ii) priority claims against the Debtors, each as further described in the Wind-Down Budget. The description of the administrative and priority claims that are to be set forth in the Wind-Down Budget shall reflect such categories, provisions and assumptions such that a good faith estimate, as of the Effective Date, of the sum of the obligations arising from the claims referenced in clauses (i) and (ii) above shall be at least equal to \$200,000,000.

"<u>Affiliate</u>": with respect to any Person, any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such Person. For purposes of this Agreement, "control" (together with the correlative meanings of "controlled by" and "under common control with") means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract, or otherwise. For the avoidance of doubt, pension plans of a Person and entities holdings the assets of such plans, shall not be deemed to be Affiliates of such Person.

"<u>Aggregate Exposure Percentage</u>": with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender's aggregate but unpaid principal amount of such Lender's Loans at such time to the sum of the aggregate but unpaid principal amount of all Lenders' Loans at such time.

"<u>Agreement</u>": as defined in the preamble hereto.

"<u>Anti-Money Laundering Laws</u>": as defined in Section 3.18(d).

"<u>Applicable Law</u>": as to any Person, all laws (including common law), statutes, regulations, ordinances, treaties, judgments, decrees, injunctions, writs and orders of any court,

governmental agency or authority and rules, regulations, orders, directives, licenses and permits of any Governmental Authority applicable to such Person or its property or in respect of its operations.

"<u>Applicable Margin</u>": (A) 2.0% per annum in the case of ABR Loans and (B) 3.0% per annum in the case of Eurodollar Loans.

"<u>Assignee</u>": as defined in Section 8.6(b).

"<u>Assignment and Assumption</u>": an Assignment and Assumption, substantially in the form of Exhibit C.

"<u>Bankruptcy Code</u>": the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq.

"<u>Bankruptcy Court</u>": the United States Bankruptcy Court for the Southern District of New York (together with the District Court for the Southern District of New York, where applicable).

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

"<u>Bankruptcy Rules</u>": the Federal Rules of Bankruptcy Procedure and local rules of the Bankruptcy Court, each as amended, and applicable to the Cases.

"<u>Benefitted Lender</u>": as defined in Section 8.7(a).

"<u>Board</u>": the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Borrower": as defined in the recitals.

"<u>Business Day</u>": any day other than a Saturday, Sunday or other day on which banks in New York City or Ottawa, Ontario, Canada are permitted to close; <u>provided</u>, <u>however</u>, that when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London Interbank market.

"<u>Canadian Lender</u>": Export Development Canada, a corporation established pursuant to the laws of Canada, and its successors and assigns.

"<u>Canadian Lender Consortium Members</u>": each of the Export Development Canada, the Government of Canada and the Government of Ontario. "<u>Canadian Post-Sale Facility</u>": the Amended and Restated Loan Agreement, dated as of the Effective Date, by and among General Motors of Canada Limited, as borrower, the other loan parties thereto, and the Canadian Lender.

"<u>Canadian PV Loan Agreement</u>": the Loan Agreement, dated as of the Effective Date, by and among New CarCo, as borrower, the other loan parties thereto, and the Canadian Lender.

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

"<u>Capital Stock</u>": any and all equity interests, including any shares of stock, membership or partnership interests, participations or other equivalents whether certificated or uncertificated (however designated) of a corporation, limited liability company, partnership or any other entity, and any and all similar ownership interests in a Person and any and all warrants or options to purchase any of the foregoing.

#### "<u>Carve-Out</u>": as defined in the Orders.

"<u>Cases</u>": the Initial Cases and each other case of a Debtor filed with the Bankruptcy Court and joined with the Initial Cases.

"Cash Equivalents": (a) Dollars, or money in other currencies received in the ordinary course of business, (b) securities with maturities of one (1) year or less from the date of acquisition issued or fully guaranteed or insured by the United States or Canadian government or any agency thereof, (c) securities with maturities of one (1) year or less from the date of acquisition issued or fully guaranteed by any state, province, commonwealth or territory of the United States or Canada, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least "A" by S&P or "A" by Moody's or equivalent rating, (d) demand deposit, certificates of deposit and time deposits with maturities of one (1) year or less from the date of acquisition and overnight bank deposits of any commercial bank, supranational bank or trust company having capital and surplus in excess of \$500,000,000, (e) repurchase obligations with respect to securities of the types (but not necessarily maturity) described in clauses (b) and (c) above, having a term of not more than 90 days, of banks (or bank holding companies) or subsidiaries of such banks (or bank holding companies) and non-bank broker-dealers listed on the Federal Reserve Bank of New York's list of primary and other reporting dealers ("Repo Counterparties"), which Repo Counterparties have capital, surplus and undivided profits aggregating in excess of \$500,000,000 (or the foreign equivalent thereof) and which Repo Counterparties or their parents (if the Repo Counterparties are not rated) will at the time of the transaction be rated "A-1" by S&P (or such similar equivalent rating) or higher by at least one nationally recognized statistical rating organization, (f) commercial paper rated at least A-1 or the equivalent thereof by S&P or P-1 or the equivalent thereof by Moody's and in either case

maturing within one (1) year after the day of acquisition, (g) short-term marketable securities of comparable credit quality, (h) shares of money market mutual or similar funds which invest at least 95% in assets satisfying the requirements of clauses (a) through (g) of this definition (except that such assets may have maturities of 13 months or less), and (i) in the case of a Foreign Subsidiary, substantially similar investments, of comparable credit quality, denominated in the currency of any jurisdiction in which such Person conducts business.

"<u>Change of Control</u>": with respect to the Borrower, the acquisition, after the Closing Date, by any other Person, or two or more other Persons acting in concert other than the Permitted Holders, the Lenders or any Affiliate of the Lenders, of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of outstanding shares of voting stock of the Borrower at any time if after giving effect to such acquisition such Person or Persons owns twenty percent (20%) or more of such outstanding voting stock.

"<u>Closing Date</u>": June 3, 2009.

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

"<u>Collateral</u>": all property and assets of the Loan Parties of every kind or type whatsoever, including tangible, intangible, real, personal or mixed, whether now owned or hereafter acquired or arising, wherever located, all property of the estates of each Debtor within the meaning of section 541 of the Bankruptcy Code (including avoidance actions arising under Chapter 5 of the Bankruptcy Code and applicable state law except avoidance actions against the Prepetition Senior Facilities Secured Parties (as defined in the Final Order)), all property pledged to secure the Obligations under each Collateral Document (other than the Orders) and all proceeds, rents and products of the foregoing other than Excluded Collateral. For the avoidance of doubt, the proceeds of the Tranche C Term Loans constitute Collateral.

"<u>Collateral Documents</u>": means, collectively, the Orders, the Guaranty, the Equity Pledge Agreement, each Mortgage, collateral assignment, security agreement, pledge agreement or similar agreements delivered to the Lenders to secure the Obligations. The Collateral Documents (other than the Orders) shall supplement, and shall not limit, the grant of Collateral pursuant to the Orders.

"<u>Committee</u>": any statutory committee appointed in the Cases.

"<u>Compensation Regulations</u>": as defined in Section 5.16(a)(i).

"<u>Compliance Certificate</u>": a certificate duly executed by a Responsible Officer, substantially in the form of Exhibit F, for the immediately prior calendar month and on a cumulative basis from the Petition Date.

"<u>Contractual Obligation</u>": as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control": as defined in the definition of "Affiliate".

"<u>Controlled Affiliate</u>": as defined in Section 3.18(a).

"<u>Convention</u>": as defined in Section 2.12(d).

"<u>Debtor</u>": each of the Initial Debtors and, subject to the written consent of the Required Lenders, each other Subsidiary of the Initial Debtors to the extent that (i) such Subsidiary files with the Bankruptcy Court, (ii) such case is joined with the Cases and (iii) such Subsidiary is subject, by order of the Bankruptcy Court, to the previously issued orders relating to the Cases (including the Orders).

"<u>Debtor Successor</u>": with respect to any Debtor, (i) a "liquidating trust," within the meaning of Treas. Reg. § 301.7701-4, to which such Debtor's assets are distributed, or (ii) any other entity established for the sole purpose of liquidating the assets of such Debtor.

"<u>Default</u>": any event, that with the giving of notice, the lapse of time, or both, would become an Event of Default.

"<u>Disposition</u>": with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof; and the terms "Dispose" and "Disposed of" shall have correlative meanings.

"<u>Dollar Equivalent</u>": on any date of determination, (a) with respect to any amount denominated in Dollars, such amount and (b) with respect to an amount denominated in any other currency, the equivalent in Dollars of such amount as determined by the Treasury in accordance with normal banking industry practice using the Exchange Rate on the date of determination of such equivalent. In making any determination of the Dollar Equivalent, the Treasury shall use the relevant Exchange Rate in effect on the date on which a Dollar Equivalent is required to be determined pursuant to the provisions of this Agreement. As appropriate, amounts specified herein as amounts in Dollars shall include any relevant Dollar Equivalent amount.

"Dollars" and "<u>\$</u>": the lawful money of the United States.

"<u>Domestic 956 Subsidiary</u>": any U.S. Subsidiary substantially all of the value of whose assets consist of equity of one or more Foreign 956 Subsidiaries for U.S. federal income tax purposes.

"<u>Domestic Subsidiary</u>": any Subsidiary that is organized or existing under the laws of the United States or Canada or any state, province, commonwealth or territory of the United States or Canada.

"<u>EAWA</u>": the Employ American Workers Act (Section 1611 of Division A, Title XVI of the American Recovery and Reinvestment Act of 2009), Public Law No. 111-5, effective as of February 17, 2009, as may be amended and in effect from time to time.

"<u>EESA</u>": the Emergency Economic Stabilization Act of 2008, Public Law No. 110-343, effective as of October 3, 2008, as amended by Section 7000 *et al.* of Division A,

Title VII of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, effective as of February 17, 2009, as may be further amended and in effect from time to time.

"<u>Effective Date</u>": the date on which the conditions precedent set forth in Section 4.1 shall have been satisfied, which date shall not be later than the date on which the Related Section 363 Transactions are consummated.

"<u>EISA</u>": the Energy Independence and Security Act of 2007, Public Law No. 110-140, effective as of January 1, 2009, as may be amended and in effect from time to time.

"<u>Embargoed Person</u>": as defined in Section 3.19.

"<u>Environmental Agreement</u>": the Environmental Agreement dated as of the date hereof, executed by the Loan Parties for the benefit of the Lenders, substantially in the form of Exhibit I.

"<u>Environmental Laws</u>": any and all foreign, Federal, state, provincial, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or natural resources, as now or may at any time hereafter be in effect.

"<u>Environmental Permits</u>": any and all permits, licenses, approvals, registrations, notifications, exemptions and other authorizations required under any Environmental Law.

"<u>Environmental Tranche</u>" an amount under the Wind-Down Budget up to \$500,000,000 that was allocated as of the Effective Date to cover anticipated environmental related expenses and claims.

"<u>Equity Pledge Agreement</u>": the Amended and Restated Equity Pledge Agreement dated as of the date hereof, made by each Pledgor in favor of the Lenders, substantially in the form of Exhibit L.

"<u>ERISA</u>": the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Eurocurrency Reserve Requirements": for any day as applied to a Eurodollar Loan, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including basic, supplemental, marginal and emergency reserves) under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board) maintained by a member bank of the Federal Reserve System; <u>provided</u> that the Eurocurrency Reserve Requirements shall be \$0 with respect to the Canadian Lender.

"<u>Eurodollar Base Rate</u>": with respect to each day during each Interest Period pertaining to a Eurodollar Loan, the rate per annum determined on the basis of the rate for deposits in Dollars for a period equal to such Interest Period commencing on the first day of such

Interest Period appearing on page LIBOR01 of the Reuters screen as of 11:00 a.m. (London time) two Business Days prior to the beginning of such Interest Period. In the event that such rate does not appear on such page of the Reuters screen (or otherwise on such screen), the Eurodollar Base Rate shall be determined by reference to such other comparable publicly available service for displaying eurodollar rates as may be selected by the Treasury or, in the absence of such availability, by reference to the rate at which a reference institution selected by the Treasury is offered Dollar deposits at or about 11:00 a.m. (New York City time) two Business Days prior to the beginning of such Interest Period in the interbank eurodollar market where its eurodollar and foreign currency and exchange operations are then being conducted for delivery on the first day of such Interest Period for the number of days comprised therein.

"<u>Eurodollar Loans</u>": Loans the rate of interest applicable to which is based upon the Eurodollar Rate.

"<u>Eurodollar Rate</u>": with respect to each day during each Interest Period pertaining to a Eurodollar Loan, a rate per annum determined for such day in accordance with the following formula (rounded upward to the nearest 1/100th of 1%):

Eurodollar Base Rate 1.00 – Eurocurrency Reserve Requirements

; provided that, in no event shall the Eurodollar Rate be less than 2.00%.

"Event of Default": as defined in Section 7.1 .

"Exchange Act": the Securities and Exchange Act of 1934, as amended.

"Exchange Rate": for any day with respect to any currency (other than Dollars), the rate at which such currency may be exchanged into Dollars, as set forth at 11:00 a.m. (New York time) on such day on the applicable Bloomberg currency page with respect to such currency. In the event that such rate does not appear on the applicable Bloomberg currency page, the Exchange Rate with respect to such currency shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Treasury and the Borrower or, in the absence of such agreement, such Exchange Rate shall instead be the spot rate of exchange of a reference institution selected by the Treasury in the London Interbank market or other market where such reference institution's foreign currency exchange operations in respect of such currency are then being conducted, at or about 11:00 a.m. (New York time) on such day for the purchase of Dollars with such currency, for delivery two Business Days later; provided, however, that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Treasury may use any reasonable method it deems appropriate to determine such rate, and such determination shall be conclusive absent manifest error.

"<u>Excluded Collateral</u>": as defined in <u>Schedule 3.28</u>. For the avoidance of doubt, Excluded Collateral shall at all times include the New GM Equity Interests and tax refunds due to Canadian subsidiaries.

"Excluded Subsidiary": (i) any JV Subsidiary in which any Loan Party owns less than 80% of the voting or economic interest, (ii) any U.S. Subsidiary of the Borrower listed as one of the "Domestic Entities" on Annex 1 to <u>Schedule 3.28</u> other than the Loan Parties listed therein, (iii) any Subsidiary of the Borrower existing on the Closing Date that the Borrower does not Control as of the Closing Date (including, without limitation, dealerships wholly owned by the Borrower that are operated by a third party pursuant to an agreement in effect on the Petition Date), (iv) [intentionally omitted] and (v) any Subsidiary set forth on <u>Schedule 1.1G</u> as such <u>Schedule 1.1G</u> may be amended from time to time with the consent of the Required Lenders.

"Executive Order": as defined in Section 3.19.

"<u>Existing Agreements</u>": the agreements of the Loan Parties and their Subsidiaries in effect on the Closing Date and any extensions, renewals and replacements thereof so long as any such extension, renewal and replacement could not reasonably be expected to have a material adverse effect on the rights and remedies of the Lenders under any of the Loan Documents.

"<u>Existing Credit Agreement</u>": as defined in the recitals.

"<u>Existing UST Term Loan Agreement</u>": the Loan and Security Agreement, dated as of December 31, 2008, between the Borrower and the Treasury.

"<u>Expense Policy</u>": the Borrower's comprehensive written policy on excessive or luxury expenditures maintained and implemented in accordance with the Treasury regulations contained in 31 C.F.R. Part 30.

"Federal Funds Effective Rate": for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by JPMorgan Chase Bank, N.A. from three federal funds brokers of recognized standing selected by it (or, if JPMorgan Chase Bank, N.A. is no longer receiving such quotations for any reason, the average of such quotations received by a reference institution selected by the Lender).

"<u>Final Order</u>": as defined in the recitals.

"Foreign Assets Control Regulations": as defined in Section 3.19.

"Foreign 956 Subsidiary": any Non-U.S. Subsidiary of the Borrower that is a "controlled foreign corporation" as defined in Code Section 957.

"Foreign Subsidiary": any Subsidiary that is not a Domestic Subsidiary.

"<u>Funding Office</u>": the office of each Lender specified in <u>Schedule 1.1A</u> or such other office as may be specified from time to time by such Lender as its funding office by written notice to the Borrower.

"<u>GAAP</u>": generally accepted accounting principles as in effect from time to time in the United States.

"<u>Governmental Authority</u>": any federal, state, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality, or any federal, state or municipal court, in each case whether of the United States or a foreign jurisdiction.

"Group Members": the collective reference to the Borrower and its Subsidiaries.

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

"<u>Guarantor</u>": each Person listed on <u>Schedule 1.1B</u> and each other Person that becomes an Additional Guarantor.

"<u>Guaranty</u>": the Amended and Restated Guaranty and Security Agreement dated as of the date hereof, executed and delivered by the Borrower and each Guarantor, substantially in the form of Exhibit A.

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

and (k) any other indebtedness of such Person evidenced by a note, bond, debenture or similar instrument.

"Indemnified Liabilities": as defined in Section 8.5.

"Indemnitee": as defined in Section 8.5.

"Initial Case": as defined in the recitals.

"Initial Debtors": as defined in the recitals.

"<u>Interest Payment Date</u>": (a) as to any ABR Loan, the first day of each March, June, September and December to occur while such Loan is outstanding and the final maturity date of such Loan, (b) as to any Eurodollar Loan, the last day of such Interest Period, and (c) as to any Loan, the date of any repayment or prepayment made in respect thereof.

"Interest Period": as to any Eurodollar Loan, (i) initially, the period commencing on the Borrowing Date (as defined in the Existing Credit Agreement) with respect to such Loan and ending three months thereafter; and (ii) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Loan and ending three months thereafter; <u>provided</u> that all of the foregoing provisions relating to Interest Periods are subject to the following:

(A) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(B) any Interest Period that would otherwise extend beyond the Maturity Date shall end on the Maturity Date; and

(C) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period.

"<u>Interim Order</u>": the Interim Order entered June 2, 2009 by the Bankruptcy Court pursuant to Bankruptcy Code sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (a) approving this Agreement and authorizing the Loan Parties to obtain Postpetition financing pursuant thereto, (b) granting related Liens and Superpriority Claims, (c) granting adequate protection to certain Prepetition secured parties, and (d) scheduling a final hearing.

"<u>Investments</u>": as defined in Section 6.10.

"JV Agreement": each partnership or limited liability company agreement (or similar agreement) between a North American Group Member or one of its Subsidiaries and the

relevant JV Partner as the same may be amended, restated, supplemented or otherwise modified from time to time, in accordance with the terms hereof.

"<u>JV Partner</u>": each Person party to a JV Agreement that is not a Loan Party or one of its Subsidiaries.

"<u>JV Subsidiary</u>": any Subsidiary of a Group Member which is not a Wholly Owned Subsidiary and as to which the business and management thereof is jointly controlled by the holders of the Capital Stock therein pursuant to customary joint venture arrangements.

"Lenders": as defined in the preamble hereto.

"<u>Lien</u>": any mortgage, pledge, security interest, lien or other charge or encumbrance (in the nature of a security interest), including the lien or retained security title of a conditional vendor, upon or with respect to any property or assets.

"<u>Loan Documents</u>": this Agreement, the Notes, the Environmental Agreement, the Collateral Documents and each post-closing letter or agreement now and hereafter entered into among the parties hereto.

"Loan Parties": the Borrower, each Guarantor and the Pledgors.

"Loans": as defined in Section 2.1.

"<u>Master Transaction Agreement</u>": that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009, among New CarCo and the sellers party thereto.

"<u>Material Adverse Effect</u>": a material adverse effect on (a) the business, operations, property, condition (financial or otherwise) or prospects of the Borrower and its Subsidiaries (taken as a whole), (b) the ability of the Loan Parties (taken as a whole) to perform any of their obligations under any of the Loan Documents to which they are a party, (c) the validity or enforceability in any material respect of any of the Loan Documents to which the Loan Parties are a party, (d) the rights and remedies of the Lenders under any of the Loan Documents, or (e) the Collateral (taken as a whole); provided that, (w) the taking of any action by the Borrower and its Subsidiaries, including the cessation of production, pursuant to and in accordance with the Wind-Down Budget, (x) the filing of the Cases, and (y) any sale pursuant to any Related Section 363 Transaction or any other action taken pursuant to the Orders, shall not be taken into consideration.

"<u>Material Environmental Amount</u>": \$50,000,000.

"<u>Maturity Date</u>": the first date on which the earlier of the following shall have occurred (which date may be extended by the Lenders in their sole discretion in accordance with Section 8.1): (a) the effective date of a plan of liquidation confirmed by the Bankruptcy Court with respect to the Cases that is not reasonably satisfactory to the Treasury; <u>provided</u> that any objection from the Treasury that such plan is not reasonably satisfactory to the Treasury will not be based on the Disposition of Excluded Collateral under such plan and (b) the first date on

which each of the following shall have occurred (i) all claims against the Debtors have been resolved such that there are no remaining disputed claims, (ii) all assets of the Debtors (other than remaining cash) have been liquidated and (iii) all distributions on account of allowed claims have been made, and all other actions that are required under the plan of liquidation (other than the dissolution of the last remaining Debtor) have been completed. On the Maturity Date arising under clause (b) above, the plan administrator or other individual or entity charged with administering the liquidation plan shall be entitled to retain a de minimis amount of funds to complete the dissolution of the last remaining Debtor. As used in this definition, references to a Debtor includes its Debtor Successor.

"Moody's": Moody's Investors Service, Inc. and its successors.

"<u>Mortgage</u>": each of the mortgages and deeds of trust made by the Borrower or any Guarantor in favor of, or for the benefit of, the Lenders, substantially in the form of Exhibit J, taking into consideration the law and jurisdiction in which such mortgage or deed of trust is to be recorded or filed, to the extent applicable.

"<u>Mortgaged Property</u>": each property listed on <u>Schedule 1.1C</u>, as to which the Lenders shall be granted a Lien pursuant to the Orders or the Mortgages.

"<u>New CarCo</u>": General Motors Company (formerly known as NGMCO, Inc.), a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings, LLC.

"<u>New CarCo Assignment and Assumption</u>": as defined in the recitals.

"<u>New GM Equity Interests</u>": any stock, warrants, options or other equity interests of New CarCo or any of its Subsidiaries issued to or held by any Debtor (or any of its Subsidiaries) pursuant to the Related Section 363 Transactions, including any (i) subsequent dividends, payment or other distribution thereon, and (ii) proceeds received or receivable upon any Disposition thereof.

"<u>Non-Debtor</u>": each Subsidiary of the Borrower that is not a Debtor.

"<u>Non-Excluded Taxes</u>": as defined in Section 2.12(a).

"<u>Non-U.S. Lender</u>": as defined in Section 2.12(d).

"<u>Non-U.S. Subsidiary</u>": any Subsidiary of any Loan Party that is not a U.S. Subsidiary.

"<u>North American Group Members</u>": collectively, the Loan Parties and each Domestic Subsidiary of a Loan Party that is not an Excluded Subsidiary.

"<u>Notes</u>": as defined in Section 4.1(a)(vi) and any promissory notes issued in connection with an assignment contemplated by Section 2.3(b).

"<u>Obligations</u>": the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Loans and interest accruing after the filing

of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans and all other obligations and liabilities of any Loan Party to any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including, without limitation, all fees, charges and disbursements of counsel to any Lender that are required to be paid by any Loan Party pursuant hereto) or otherwise.

"<u>OFAC</u>": the Office of Foreign Assets Control of the Treasury.

"Orders": the Interim Order, the Final Order and the Wind-Down Order.

"<u>Other Foreign 956 Subsidiary</u>": any Non-U.S. Subsidiary substantially all of the value of whose assets consist of equity of one or more Foreign 956 Subsidiaries for U.S. federal income tax purposes.

"<u>Other Taxes</u>": any and all present or future stamp or documentary taxes and any other excise or property taxes, intangible or mortgage recording taxes, charges or similar levies imposed by the United States or any taxing authority thereof or therein arising from any payment made, or from the execution, delivery or enforcement of, or otherwise with respect to this Agreement or any other Loan Document.

"<u>Participant</u>": as defined in Section 8.6(c).

"<u>Permitted Holders</u>": any holder of any Capital Stock of the Borrower as of the Closing Date.

"<u>Permitted Indebtedness</u>":

- (a) Indebtedness created under any Loan Document;
- (b) [intentionally omitted];
- (c) trade payables, if any, in the ordinary course of its business;

(d) Indebtedness existing on the Petition Date and any refinancings, refundings, renewals or extensions thereof (without any increase, or any shortening of the maturity, of any principal amount thereof);

(e) intercompany Indebtedness of a North American Group Member in the ordinary course of business; <u>provided</u> that, the right to receive any repayment of such Indebtedness (other than Indebtedness meeting the criteria of clause (d) above, or any extensions, renewals, exchanges or replacements thereof) shall be subordinated to the Lenders' rights to receive repayment of the Obligations;

- (f) [intentionally omitted];
- (g) [intentionally omitted];

(h) Swap Agreements permitted pursuant to Section 6.15 that are not entered into for speculative purposes;

(i) Indebtedness with respect to (x) letters of credit, bankers' acceptances and similar instruments issued in the ordinary course of business, including letters of credit, bankers' acceptances and similar instruments in respect of the financing of insurance premiums, customs, stay, performance, bid, surety or appeal bonds and similar obligations, completion guaranties, "take or pay" obligations in supply agreements, reimbursement obligations regarding workers' compensation claims, indemnification, adjustment of purchase price and similar obligations incurred in connection with the acquisition or Disposition of any business or assets, and sales contracts, coverage of long-term counterparty risk in respect of insurance companies, purchasing and supply agreements, rental deposits, judicial appeals and service contracts and (y) appeal, bid, performance, surety, customs or similar bonds issued for the account of any Loan Party in the ordinary course of business;

(j) Indebtedness incurred in the ordinary course of business in connection with cash management and deposit accounts and operations, netting services, employee credit card programs and similar arrangements and Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, <u>provided</u> that such Indebtedness is extinguished within five Business Days of its incurrence;

- (k) any guarantee by any Loan Party of Permitted Indebtedness; and
- (1) Indebtedness entered into under Section 136 of EISA.

"<u>Permitted Investments</u>":

(a) any Investment in Cash Equivalents;

(b) any Investment by a Loan Party in the Borrower, another Loan Party, or a Pledged Entity that is a Domestic Subsidiary;

(c) [intentionally omitted];

(d) any Investment (i) existing on the Effective Date, or (ii) consisting of any extension, modification or renewal of any Investment existing on the Closing Date; <u>provided</u> that the amount of any such Investment is not increased through such extension, modification or renewal;

- (e) [intentionally omitted];
- (f) [intentionally omitted];

- (g) [intentionally omitted];
- (h) any Investment otherwise permitted under this Agreement;

(i) Investments in Indebtedness of, or Investments guaranteed by, Governmental Authorities, in connection with industrial revenue, municipal, pollution control, development or other bonds or similar financing arrangements;

- (j) [intentionally omitted];
- (k) Trade Credit;
- (l) [intentionally omitted];

(m) Investments (i) received in satisfaction or partial satisfaction of delinquent accounts and disputes with customers or suppliers in the ordinary course of business, or (ii) acquired as a result of foreclosure of a Lien securing an Investment or the transfer of the assets subject to such Lien in lieu of foreclosure;

(n) commercial transactions in the ordinary course of business with the Borrower or any of its Subsidiaries to the extent such transactions would constitute an Investment;

(o) conveyance of Collateral in an arm's-length transaction to a Subsidiary that is not a Loan Party or an Affiliate of the Borrower for non-cash consideration consisting of Trade Credit or other Property to become Collateral having a fair market value equal to or greater than the fair market value of the conveyed Collateral; and

(p) Investments after the Effective Date in (i) dealerships of the Borrower and its Subsidiaries in the United States in an aggregate amount not exceeding \$2,500,000 and (ii) General Motors Strasbourg, S.A. in an aggregate amount not exceeding \$7,500,000.

"<u>Permitted Liens</u>": with respect to any Property of any North American Group Member:

(a) Liens created under the Loan Documents;

(b) Liens on Property of a North American Group Member existing on the date hereof (including Liens on Property of a North American Group Member pursuant to Existing Agreements; <u>provided</u> that such Liens shall secure only those obligations and any permitted refinancing that they secure on the date hereof);

(c) [intentionally omitted];

(d) Liens for taxes and utility charges not yet due or that are being contested in good faith, by proper proceedings diligently pursued, and as to which adequate reserves have been provided; (e) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business and securing obligations that are not due and payable or that are being contested in compliance with Section 5.8;

(f) Liens securing reimbursement obligations with respect to letters of credit that encumber documents and other property relating to such letters of credit and the proceeds thereof;

(g) Liens securing Swap Agreements permitted pursuant to Section 6.15;

(h) Liens created in the ordinary course of business in favor of banks and other financial institutions over balances of any accounts held at such banks or financial institutions or over investment property held in a securities account, as the case may be, to facilitate the operation of cash pooling, cash management or interest set-off arrangements;

(i) customary Liens in favor of trustees and escrow agents, and netting and set-off rights, banker's liens and the like in favor of counterparties to financial obligations and instruments, including, without limitation, Swap Agreements permitted pursuant to Section 6.15;

(j) Liens securing Indebtedness incurred under Section 136 of EISA;

(k) pledges and deposits made in the ordinary course of business in compliance with workmen's compensation, unemployment or other insurance and other social security laws or regulations;

(l) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory obligations, surety, customs and appeal bonds, performance bonds and other obligations of a like nature, or to secure the payment of import or customs duties, in each case incurred in the ordinary course of business;

(m) zoning and environmental restrictions, easements, licenses, encroachments, covenants and servitudes, rights-of-way, restrictions on use of real property or groundwater, institutional controls and other similar encumbrances or deed restrictions incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and do not materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any North American Group Member;

- (n) [intentionally omitted];
- (o) judgment Liens securing judgments;

(p) any Lien consisting of rights reserved to or vested in any Governmental Authority by statutory provision;

(q) Liens securing Indebtedness described in clauses (d) and (e) of the definition of Permitted Indebtedness;

(r) pledges or deposits made to secure reimbursement obligations in respect of letters of credit issued to support any obligations or liabilities described in clauses (k) or (l) of this definition;

- (s) [intentionally omitted];
- (t) [intentionally omitted]; and

(u) other Liens created or assumed in the ordinary course of business of the North American Group Member; <u>provided</u> that the obligations secured by all such Liens shall not exceed the principal amount of \$10,000,000.

"<u>Person</u>": any individual, corporation, company, voluntary association, partnership, joint venture, limited liability company, trust, unincorporated association or government (or any agency, instrumentality or political subdivision thereof).

"Petition Date": as defined in the recitals hereto.

"<u>Pledged Entity</u>": a Subsidiary of a Loan Party whose Capital Stock is subject to a security interest in favor of the Lenders pursuant to the Orders or the Collateral Documents.

"<u>Pledgors</u>": the parties set forth on <u>Schedule 1.1D</u> and each other Person that makes a pledge in favor of the Lenders under the Equity Pledge Agreement.

"<u>Postpetition</u>": when used with respect to any agreement or instrument, any claim or proceeding or any other matter, shall refer to an agreement or instrument that was entered into or became effective, a claim or proceeding that first arose or was first instituted, or another matter that first occurred, after the commencement of the Cases.

"<u>Prepetition</u>": when used with respect to any agreement or instrument, any claim or proceeding or any other matter, shall refer to an agreement or instrument that was entered into or became effective, a claim or proceeding that arose or was instituted, or another matter that occurred, prior to the Petition Date.

"<u>Prepetition Payment</u>": a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any Prepetition Indebtedness or trade payables or other Prepetition claims against any Debtor.

"<u>Prime Rate</u>": the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A. (or if JPMorgan Chase Bank, N.A. is no longer announcing such a rate for any reason, another reference institution selected by the Lender) as its prime rate in effect at its principal office in New York City (the Prime Rate not being intended to be the lowest rate of interest charged by JPMorgan Chase Bank, N.A. in connection with extensions of credit to borrowers).

"<u>Prohibited Jurisdiction</u>": any country or jurisdiction, from time to time, that is the subject of a prohibition order (or any similar order or directive), sanctions or restrictions promulgated or administered by any Governmental Authority of the United States.

"Prohibited Person": any Person:

(a) subject to the provisions of the Executive Order;

(b) that is owned or controlled by, or acting for or on behalf of, any person or entity that is subject to the provisions of the Executive Order;

(c) with whom a Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;

(d) who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order;

(e) that is named as a "specially designated national and blocked person" on the most current list published by the OFAC at its official website, http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf or at any replacement website or other replacement official publication of such list; or

(f) who is an Affiliate or affiliated with a Person listed above.

"<u>Property</u>": any right or interest in or to property (other than tax refunds due to Canadian subsidiaries) of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

"<u>Quarterly Report</u>": as defined in Section 5.1(f).

"<u>Records</u>": all books, instruments, agreements, customer lists, credit files, computer files, storage media, tapes, disks, cards, software, data, computer programs, printouts and other computer materials and records generated by other media for the storage of information maintained by any Person with respect to the business and operations of the Loan Parties and the Collateral.

"<u>Register</u>": as defined in Section 8.6(b).

"<u>Regulation D</u>": Regulation D of the Board as in effect from time to time.

"<u>Related Section 363 Transactions</u>": as defined in the recitals.

"<u>Required Lenders</u>": at any time, Lenders with Loans constituting a majority of the Loans of all Lenders.

"<u>Requirements of Law</u>": as to any Person, the Certificate of Incorporation and By-Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court of competent jurisdiction or other Governmental Authority, in each case applicable to and binding upon such Person and any of its property, and to which such Person and any of its property is subject.

"<u>Responsible Officer</u>": as to any Person, the chief executive officer or, with respect to financial matters (including without limitation those matters set forth in Sections 5.1(f) and 5.2(h)), the chief financial officer, treasurer or assistant treasurer of such Person, an individual so designated from time to time by such Person's board of directors or, for the purposes of Section 5.2 only (other than Sections 5.1(f) and 5.2(h)), to include the secretary or an assistant secretary of the Borrower, or, in the event any such officer is unavailable at any time he or she is required to take any action hereunder, Responsible Officer shall mean any officer authorized to act on such officer's behalf as demonstrated by a certificate or corporate resolution (or equivalent); <u>provided</u> that the Lenders are notified in writing of the identity of such Responsible Officer.

"<u>Restricted Payments</u>": as defined in Section 6.5.

"<u>S&P</u>": Standard & Poor's Ratings Services and its successors.

"Sale/Leaseback Transaction": as defined in Section 6.17.

"<u>SEC</u>": the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

"<u>Section 363 Sale Order</u>": an order of the Bankruptcy Court approving the Related Section 363 Transactions in form and substance substantially in the form attached to the Transaction Documents or otherwise satisfactory to the Required Lenders.

"<u>Senior Employee</u>": any of the 25 most highly compensated employees (including the SEOs) of the Loan Parties, as determined pursuant to the rules set forth in 31 C.F.R. Part 30.

"<u>SEO</u>": a Senior Executive Officer as defined in the EESA and any interpretation of such term by the Treasury thereunder, including the rules set forth in 31 C.F.R. Part 30.

"<u>Special Inspector General of the Troubled Asset Relief Program</u>": The Special Inspector General of the Troubled Asset Relief Program, as contemplated by Section 121 of the EESA.

"Specified Benefit Plan": any employee benefit plan within the meaning of section 3(3) of ERISA and any other plan, arrangement or agreement which provides for compensation, benefits, fringe benefits or other remuneration to any employee, former employee, individual independent contractor or director, including any bonus, incentive, supplemental retirement plan, golden parachute, employment, individual consulting, change of control, bonus or retention agreement, whether provided directly or indirectly by any Group Member or otherwise.

"Subsidiary": with respect to any Person, any corporation, partnership, limited liability company or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or shall have the right to have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person. Unless otherwise qualified, all references to a "Subsidiary" or "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Superpriority Claim": a claim against the Borrower or any other Debtor in any of the Cases pursuant to section 364(c)(1) of the Bankruptcy Code having priority over any or all administrative expenses including administrative expenses specified in sections 503 and 507 of the Bankruptcy Code, whether or not such claim or expenses may become secured by a judgment lien or other non-consensual lien, levy or attachment.

"<u>Swap Agreement</u>": any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; <u>provided</u> that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or any of its Subsidiaries shall be a "<u>Swap Agreement</u>."

"<u>Taxes</u>": as defined in Section 2.12(a).

"<u>Trade Credit</u>": accounts receivable, trade credit or other advances extended to, or investment made in, customers, suppliers, including intercompany, in the ordinary course of business.

"Trading With the Enemy Act": as defined in Section 3.19.

"<u>Tranche B Term Loan</u>": as defined in the recitals.

"<u>Tranche C Term Loan</u>": as defined in the recitals.

"<u>Transaction Documents</u>": each of, and collectively, (i) the Master Transaction Agreement, (ii) the Section 363 Sale Order, (iii) the Transition Services Agreement and (iv) the related manufacturing agreements, asset purchase agreements, organizational documents, finance support agreements and all other related documentation, each as amended, supplemented or modified from time to time in accordance with Section 6.6.

"<u>Transferee</u>": any Assignee or Participant.

"<u>Transition Services Agreement</u>": the Transition Services Agreement, dated as of the date hereof, among the Borrower, the other Initial Debtors, and New CarCo, substantially in the form of Exhibit T to the Master Transaction Agreement.

"Treasury": The United States Department of the Treasury.

"<u>Uniform Commercial Code</u>": the Uniform Commercial Code as in effect from time to time in the State of New York.

"<u>United States</u>": the United States of America.

"<u>USA PATRIOT Act</u>": as defined in Section 3.18(d).

"<u>U.S. Subsidiary</u>": any Subsidiary of any Loan Party that is organized or existing under the laws of the United States or any state thereof or the District of Columbia.

"<u>Wholly Owned Subsidiary</u>": as to any Person, any other Person all of the Capital Stock of which (other than directors' qualifying shares required by law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

"<u>Wind-Down</u>": the sale or shutdown of certain businesses and properties of the Debtors and the Subsidiaries thereof.

"<u>Wind-Down Budget</u>": the budget, in form and substance consistent with the budget provided by the Company prior to the Effective Date and satisfactory to the Required Lenders, setting forth in reasonable detail all anticipated receipts and disbursements of the Borrower and certain of its U.S. Subsidiaries on a calendar year basis, as amended by each Quarterly Report delivered pursuant to Section 5.1(f).

"<u>Wind-Down Order</u>": as defined in the recitals.

1.2. <u>Other Definitional Provisions</u>. (a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, (i) accounting terms relating to Group Members not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP, (ii) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," (iii) the word "incur" shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words "incurred" and "incurrence" shall have correlative meanings), (iv) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Capital Stock, securities, revenues, accounts, leasehold interests and contract rights, (v) references to agreements or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as

amended, supplemented, restated or otherwise modified from time to time and (vi) references to any Person shall include its successors and assigns.

(c) The words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole (including the Schedules and Exhibits hereto) and not to any particular provision of this Agreement (or the Schedules and Exhibits hereto), and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

1.3. <u>Conversion of Foreign Currencies</u>. (a) For purposes of this Agreement and the other Loan Documents, with respect to any monetary amounts in a currency other than Dollars, the Dollar Equivalent thereof shall be determined based on the Exchange Rate in effect at the time of such determination (unless otherwise explicitly provided herein).

(b) The Treasury may set up appropriate rounding off mechanisms or otherwise round-off amounts hereunder to the nearest higher or lower amount in whole Dollar or cent to ensure amounts owing by any party hereunder or that otherwise need to be calculated or converted hereunder are expressed in whole Dollars or in whole cents, as may be necessary or appropriate.

#### **SECTION 2**

### AMOUNT AND TERMS OF THE LOANS

2.1. Loans. On the Effective Date, the Lenders made the Tranche C Term Loans in Dollars to the Borrower in the aggregate principal amount of \$1,175,000,000 (the "Loans"). The Loans shall be non-recourse to the Borrower and the Guarantors and recourse only to the Collateral. The Loans may from time to time be Eurodollar Loans or, solely in the circumstances specified in Section 2.8, ABR Loans. Loans repaid or prepaid may not be reborrowed.

### 2.2. [Intentionally Omitted].

2.3. <u>Repayment of Loans; Evidence of Debt</u>. (a) The Loans shall be payable on the Maturity Date; <u>provided</u> that, upon the Administrative/Priority Claim Payment Date, the portion of the Loans equal to the Administrative/Priority Claim Payment Amount as of such date shall be due. Except as otherwise expressly provided herein, the repayment of the Loans shall, subsequent to the closing of the Related Section 363 Transactions, be subject to claims against the Debtors' estates that have priority under Sections 503(b) or 507(a) of the Bankruptcy Code, including costs and expenses of administration that are attendant to the formulation and confirmation of a liquidating chapter 11 plan, whether incurred prior or subsequent to the consummation of the Related Section 363 Transactions, in an aggregate amount up to \$1,175,000,000, or such larger amount as approved by the Lenders. (b) Pursuant to Section 4.1(a), the Borrower shall execute and deliver the Notes on the Effective Date. Following any assignment of the Loans pursuant to Section 8.6, the Borrower agrees that, upon the request of any Lender, the Borrower shall promptly execute and deliver to such Lender Notes reflecting the Loans assigned and the Loans retained by such Lender, if any.

2.4. <u>Optional Prepayments</u>. (a) The Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to each Lender no later than 12:00 noon (New York City time) three Business Days prior to the date such prepayment is requested to be made, which notice shall specify the date of such prepayment, the aggregate amount of such prepayment and such Lender's Aggregate Exposure Percentage of such payment; <u>provided</u> that, if a Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.10. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with accrued interest to such date on the amount prepaid and shall be applied as provided in Section (b). Partial prepayments of Loans shall be in an aggregate principal amount of \$20,000,000 or a whole multiple thereof or, if less, the entire principal amount thereof then outstanding.

(b) Unless the Required Lenders shall otherwise agree, amounts to be applied in connection with prepayments made pursuant to Section 2.4 shall be applied, (i) <u>first</u>, to pay accrued and unpaid interest on, and expenses in respect of, the Loans, and (ii) <u>second</u>, to repay the Loans. Any such prepayment shall be accompanied by a notice to each Lender specifying the aggregate amount of such prepayment and such Lender's Aggregate Exposure Percentage of such prepayment.

2.5. [Intentionally Omitted].

2.6. <u>Interest Rates and Payment Dates/Fee Payment Dates/Fees</u>. (a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Eurodollar Rate determined for such Interest Period <u>plus</u> the Applicable Margin.

(b) Each ABR Loan shall bear interest at a rate per annum equal to the ABR <u>plus</u> the Applicable Margin.

(c) [Intentionally Omitted].

(d) At any time any Event of Default shall have occurred and be continuing, (i) all outstanding Loans shall bear interest at a rate per annum equal to the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section 2.6 <u>plus</u> 5% per annum, which, in the sole discretion of the Treasury, may be the rate of interest then applicable to ABR Loans, and (ii) all other outstanding Obligations shall bear interest at 5% above the rate per annum equal to the rate of interest then applicable to ABR Loans.

(e) [Intentionally Omitted].

(f) Interest shall be payable in arrears on each Interest Payment Date, <u>provided</u> that, interest on the Loans shall not be payable in cash on each Interest Payment Date but shall instead be added to the principal of the Loans on each Interest Payment Date and shall be payable in cash on the Maturity Date.

2.7. <u>Computation of Interest and Fees</u>. (a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that with respect to ABR Loans the rate of interest on which is calculated on the basis of the Prime Rate, the interest thereon shall be calculated on the basis of a 365- (or 366-) day year for the actual days elapsed. The Treasury shall, as soon as practicable, and promptly, notify the Borrower and the other Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Loan resulting from a change in the ABR or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective. The Treasury shall, as soon as practicable, and promptly, notify the Borrower and the other Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Treasury pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Treasury shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Treasury in determining any interest rate pursuant to Section 2.7(a).

2.8. <u>Inability to Determine Interest Rate; Illegality</u>. (a) If prior to the first day of any Interest Period:

(i) any Lender shall have determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period, or

(ii) any Lender shall have determined that the Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lender (as conclusively certified by such Lender) of making or maintaining their affected Loans during such Interest Period;

such Lender shall give telecopy or telephonic notice thereof to the Borrower and the other Lenders as soon as practicable thereafter. If such notice is given pursuant to clause (i) or (ii) of this Section 2.8(a) in respect of Eurodollar Loans, then (1) any Eurodollar Loans requested to be made on the first day of such Interest Period shall be made by the affected Lenders as ABR Loans, and (2) any outstanding Eurodollar Loans of the affected Lender, shall be converted, on the last day of the then-current Interest Period, to ABR Loans. Until such relevant notice has been withdrawn by such Lender, no further Eurodollar Loans by the affected Lenders shall be made or continued as such, nor shall the Borrower have the right to convert ABR Loans to Eurodollar Loans.

(b) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof shall make it unlawful for any Lender to make or maintain Eurodollar Loans as contemplated by this Agreement, such Lender shall give notice thereof to the Borrower describing the relevant provisions of such Requirement of Law, following which, (i) in the case of Eurodollar Loans, (A) the commitment of such Lender hereunder to make Eurodollar Loans and continue such Eurodollar Loans as such and (B) such Lender's outstanding Eurodollar Loans shall be converted automatically on the last day of the then current Interest Periods with respect to such Loans (or within such earlier period as shall be required by law) to ABR Loans. If any such conversion or prepayment of a Eurodollar Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, the Borrower shall pay to such Lender such amounts, if any, as may be required pursuant to Section 2.10.

2.9. <u>Treatment of Borrowings and Payments; Evidence of Debt.</u> (a) [Intentionally Omitted].

(b) Each payment (including each prepayment) by the Borrower on account of principal of and interest on the Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Loans then held by the Lenders. Amounts paid on account of the Loans may not be reborrowed.

(c) [Intentionally Omitted].

(d) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without setoff or counterclaim and shall be made prior to 3:00 p.m. (New York City time) on the due date thereof to the Lenders at their respective Funding Offices, in Dollars and in immediately available funds. If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

2.10. <u>Indemnity</u>. The Borrower agrees to indemnify each Lender for, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment after the Borrower has given a notice thereof in accordance with the provisions of this Agreement or (c) the making of a prepayment of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto. Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, for the period from the date of such prepayment or of such failure to borrow to the last day of such Interest Period (or, in the case of a failure to borrow the Interest Period that would have

commenced on the date of such failure) in each case at the applicable rate of interest for such Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) <u>over</u> (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank Eurodollar market. A certificate as to any amounts payable pursuant to this Section 2.10 submitted to the Borrower by any Lender shall be conclusive in the absence of manifest error and shall be payable within 30 days of receipt of any such notice. The agreements in this Section 2.10 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

2.11. <u>Superpriority Nature of Obligations and Lenders' Liens</u>. The priority of Lenders' Liens on the Collateral owned by the Loan Parties shall be set forth in the Final Order entered with respect to the Cases.

2.12. <u>Taxes</u>. (a) All payments made by the Borrower under this Agreement or any other Loan Document shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereinafter imposed, levied, collected, withheld or assessed by any Governmental Authority (collectively, "Taxes"), except for any deduction or withholding required by law. If the Borrower is required to withhold any Non-Excluded Taxes from any amounts payable to any Lender (i) the Borrower shall make such deductions and shall pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Laws and (ii) the amounts so payable to such Lender shall be increased to the extent necessary to pay to such Lender such additional amounts as may be necessary so that the Lender receives, free and clear of all such Non-Excluded Taxes, a net amount equal to the amount it would have received from the Borrower under this Agreement or any other Loan Document if no such deduction or withholding had been made. For purposes of this Agreement or any other Loan Document, "Non-Excluded Taxes" are withholding Taxes imposed by the United States or any taxing authority thereof or therein on payments made by the Borrower under this Agreement or any other Loan Document other than (a) withholding Taxes imposed on any Lender as a result of a present or former connection between such Lender and the jurisdiction of the United States or any taxing authority thereof or therein imposing such Tax (other than any such connection arising solely from such Lender having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any other Loan Document), (b) any branch profits taxes imposed by the United States, (c) any withholding Taxes that exist on the date the Lender becomes a Lender or that arise as a result of a change in status of the Lender as a Governmental Authority which is an agency of the Canadian federal government that is exempt from withholding under the Convention as in effect on the date the Lender becomes a Lender, and (d) withholding Taxes that could be eliminated or reduced by the Lender providing tax forms, certifications, or other documentation.

(b) In addition, the Borrower shall pay any Other Taxes over to the relevant Governmental Authority in accordance with Applicable Law.

(c) Whenever any Non-Excluded Taxes or Other Taxes are payable by the Borrower, as promptly as possible thereafter, the Borrower shall send to the Lender, as the case may be, a certified copy of an original official receipt received by the Borrower showing payment thereof (or if an official receipt is not available, such other evidence of payment as shall be reasonably satisfactory to such Lender). If the Borrower fails to pay any Non-Excluded Taxes or Other Taxes required to be paid by the Borrower when due to the appropriate taxing authority or fails to remit to the Lender the required receipts or other required documentary evidence, in each case after receiving at least five days' advance written notice from the Lender, the Borrower shall indemnify the Lender, as the case may be, for any incremental taxes, Non-Excluded Taxes or Other Taxes, interest, additions to tax, expenses or penalties that may become payable by any Lender, as the case may be, as a result of such failure. The indemnification payments under this Section 2.12(c) shall be made within 30 days after the date such Lender, as the case may be, makes a written demand therefor (together with a reasonably detailed calculation of such amounts).

(d) Each Lender (or any Transferee) (other than the United States government (including the Treasury)) that either (i) is not incorporated under the laws of the United States, any state thereof, or the District of Columbia or (ii) whose name does not include "Incorporated," "Inc.," "Corporation," "Corp.," "P.C.," "insurance company," or "assurance company" (a "Non-U.S. Lender") shall deliver to the Borrower, so long as such Lender is legally entitled to do so, two originals of either U.S. Internal Revenue Service Form W-9, Form W-8BEN, Form W-8EXP, Form W-8ECI, or in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payment of "portfolio interest", a Form W-8BEN (along with a statement as to certain requirements in order to claim an exemption for "portfolio interest" reasonably acceptable to the Borrower), or Form W-8IMY (with applicable attachments), or any subsequent versions thereof or successors thereto, properly completed and duly executed by such Non-U.S. Lender claiming a complete exemption from (or reduced rate of) United States federal withholding tax on all payments by the Borrower under this Agreement or any other Loan Document. In addition, each Lender shall provide any other U.S. tax forms (with applicable attachments) as will reduce or eliminate United States federal withholding tax on payments by the Borrower under this Agreement or any other Loan Document. For the avoidance of doubt, the Canadian Lender shall provide a Form W-8BEN claiming exemption from withholding under the Convention between the United States of America and Canada with respect to Taxes on Income and on Capital (the "Convention") on the Closing Date. Each Lender (other than the United States government (including the Treasury)) shall provide the appropriate documentation under this clause (d) at the following times (i) prior to the first payment date after becoming a party to this Agreement, (ii) upon a change in circumstances or upon a change in law, in each case, requiring or making appropriate a new or additional form, certificate or documentation, (iii) upon or before the expiration, obsolescence or invalidity of any documentation previously provided to the Borrower and (iv) upon reasonable request by the Borrower. If a Lender is entitled to an exemption from or a reduction of any non-U.S. withholding Tax under the laws of any jurisdiction imposing such Tax on any payments made by the Borrower under this Agreement, then the Lender shall deliver to the Borrower, at the time or times prescribed by Applicable Law and as reasonably requested by the Borrower, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate, provided that the Lender is legally entitled to complete, execute and deliver such documentation and without material adverse consequences to the Lender.

If any Lender determines, in its sole good faith discretion, that it has (e) received a refund, credit or other tax benefit in respect of any Non-Excluded Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.12, it shall pay over such refund to the Borrower (but only to the extent of Non-Excluded Taxes or Other Taxes paid by the Borrower plus any interest thereon paid by the relevant Governmental Authority with respect to such refund), net of all out of pocket third-party expenses of the Lender related to claiming such refund or credit, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund) within 30 days of the date of such Notwithstanding anything to the contrary in this Agreement or any other Loan receipt. Document, upon the request of the Lender, as the case may be, the Borrower agrees to repay any amount paid over to the Borrower by such Lender pursuant to the immediately preceding sentence if such Lender, as the case may be, is required to repay such amount to such Governmental Authority. This paragraph shall not be construed to (i) interfere with the rights of any Lender to arrange its tax affairs in whatever manner it sees fit, (ii) obligate any Lender to claim any tax refund, (iii) require any Lender to make available its tax returns (or any other information relating to its taxes or any computation with respect thereof which it deems in its sole discretion to be confidential) to the Borrower or any other Person, or (iv) require any Lender to do anything that would in its sole discretion prejudice its ability to benefit from any other refunds, credits, reliefs, remissions or repayments to which it may be entitled.

(f) Each Lender that is an Assignee shall be bound by this Section 2.12.

(g) The agreements contained in this Section 2.12 shall survive the termination of this Agreement or any other Loan Document and the payments contemplated hereunder or thereunder.

### **SECTION 3**

### **REPRESENTATIONS AND WARRANTIES**

To induce the Lenders to enter into this Agreement, each Loan Party represents to the Lenders, with respect to itself and each of its Subsidiaries that is a North American Group Member, in each case subject to the Wind-Down, the Orders, the Related Section 363 Transactions, the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court issued in connection with the Cases, that as of the Effective Date:

3.1. Existence. Each North American Group Member (a) is a corporation, limited partnership or limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite corporate or other power, and has all governmental licenses, authorizations, consents and approvals, necessary to own its assets and carry on its business as now being or as proposed to be conducted, except where the lack of such licenses, authorizations, consents and approvals would not be reasonably likely to have a Material Adverse Effect, (c) is qualified to do business and is in good standing in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary, except where failure so to qualify would not be reasonably

likely (either individually or in the aggregate) to have a Material Adverse Effect, and (d) is in compliance in all material respects with all Requirements of Law.

- 3.2. [Intentionally Omitted].
- 3.3. [Intentionally Omitted].
- 3.4. [Intentionally Omitted].

3.5. <u>Action, Binding Obligations</u>. (i) Each North American Group Member has all necessary corporate or other power, authority and legal right to execute, deliver and perform its obligations under each of the Loan Documents to which it is a party; (ii) the execution, delivery and performance by each North American Group Member of each of the Loan Documents to which it is a party has been duly authorized by all necessary corporate or other action on its part; and (iii) each Loan Document has been duly and validly executed and delivered by each North American Group Member party thereto and constitutes a legal, valid and binding obligation of all of the North American Group Members party thereto, enforceable against such North American Group Members in accordance with its terms, subject to the Bankruptcy Exceptions.

3.6. <u>Approvals</u>. Except as required under applicable state and federal bankruptcy rules, no authorizations, approvals or consents of, and no filings or registrations with, any Governmental Authority, or any other Person, are necessary for the execution, delivery or performance by each North American Group Member of the Loan Documents to which it is a party for the legality, validity or enforceability thereof, except with respect to North American Group Members other than the Debtors for filings and recordings or other actions in respect of the Liens pursuant to the Collateral Documents, unless the same has already been obtained and provided to the Lenders.

3.7. [Intentionally Omitted].

3.8. <u>Investment Company Act</u>. None of the Loan Parties is required to register as an "investment company", or is a company "controlled" by a Person required to register as an "investment company", within the meaning of the Investment Company Act of 1940, as amended. No Loan Party is subject to any Federal or state statute or regulation which limits its ability to incur Indebtedness.

3.9. [Intentionally Omitted].

3.10. <u>Chief Executive Office; Chief Operating Office</u>. The chief executive office and the chief operating office on the Closing Date for each North American Group Member is located at the location set forth on <u>Schedule 3.10</u> hereto.

3.11. <u>Location of Books and Records</u>. The location where the North American Group Members keep their books and records including all Records relating to their business and operations and the Collateral are located in the locations set forth in <u>Schedule 3.11</u>.

3.12. [Intentionally Omitted].

## 3.13. [Intentionally Omitted].

3.14. <u>Expense Policy</u>. The Borrower has taken steps necessary to ensure that (a) the Expense Policy conforms to the requirements set forth herein and (b) the Borrower and its Subsidiaries are in compliance with the Expense Policy.

3.15. <u>Subsidiaries</u>. All of the Subsidiaries of each Loan Party at the date hereof are listed on <u>Schedule 3.15</u>, which schedule sets forth the name and jurisdiction of formation of each of their Subsidiaries and, as to each such Subsidiary, the percentage of each class of Capital Stock owned by each Loan Party or any of their Subsidiaries except as set forth on <u>Schedule 3.15</u>.

3.16. <u>Capitalization</u>. One hundred percent (100%) of the issued and outstanding Capital Stock of each North American Group Member (other than Borrower) is owned by the Persons listed on <u>Schedule 3.16</u> and, to the knowledge of each Loan Party, such Capital Stock are owned by such Persons, free and clear of all Liens other than Permitted Liens. No Loan Party has issued or granted any options or rights with respect to the issuance of its respective Capital Stock which is presently outstanding except as set forth on <u>Schedule 3.16</u> hereto.

3.17. <u>Fraudulent Conveyance</u>. Each North American Group Member acknowledges that it will benefit from the Loans contemplated by this Agreement. No North American Group Member is incurring Indebtedness or transferring any Collateral with any intent to hinder, delay or defraud any of its creditors.

3.18. <u>USA PATRIOT Act</u>. (a) No North American Group Member nor any of its respective Affiliates over which it exercises management control (a "<u>Controlled Affiliate</u>") is a Prohibited Person, and such Controlled Affiliates are in compliance with all applicable orders, rules, regulations and recommendations of OFAC.

(b) No North American Group Member nor any of its members, directors, officers, employees, parents, Subsidiaries or Affiliates: (1) is subject to U.S. or multilateral economic or trade sanctions currently in force; (2) is owned or controlled by, or act on behalf of, any governments, corporations, entities or individuals that are subject to U.S. or multilateral economic or trade sanctions currently in force; or (3) is a Prohibited Person or is otherwise named, identified or described on any blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list or other list of individuals or entities with whom U.S. persons may not conduct business, including but not limited to lists published or maintained by OFAC, lists published or maintained by the U.S. Department of Commerce, and lists published or maintained by the U.S. Department of State.

(c) None of the Collateral is traded or used, directly or indirectly by a Prohibited Person or is located or organized (in the case of a Pledged Entity) in a Prohibited Jurisdiction.

(d) Each North American Group Member has established an anti-money laundering compliance program as required by all applicable anti-money laundering laws and regulations, including without limitation the Uniting and Strengthening America by Providing

Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (the "<u>USA PATRIOT Act</u>") (collectively, the "<u>Anti-Money Laundering Laws</u>").

3.19. Embargoed Person. As of the date hereof and at all times throughout the term of any Loan, (a) none of any North American Group Member's funds or other assets constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq. (the "Trading With the Enemy Act"), any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or regulations promulgated thereunder or executive order relating thereto (which for the avoidance of doubt shall include but shall not be limited to (i) Executive Order No. 13224, effective as of September 24, 2001 and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (ii) the USA PATRIOT Act), with the result that the investment in the Borrower (whether directly or indirectly), is prohibited by law or any Loan made by the Lenders is in violation of law ("Embargoed Person"); (b) no Embargoed Person has any interest of any nature whatsoever in it with the result that the investment in it (whether directly or indirectly), is prohibited by law or any Loan is in violation of law; (c) none of its funds have been derived from any unlawful activity with the result that the investment in it (whether directly or indirectly), is prohibited by law or any Loans is in violation of law; and (d) neither it nor any of its Affiliates (i) is or will become a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (ii) engages or will engage in any dealings or transactions, or be otherwise associated, with any such "blocked person". For purposes of determining whether or not a representation with respect to any indirect ownership is true or a covenant is being complied with under this Section 3.19, no North American Group Member shall be required to make any investigation into (i) the ownership of publicly traded stock or other publicly traded securities or (ii) the ownership of assets by a collective investment fund that holds assets for employee benefit plans or retirement arrangements.

3.20. <u>Use of Proceeds</u>. (a) The proceeds of the Loans shall be used (i) as permitted in the Wind-Down Order or (ii) to finance working capital needs and other general corporate purposes incurred in connection with the Wind-Down, including the payment of expenses associated with the administration of the Cases; <u>provided</u> that, the North American Group Members may not prepay Indebtedness without the prior written consent of the Required Lenders.

(b) Notwithstanding anything to the contrary herein, none of the proceeds of the Loans shall be used in connection with (i) any investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against any Lender, (ii) the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against any Lender, any of their respective affiliates or other Canadian Lender Consortium Member with respect to any loans or other financial accommodations made to any North American Group Member prior to the Petition Date, or (iii) any loans, advances, extensions of credit, dividends or other investments to any person not a North American Group Member; <u>provided</u>, <u>however</u>, that the limitations set forth in this Section 3.20(b) shall not preclude the use of the proceeds of the Loans in connection with any claims, causes of action, adversary proceedings or other litigations against any Governmental Authority (excluding the Canadian Lender Consortium Members) with respect to the imposition or administration of any Tax laws or Environmental Laws. For the avoidance of doubt, the limitations set forth in Section 3.20(b)(i) and (ii) above, shall not limit the use of proceeds with respect to any of the actions and claims described in such clauses against any Governmental Authority that is not (x) a Lender or (y) a Canadian Lender Consortium Member.

(c) The North American Group Members are the ultimate beneficiaries of this Agreement and the proceeds of Loans to be received hereunder. The use of the Loans will comply with all Applicable Laws, including Anti-Money Laundering Laws. No portion of any Loan is to be used, for the "purpose of purchasing or carrying" any "margin stock" as such terms are used in Regulations U and X of the Board, as amended, and the Borrower is not engaged in the business of extending credit to others for such purpose.

3.21. <u>Representations Concerning the Collateral</u>. Each Loan Party represents and warrants to the Lenders:

(a) No Loan Party has assigned, pledged, conveyed, or encumbered any Collateral to any other Person (other than Permitted Liens) and immediately prior to the pledge of any such Collateral, a Loan Party was the sole owner of such Collateral and had good and marketable title thereto, free and clear of all Liens (other than Permitted Liens), and no Person, other than the Lenders has any Lien (other than Permitted Liens) on any Collateral. No security agreement, financing statement, equivalent security or lien instrument or continuation statement covering all or any part of the Collateral which has been signed by any Loan Party or which any Loan Party has authorized any other Person to sign or file or record, is on file or of record with any public office, except such as may have been filed by or on behalf of a Loan Party in favor of the Lenders pursuant to the Loan Documents or in respect of applicable Permitted Liens.

(b) The provisions of the Loan Documents are effective to create in favor of the Lenders a valid security interest in all right, title, and interest of each Loan Party in, to and under the Collateral, subject only to applicable Permitted Liens.

(c) Upon the entry and effectiveness of the Orders and the filing of financing statements on Form UCC-1 naming the Lenders as "Secured Parties" and each Loan Party as "Debtor", and describing the Collateral, in the jurisdictions and recording offices listed on <u>Schedule 3.21</u> attached hereto, the security interests granted in the Collateral pursuant to the Collateral Documents will constitute perfected first priority security interests under the Uniform Commercial Code in all right, title and interest of the applicable Loan Party in, to and under such Collateral, which can be perfected by filing under the Uniform Commercial Code, in each case, subject to applicable Permitted Liens and as provided in Section 3.24.

(d) Each Loan Party has and will continue to have the full right, power and authority, to pledge the Collateral, subject to Permitted Liens, and the pledge of the Collateral may be further assigned without any requirement.

- 3.22. [Intentionally Omitted].
- 3.23. [Intentionally Omitted].

3.24. Lien Priority. (a) On and after the Closing Date, and the entry of the Orders and after giving effect thereto and the filing of financing statements on Form UCC-1 naming the Lenders as "Secured Parties" and each Loan Party as "Debtor", and describing the Collateral, in the jurisdictions and recording offices listed on <u>Schedule 3.21</u> attached hereto subject to the Permitted Liens, the provisions of the Loan Documents are effective to create in favor of the Lenders, legal, valid and perfected Liens on and security interests (having the priority provided for herein and in the Orders) in all right, title and interest in the Collateral, enforceable against each Loan Party that owns an interest in such Collateral and any other Person.

(b) On and after the entry of the Orders and after giving effect thereto and the filing of financing statements on Form UCC-1 naming the Lenders as "Secured Parties" and each Loan Party as "Debtor", and describing the Collateral, in the jurisdictions and recording offices listed on <u>Schedule 3.21</u> attached hereto, all Obligations owing by the Loan Parties will be secured by:

(i) valid, perfected, first-priority security interests in and liens (i) with respect to the Debtors, pursuant to section 364(c)(2) of the Bankruptcy Code and (ii) with respect to the Non-Debtor Loan Parties, pursuant to the Collateral Documents (other than the Orders), in each case, on the Collateral that is not subject to non avoidable, valid and perfected liens in existence as of the Petition Date (or to non avoidable valid liens in existence as of the Petition Date that are subsequently perfected as permitted by section 546(b) of the Bankruptcy Code), subject only to Permitted Liens (other than Liens permitted under clause (a) thereof) and the Carve-Out; and

(ii) valid, perfected, security, junior interests in and liens pursuant to (i) with respect to the Debtors, section 364(c)(3) of the Bankruptcy Code and (ii) with respect to the Non-Debtor Loan Parties, pursuant to the Collateral Documents (other than the Orders), in each case, on the Collateral that is subject to non avoidable, valid and perfected liens in existence as of the Petition Date, or to non avoidable valid liens in existence as of the Petition Date that are subsequently perfected as permitted by section 546(b) of the Bankruptcy Code, subject only to the Carve-Out.

(c) On and after the entry of the Orders and after giving effect thereto, all Obligations owing by the Debtors will be an allowed administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code in each of the Cases having priority over all administrative expenses of the kind specified in sections 503 and 507 of the Bankruptcy Code and any and all expenses and claims of the Borrower and the other Debtors, whether heretofore or hereafter incurred, including, but not limited to, the kind specified in sections 105, 326, 328, 506(c), 507(a) or 1114 of the Bankruptcy Code, subject only to the Carve-Out.

- 3.25. [Intentionally Omitted].
- 3.26. [Intentionally Omitted].

## 3.27. [Intentionally Omitted].

3.28. <u>Excluded Collateral</u>. Set forth on Annex I to <u>Schedule 3.28</u> is a complete and accurate list as of the Effective Date of all Excluded Collateral that is Capital Stock of domestic joint ventures, Domestic Subsidiaries, "first-tier" foreign joint ventures, and Foreign 956 Subsidiaries.

3.29. <u>Mortgaged Real Property.</u> After giving effect to the recording of the Mortgages, real property identified on <u>Schedule 1.1C</u> shall be subject to a recorded first lien mortgage, deed of trust or similar security instrument (subject to Permitted Liens).

## 3.30. [Intentionally Omitted].

3.31. <u>The Final Order</u>. Upon the maturity (whether by the acceleration or otherwise) of any of the Obligations, the Lenders shall, subject to the provisions of Section 7 and the applicable provisions of the Final Order, be entitled to immediate payment of such Obligations, and to enforce the remedies provided for hereunder, without further application to or order by the Bankruptcy Court.

3.32. <u>Wind-Down Budget</u>. All material facts in the Wind-Down Budget are accurate and the Borrower has disclosed to each Lender all assumptions in the Wind-Down Budget, it being understood that in the case of projections, such projections are based on reasonable estimates, on the date as of which such information is stated or certified.

## **SECTION 4**

## **CONDITIONS PRECEDENT**

4.1. <u>Conditions to Effectiveness</u>. The effectiveness of this Agreement is subject to the satisfaction of the following conditions precedent, satisfaction of such conditions precedent to be determined by the Required Lenders in their reasonable discretion, except as otherwise set forth below:

(a) <u>Loan Documents</u>. The Lenders shall have received the following documents, which shall be in form satisfactory to each Lender:

- (i) this Agreement executed and delivered by the Borrower;
- (ii) the Guaranty, executed and delivered by each Guarantor;
- (iii) the Equity Pledge Agreement, executed and delivered by each Pledgor;
- (iv) [intentionally omitted];

(v) the Environmental Agreement, executed and delivered by each Loan Party party thereto; and

(vi) a promissory note of the Borrower evidencing the Loans of such Lender, substantially in the form of Exhibit G (the "<u>Note</u>"), with appropriate insertions as to date and principal amount.

(b) <u>Related Section 363 Transactions</u>. The Required Lenders and their counsel shall be reasonably satisfied that the terms of the Related Section 363 Transactions and of the Transaction Documents are consistent in all material respects with the information provided to the Lenders in advance of the date hereof or are otherwise reasonably satisfactory to the Required Lenders (the Required Lenders acknowledge that the form of Transaction Documents provided to them on or prior to the date hereof are satisfactory). The Transaction Documents shall have been duly executed and delivered by the parties thereto, all conditions precedent to the Related Section 363 Transactions set forth in the Transaction Documents shall have been satisfied, and the Related Section 363 Transactions shall have been consummated pursuant to such Transaction Documents substantially contemporaneously with the conditions precedent set forth in this Section 4.1, and no provision thereof shall have been waived, amended, supplemented or otherwise modified, in each case in a manner adverse to the Lenders, without the Required Lender's consent.

(c) <u>Final Order</u>. (i) The Final Order shall have been entered by the Bankruptcy Court and shall have been in full force and effect.

(ii) The Final Order shall not have been reversed, modified, amended, stayed or vacated, in the case of any modification or amendment, in a manner, or relating to a matter, without the consent of the Lenders.

(iii) The Debtors and their respective Subsidiaries shall be in compliance in all respects with the Final Order.

- (iv) [Intentionally Omitted].
- (v) [Intentionally Omitted].

(d) <u>New CarCo Assignment and Assumption</u>. The Borrower and New CarCo shall have executed and delivered the New CarCo Assignment and Assumption, and all conditions precedent to New CarCo's \$7,072,488,605 First Lien Credit Agreement between New CarCo and Treasury shall have been satisfied or waived by the Treasury in accordance with the terms therewith substantially contemporaneously with the conditions precedent set forth in this Section 4.1.

(e) <u>Canadian Post-Sale Facility</u>. The Canadian Post-Sale Facility, in form and substance satisfactory to the Lenders, shall have become effective and the Lenders shall have received all documents, instruments and related agreements in connection with the Canadian Post-Sale Facility.

(f) <u>Canadian PV Loan Agreement</u>. The Canadian PV Loan Agreement, in form and substance satisfactory to the Lenders, shall have become effective and the Lenders shall have received all documents, instruments and related agreements in connection with the Canadian PV Loan Agreement.

- (g) [Intentionally Omitted].
- (h) [Intentionally Omitted].

(i) <u>Wind-Down Budget</u>. The Borrower shall have delivered to the Lenders the Wind-Down Budget in form and substance satisfactory to the Required Lenders.

# (j) [Intentionally Omitted].

(k) <u>Litigation</u>. There shall not exist any action, suit, investigation, litigation or proceeding pending (other than the Cases) or threatened in any court or before any arbitrator or Governmental Authority that, in the sole discretion of the Required Lenders, materially or adversely affects any of the transactions contemplated hereby, or that has or could be reasonably likely to have a Material Adverse Effect.

# (l) [Intentionally Omitted].

(m) <u>Consents</u>. The Lenders shall have received all necessary third party and governmental waivers and consents, and each Loan Party shall have complied with all Applicable Laws, decrees and material agreements.

(n) <u>No Default</u>. No Default or Event of Default shall exist on the Effective Date or after giving effect to the transactions contemplated to be consummated on the Effective Date pursuant to the Transaction Documents and the Loan Documents.

(o) <u>Accuracy of Representations and Warranties</u>. All representations and warranties made by the North American Group Members in or pursuant to the Loan Documents shall be true and correct in all material respects.

(p) <u>Closing Certificate; Certified Certificate of Incorporation; Good Standing</u> <u>Certificates</u>. The Lenders shall have received (i) a certificate of the secretary or assistant secretary of each Loan Party, dated the Effective Date, substantially in the form of <u>Exhibit B-1</u>, with appropriate insertions and attachments, including the certificate of incorporation (or equivalent organizational document) of each Loan Party, certified by the relevant authority of the jurisdiction of organization of such Loan Party (<u>provided</u> that, to the extent applicable, in lieu of delivering the certificate of incorporation and other organizational documents, such certificate may include a certification that such documents not have been amended, supplemented or otherwise modified since the Closing Date), (ii) bring down good standing certifications for each Loan Party from its jurisdiction of organization and (iii) a certificate of the Borrower and each Guarantor, dated the Effective Date, to the effect that the conditions set forth in this Section 4.1 have been satisfied, substantially in the form of <u>Exhibit B-2</u>.

(q) <u>Legal Opinion</u>. The Lenders shall have received the executed legal opinion of Weil, Gotshal and Manges LLP, New York counsel to the Loan Parties, substantially in the form of Exhibit E, as to New York law, United States federal law and the Delaware General Corporation Law.

## **SECTION 5**

### **AFFIRMATIVE COVENANTS**

Each Loan Party covenants and agrees to, and to cause each of its Subsidiaries that is a North American Group Member to, so long as any Loan is outstanding and until payment in full of all Obligations, in each case except as shall be required in connection with the Wind-Down, and subject to the Orders, the Related Section 363 Transactions, the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court issued in connection with the Cases:

### 5.1. <u>Financial Statements</u>. The Borrower shall deliver to the Lenders:

(a) as soon as reasonably possible after receipt by the subject North American Group Member, a copy of any material report that may be prepared and submitted by such North American Group Member's independent certified public accountants at any time or any other material report with respect to the North American Group Members provided to the Borrower and its Subsidiaries pursuant to the Transition Services Agreement;

(b) from time to time such other information regarding the financial condition, operations, or business of any North American Group Member as any Lender may reasonably request;

(c) promptly upon their becoming available, copies of such other financial statements and reports, if any, as any North American Group Member may be required to publicly file with the SEC or any similar or corresponding governmental commission, department or agency substituted therefor, or any similar or corresponding governmental commission, department, board, bureau, or agency, federal or state;

(d) [intentionally omitted];

(e) notice of and copies of each Debtors' pleadings filed in the Cases in connection with any material contested matter or adversary proceeding in the Cases (but the foregoing may be satisfied by including each of the Lenders and their counsel in a "core service group," to receive copies of all pleadings under any order establishing notice and service requirements in the Cases), and such additional information with respect to such matters as either of the Lenders may reasonably request, and which notice shall also include sending copies of any pleadings or other documents that the Borrower or other Debtors seek to file under seal to each of the lenders and their counsel, <u>provided</u>, <u>however</u>, that if (in addition to the confidentiality provisions of this Agreement) additional confidentiality provisions are needed (i.e. if required by third parties), the Lenders and the Borrower shall endeavor to work out reasonable additional confidentiality terms;

(f) no later than the twentieth Business Day following the last day of each fiscal quarter, a report (a "<u>Quarterly Report</u>") setting forth in reasonable detail the anticipated receipts and disbursements of the North American Group Members for the immediately succeeding twelve-month period (on a calendar month basis) and the aggregate amount of cash and Cash Equivalents of the North American Group Members as of the last day of the immediately preceding fiscal quarter, in form and substance reasonably satisfactory to the

Required Lenders. Each Quarterly Report shall be accompanied by a certificate of a Responsible Officer certifying that such Quarterly Report was prepared in good faith and are based on reasonable estimates on the date as of which such information is certified; and

(g) on the first Business Day of February to occur each year from the Effective Date until the Maturity Date, a report setting forth in reasonable detail the three-year business plan of the Borrower.

5.2. <u>Notices; Reporting Requirements</u>. The relevant Loan Party shall deliver written notice to the Lenders of the following:

(a) <u>Defaults</u>. Promptly after a Responsible Officer or any officer of a North American Group Member with a title of at least executive vice president becomes aware of the occurrence of any Default or Event of Default, or any event of default under any publicly filed material Contractual Obligation of any Group Member;

(b) <u>Litigation</u>. Promptly after a Responsible Officer or an attorney in the general counsel's office of a North American Group Member obtains knowledge of any action, suit or proceeding instituted by or against such North American Group Member or any of its Subsidiaries in any federal or state court or before any commission, regulatory body or Governmental Authority (i) in which the amount in controversy, in each case, is an amount equal to \$25,000,000 or more, (ii) in which injunctive or similar relief is sought, or (iii) which relates to any Loan Document, the relevant Loan Party shall furnish to the Lenders notice of such action, suit or proceeding;

(c) <u>Material Adverse Effect on Collateral</u>. Promptly upon any North American Group Member becoming aware of any default or any event or change in circumstances related to any Collateral which, in each case, could reasonably be expected to have a Material Adverse Effect;

(d) <u>Judgments</u>. Promptly upon the entry of a judgment or decree against any Loan Party or any of its Subsidiaries in an amount in excess of \$15,000,000;

(e) <u>Environmental Events</u>. As soon as possible and in any event within seven Business Days of obtaining knowledge thereof: (i) any development, event, or condition occurring after the date hereof that, individually or in the aggregate with other developments, events or conditions occurring after the date hereof, could reasonably be expected to result in the payment by the Group Members, in the aggregate, of a Material Environmental Amount; and (ii) any notice that any Governmental Authority may deny any application for an Environmental Permit sought by, or revoke or refuse to renew any Environmental Permit held by, any Group Member; to the extent such Environmental Permit is material to the continued operations or business of the Group Members or of any manufacturing related facility;

(f) <u>Material Adverse Effect</u>. Any development or event that has had or could reasonably be expected to have a Material Adverse Effect;

(g) <u>Insurance</u>. Promptly upon any material change in the insurance coverage required of any Loan Party or any other Person pursuant to any Loan Document, with copy of evidence of same attached;

(h) <u>Compliance Certificate</u>. On the tenth Business Day of each calendar month, beginning with the first month to occur after the Effective Date, a Compliance Certificate, executed by a Responsible Officer of the Borrower, stating that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate;

(i) <u>Investment Reports</u>. With respect to any Investment made pursuant to clause (p)(i) or (ii) of the definition of Permitted Investments, on the tenth Business Day of each calendar month, beginning with the month immediately following the calendar month in which the first such Investment is made, a report executed by a Responsible Officer of the Borrower, setting forth (x) the amount of each Investment made pursuant to each of clause (p)(i) and/or (p)(ii), if any, in the immediately proceeding calendar month, (y) a description of each such Investment, if any, and (z) the aggregate amount of Investments made pursuant to each of clause (p)(i) and (p)(ii) since the Effective Date, if any, as of the end of the immediately preceding calendar month;

- (j) [Intentionally Omitted];
- (k) [<u>Intentionally Omitted</u>];

(1) <u>Expense Policy</u>. Within 15 days after the conclusion of each calendar month, beginning with the month in which the Effective Date occurs, the Borrower shall deliver to the Lenders a certification signed by a Responsible Officer of the Borrower that (i) the Expense Policy conforms to the requirements set forth herein; (ii) the Borrower and its Subsidiaries are in compliance with the Expense Policy; and (iii) there have been no material amendments to the Expense Policy or deviations from the Expense Policy other than those that have been disclosed to and approved by the Lenders; <u>provided</u> that the requirement to deliver the certification referenced in this Section 5.2(1) may be qualified as to the best of such Responsible Officer's knowledge after due inquiry and investigation;

(m) <u>Executive Privileges and Compensation</u>. The Borrower shall submit a certification on the last day of each fiscal quarter beginning with the fiscal quarter ended September 30, 2009, certifying that the Borrower has complied with and is in compliance with the provisions set forth in Section 5.16. Such certification shall be made to the Lenders by an SEO of the Borrower, subject to the requirements and penalties set forth in Title 18, United States Code, Section 1001; and

(n) <u>Organizational Documents</u>. Subject to Section 6.6, each North American Group Member shall furnish prompt written notice to the Lenders of any material amendment to such entity's organizational documents and copies of such amendments.

Each notice required to be provided pursuant to this Section 5.2(a)-(f) above shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the Borrower proposes to take with respect thereto.

5.3. <u>Existence</u>. (a) Preserve and maintain its legal existence and all of its material rights, privileges, licenses and franchises;

(b) pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all their Postpetition obligations of whatever nature, except (i) where such payment, discharge or satisfaction is prohibited by the Orders, the Bankruptcy Code, the Bankruptcy Rules or an order of the Bankruptcy Court or by this Agreement or the Wind-Down Budget, or (ii) where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the Borrower or its Subsidiaries, as the case may be;

(c) comply with the requirements of all Applicable Laws, rules, regulations and orders of Governmental Authorities if failure to comply with such requirements could be reasonably likely (either individually or in the aggregate) to have a Material Adverse Effect on any Loan Party or the Collateral;

(d) keep adequate records and books of account, in which complete entries will be made in accordance with GAAP consistently applied, and maintain adequate accounts and reserves for all taxes (including income taxes), all depreciation, depletion, obsolescence and amortization of its properties, all contingencies, and all other reserves;

(e) (i) change the location of its chief executive office/chief place of business from that specified in Section 3.10, (ii) change its name, identity or corporate structure (or the equivalent) or change the location where it maintains records with respect to the Collateral, or (iii) reincorporate or reorganize under the laws of another jurisdiction, it shall give the Lenders written notice thereof not later than ten (10) days after such event occurs, and shall deliver to the Lenders all Uniform Commercial Code financing statements and amendments as the Lenders shall request and take all other actions deemed reasonably necessary by the Lenders to continue its perfected status in the Collateral with the same or better priority;

(f) keep in full force and effect the provisions of its charter documents, certificate of incorporation, by-laws, operating agreements or similar organizational documents; and

(g) comply (i) in the case of each North American Group Member that is not a Debtor, with all Contractual Obligations in a manner such that a Material Adverse Effect could not reasonably be expected to result and (ii) in the case of each Debtor, with all material Postpetition Contractual Obligations (including the Transition Services Agreement).

5.4. <u>Payments of Taxes</u>. Except as prohibited by the Bankruptcy Code, the Borrower will and will cause each Group Member (i) to timely file or cause to be filed all federal and material state and other Tax returns that are required to be filed and all such Tax returns shall be true and correct and (ii) to timely pay and discharge or cause to be paid and discharged promptly all Taxes, assessments and governmental charges or levies arising Postpetition and imposed upon the Borrower or any of the other Group Members or upon any of their respective incomes or receipts or upon any of their respective properties before the same shall become in default or past due, as well as all lawful claims for labor, materials and supplies or otherwise which, if unpaid, might result in the imposition of a Lien or charge upon such properties or any part thereof; <u>provided</u> that it shall not constitute a violation of the provisions of this Section 5.4 if the Borrower or any of the other Group Members shall fail to pay any such Tax, assessment, government charge or levy or claim for labor, materials or supplies which is being contested in good faith, by proper proceedings diligently pursued, and as to which adequate reserves have been provided.

5.5. <u>Use of Proceeds</u>. The Loan Parties and their Subsidiaries shall use the Loan proceeds only for the purposes set forth in Section 3.20 and in a manner generally consistent with the Wind-Down Budget, except as otherwise permitted in Section 3.20(a)(i).

5.6. <u>Maintenance of Existence; Payment of Obligations; Compliance with</u> <u>Law</u>. Subject to the Orders, the Related Section 363 Transactions and the Cases, each Loan Party shall:

(a) keep all property useful and necessary in its business in good working order and condition; and

(b) maintain errors and omissions insurance and blanket bond coverage in such amounts as are in effect on the Closing Date (as disclosed to the Lenders in writing except in the event of self-insurance) and shall not reduce such coverage without the written consent of the Lenders, and shall also maintain such other insurance with financially sound and reputable insurance companies, and with respect to property and risks of a character usually maintained by entities engaged in the same or similar business similarly situated, against loss, damage and liability of the kinds and in the amounts customarily maintained by such entities. Notwithstanding anything to the contrary in this Section 5.6, to the extent that any North American Group Member is engaged in self-insurance with respect to any of its property as of the Closing Date, such Loan Party may, if consistent with past practices, continue to engage in such self-insurance throughout the term of this Agreement; provided, that the North American Group Members shall promptly obtain third party insurance that conforms to the criteria in this Section 5.6 at the request of the Lenders.

5.7. <u>Further Identification of Collateral</u>. Each Loan Party will furnish to the Lenders from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as any Lender may reasonably request, all in reasonable detail.

5.8. <u>Defense of Title</u>. Subject to the Wind-Down, the Orders, the Related Section 363 Transactions, the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court, each Loan Party warrants and will defend the right, title and interest of the Lenders in and to all Collateral against all adverse claims and demands of all Persons whomsoever, subject to (x) the restrictions imposed by the Existing Agreements to the extent that such restrictions are valid and enforceable under the applicable Uniform Commercial Code and other Requirements of Law and (y) the rights of holders of any Permitted Lien. 5.9. <u>Preservation of Collateral</u>. Subject to the Wind-Down, the Orders, the Related Section 363 Transactions, the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court, each Loan Party shall do all things necessary to preserve the Collateral so that the Collateral remains subject to a perfected security interest with the priority provided for such security interest under the Loan Documents. Without limiting the foregoing, each Loan Party will comply with all Applicable Laws, rules and regulations of any Governmental Authority applicable to such Loan Party or relating to the Collateral and will cause the Collateral to comply, with all Applicable Laws, rules and regulations of any such Governmental Authority, except where failure to so comply would not reasonably be expected to have a Material Adverse Effect. No Loan Party will allow any default to occur for which any Loan Party is responsible under any Loan Documents and each Loan Party shall fully perform or cause to be performed when due all of its obligations under the Loan Documents.

5.10. <u>Maintenance of Papers, Records and Files</u>. (a) each North American Group Member will maintain all Records in good and complete condition and preserve them against loss or destruction, all in accordance with industry and customary practices;

(b) each North American Group Member shall collect and maintain or cause to be collected and maintained all Records relating to its business and operations and the Collateral in accordance with industry custom and practice, including those maintained pursuant to the preceding subsection, and all such Records shall be in the possession of the North American Group Members or reasonably obtainable upon the request of any Lender unless the Lenders otherwise approve; and

(c) for so long as any Lender has an interest in or Lien on any Collateral, each North American Group Member will hold or cause to be held all related Records in trust for such Lender. Each North American Group Member shall notify, or cause to be notified, every other party holding any such Records of the interests and Liens granted hereby.

5.11. <u>Maintenance of Licenses</u>. Subject to the Wind-Down, the Orders, the Related Section 363 Transactions and the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court, except where the failure to do so could not reasonably be likely to have a Material Adverse Effect, each Loan Party shall (i) maintain all licenses, permits, authorizations or other approvals necessary for such Loan Party to conduct its business and to perform its obligations under the Loan Documents, (ii) remain in good standing under the laws of the jurisdiction of its organization, and in each other jurisdiction where such qualification and good standing are necessary for the successful operation of such Loan Party's business, and (iii) shall conduct its business in accordance with Applicable Law in all material respects.

5.12. <u>Payment of Obligations</u>. The Borrower will duly and punctually pay or cause to be paid the principal and interest on the Loans and each North American Group Member will duly and punctually pay or cause to be paid all fees and other amounts from time to time owing by it hereunder or under the other Loan Documents, all in accordance with the terms of this Agreement and the other Loan Documents. Each North American Group Member will, and will cause each of its Subsidiaries to, pay (i) with respect to each Debtor its Postpetition obligations; and (ii) with respect to each other Group Member its obligations, in each case including tax liabilities, assessments and governmental charges or levies imposed upon such

Person or upon its income and profits or upon any of its property, real, personal or mixed (including without limitation, the Collateral) or upon any part thereof, as well as any other lawful claims which, if unpaid, could reasonably be expected to become a Lien upon such properties or any part thereof, that, if not paid, could reasonably be expected to result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the relevant Loan Party, or such Subsidiary, has set aside on its books adequate reserves with respect thereto and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

5.13. <u>OFAC</u>. At all times throughout the term of this Agreement, each Loan Party and its Controlled Affiliates (a) shall be in full compliance with all applicable orders, rules, regulations and recommendations of OFAC and (b) shall not permit any Collateral to be maintained, insured, traded, or used (directly or indirectly) in violation of any United States statutes, rules or regulations, in a Prohibited Jurisdiction or by a Prohibited Person, and no lessee or sublessee shall be a Prohibited Person or a Person organized in a Prohibited Jurisdiction.

5.14. <u>Investment Company</u>. Each North American Group Member will conduct its operations in a manner which will not subject it to registration as an "<u>investment company</u>" as such term is defined in the Investment Company Act of 1940, as amended from time to time.

5.15. Further Assurances. Subject to the Wind-Down, the Orders, the Related Section 363 Transactions and the Cases, the Borrower shall, and shall cause each North American Group Member to, from time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take such actions, as the Lenders may reasonably request for the purposes of implementing or effectuating the provisions of this Agreement and the other Loan Documents, or of more fully perfecting or renewing the rights of the Lenders with respect to the Collateral (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets hereafter acquired by any Group Member which may be deemed to be part of the Collateral) pursuant hereto or thereto. Upon the exercise by any Lender of any power, right, privilege or remedy pursuant to this Agreement or the other Loan Documents that requires any consent, approval, recording, qualification or authorization of any Governmental Authority, the Borrower will execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that such Lender may be required to obtain from the Borrower or any Group Member such governmental consent, approval, recording, gualification or authorization.

5.16. <u>Executive Privileges and Compensation</u>. (a) Subject to the Wind-Down, the Orders, the Related Section 363 Transactions and the Cases, the Borrower shall comply with the following restrictions on executive privileges and compensation:

(i) the Borrower shall take all necessary action to ensure that its Specified Benefit Plans comply in all respects with the EESA, including, without limitation, the provisions of the Capital Purchase Program (as defined in the EESA) and the TARP Standards for Compensation and Corporate Governance, as implemented by any guidance or regulation thereunder, including the rules set forth in 31 C.F.R. Part 30, or any other guidance or regulations promulgated under the EESA, as the same shall be in effect from time to time (collectively, the "<u>Compensation Regulations</u>"), and shall not adopt any new Specified Benefit Plan (x) that does not comply therewith or (y) that does not expressly state and require that such Specified Benefit Plan and any compensation thereunder shall be subject to all relevant Compensation Regulations adopted, issued or released on or after the date any such Specified Benefit Plan is adopted. To the extent that the Compensation Regulations change, or are implemented in a manner that requires changes to then-existing Specified Benefit Plans, the Borrower shall effect such changes to its Specified Benefit Plans as promptly as practicable after it has actual knowledge of such changes in order to be in compliance with this Section 5.16(a)(i) (and shall be deemed to be in compliance for a reasonable period within which to effect such changes);

(ii) the Borrower shall be subject to the limits on the deductibility of executive compensation imposed by section 162(m)(5) of the Code, as applicable;

(iii) the Borrower shall not pay or accrue any bonus or incentive compensation to the Senior Employees, except as may be permitted under the EESA or the Compensation Regulations;

(iv) the Borrower shall not adopt or maintain any compensation plan that would encourage manipulation of its reported earnings to enhance the compensation of any of its employees;

(v) the Borrower shall maintain all suspensions and other restrictions of contributions to Specified Benefit Plans that are in place or initiated as of the Closing Date; and

(vi) the Borrower shall otherwise comply with the provisions of the Capital Purchase Program and the TARP Standards for Compensation and Corporate Governance, as implemented by any guidance or regulation thereunder, including the rules set forth in 31 C.F.R. Part 30, including without limitation the prohibition on golden parachute and tax "gross up" payments, the requirement with respect to the establishment of a compensation committee of the board of directors, and the requirement that the Borrower provide certain disclosures to the Treasury and the Borrower's primary regulator.

At all times throughout the term of this Agreement, the Required Lenders shall have the right to require any Group Member to claw back any bonuses or other compensation, including golden parachutes, paid to any Senior Employees in violation of any of the foregoing.

(b) On or prior to September 15, 2009, the Borrower shall cause (i) its principal executive officer and principal financial officer (or, in each case, a person acting in a similar capacity) and (ii) its compensation committee, as applicable, to provide the certifications to the Treasury and the Borrower's primary regulator required by the rules set forth in 31 C.F.R. Part 30. The Borrower shall preserve appropriate documentation and records to substantiate such

certification in an easily accessible place for a period not less than three years following the Maturity Date.

From the Closing Date until the repayment of all Obligations, the Borrower shall comply with the provisions of this Section 5.16.

5.17. <u>Aircraft</u>. With respect to any private passenger aircraft or interest in such aircraft that is owned or held by the Borrower or any of its respective Subsidiaries immediately prior to the Closing Date, such party shall demonstrate to the satisfaction of the Treasury that it is taking all reasonable steps to divest itself of such aircraft or interest. In addition, the Borrower shall not acquire or lease any private passenger aircraft or interest in private passenger aircraft after the Closing Date.

5.18. <u>Restrictions on Expenses</u>. (a) The Borrower shall maintain and implement an Expense Policy, provide the Expense Policy to the Treasury and the Borrower's primary regulatory agency, and post the text of the Expense Policy on its Internet website, if the Borrower maintains a company website, and distribute the Expense Policy to all employees covered under the Expense Policy. Any material amendments to the Expense Policy shall require the prior written consent of the Treasury, and any material deviations from the Expense Policy, whether in contravention thereof or pursuant to waivers provided for thereunder, shall promptly be reported to the Treasury.

(b) The Expense Policy shall, at a minimum: (i) require compliance with all Requirements of Law, (ii) apply to the Borrower and all of its Subsidiaries, (iii) govern (A) the hosting, sponsorship or other payment for conferences and events, (B) travel accommodations and expenditures, (C) consulting arrangements with outside service providers, (D) any new lease or acquisition of real estate, (E) expenses relating to office or facility renovations or relocations, and (F) expenses relating to entertainment or holiday parties, (iv) provide for (A) internal reporting and oversight, and (B) mechanisms for addressing non-compliance with the Expense Policy and (v) comply in all respects with the provisions of the Capital Purchase Program and the TARP Standards for Compensation and Corporate Governance, as implemented by any guidance or regulation thereunder, including the rules set forth in 31 C.F.R. Part 30.

5.19. <u>Employ American Workers Act</u>. The Borrower shall comply, and the Borrower shall take all necessary action to ensure that its Subsidiaries comply, in all respects with the provisions of the EAWA in all respects.

5.20. Internal Controls; Recordkeeping; Additional Reporting. (a) The Borrower shall promptly establish internal controls to provide reasonable assurance of compliance in all material respects with each of the Borrower's covenants and agreements set forth in Sections 5.16, 5.17, 5.18, 5.19 and 5.20(b) hereof and shall collect, maintain and preserve reasonable records evidencing such internal controls and compliance therewith, a copy of which records shall be provided to the Lenders promptly upon request. On the 15th day after the last day of each calendar quarter (or, if such day is not a Business Day, on the first Business Day after such day) commencing with the calendar quarter ending September 30, 2009, the Borrower shall deliver to the Treasury (at its address set forth in Section 8.2) a report setting forth in reasonable detail (x) the status of implementing such internal controls and (y) the

Borrower's compliance (including any instances of material non-compliance) with such covenants and agreements. Such report shall be accompanied by a certification duly executed by an SEO of the Borrower stating that such quarterly report is accurate in all material respects to the best of such SEO's knowledge, which certification shall be made subject to the requirements and penalties set forth in Title 18, United States Code, Section 1001.

(b) The Borrower shall use its reasonable best efforts to account for the use and expected use of the proceeds from the Loans. On the 30th day after the last day of each month (or, if such day is not a Business Day, on the first Business Day after such day) commencing with July 31, 2009, the Borrower shall deliver to the Lenders (at their respective addresses set forth in Section 8.2) a report setting forth in reasonable detail the actual results of the operations of the Borrower and its Subsidiaries for such month, which shall include (without limitation) a budget-to-actual variance analysis. Such report shall be accompanied by a certification duly executed by an SEO of the Borrower that such monthly report is accurate in all material respects to the best of such SEO's knowledge, which certification shall be made subject to the requirements and penalties set forth in Title 18, United States Code, section 1001.

(c) The Borrower shall collect, maintain and preserve reasonable records relating to the implementation of all Federal support programs provided to the Borrower or any of its Subsidiaries pursuant to the EESA, the use of the proceeds thereunder and the compliance with the terms and provisions of such programs; <u>provided</u> that the Borrower shall have no obligation to comply with the foregoing in connection with any such program to the extent that such program independently requires, by its express terms, the Borrower to collect, maintain and preserve any records in connection therewith. The Borrower shall provide the Treasury with copy of all such reasonable records promptly upon request.

5.21. <u>Waivers</u>. (a) For any Person who is a Loan Party as of the Closing Date and any Person that becomes a Loan Party after the Closing Date, the Borrower shall cause a waiver, in substantially the form attached hereto as Exhibit D-1, to be duly executed by such North American Group Member and promptly delivered to the Treasury.

(b) For any Person who is an SEO as of the Closing Date and any Person that becomes an SEO after the Closing Date, the Borrower shall cause a waiver, in substantially the form attached hereto as Exhibit D-2, to be duly executed by such SEO, and promptly delivered to the Treasury.

(c) For any Person who is an SEO as of the Closing Date and any Person that becomes an SEO after the Closing Date, the Borrower shall cause a consent and waiver, in substantially the form attached hereto as Exhibit D-3, to be duly executed by such SEO, and promptly delivered to the Borrower (with a copy to the Treasury).

(d) For any Person who is a Senior Employee as of the Closing Date and any Person that becomes an Senior Employee after the Closing Date, the Borrower shall cause a waiver, in substantially the form attached hereto as Exhibit D-4, to be duly executed by such Senior Employee, and promptly delivered to the Treasury.

(e) For any Person who is a Senior Employee as of the Closing Date and any Person that becomes an Senior Employee after the Closing Date, the Borrower shall cause a consent and waiver, in substantially the form attached hereto as Exhibit D-5, to be duly executed by such Senior Employee, and promptly delivered to the Borrower (with a copy to the Treasury).

(f) For the avoidance of doubt, this requirement will be deemed satisfied for the United States with respect to Loan Parties that are party to the Existing UST Term Loan Agreement and any SEO or Senior Employee, to the extent such Loan Party, SEO or Senior Employee has previously provided such a waiver to the Treasury.

# 5.22. [Intentionally Omitted].

5.23. <u>Additional Guarantors</u>. Except as otherwise agreed to by the Required Lenders, the Borrower shall cause each Domestic Subsidiary of a North American Group Member who becomes a Debtor after the Closing Date to become a Guarantor (each, an "<u>Additional Guarantor</u>") in accordance with Section 4.24 of the Guaranty, other than (i) [intentionally omitted], (ii) any Foreign 956 Subsidiary, (iii) any Other Foreign 956 Subsidiary and (iv) any Non-U.S. Subsidiary owned in whole or in part by a Foreign 956 Subsidiary, except in the case of clauses (i) through (iv), any Subsidiaries that were guarantors under the Existing UST Term Loan Agreement.

5.24. <u>Provide Additional Information</u>. Each North American Group Member shall, promptly, from time to time and upon request of any Lender, furnish to such Lender such information, documents, records or reports with respect to the Collateral, the Indebtedness of the North American Group Members or any Subsidiary thereof or the corporate affairs, conditions or operations, financial or otherwise, of such North American Group Member as any Lender may reasonably request, including without limitation, providing to such Lender reasonably detailed information with respect to each inquiry of such Lender raised with the North American Group Members prior to the Closing Date.

5.25. Inspection of Property; Books and Records; Discussions. Subject to the Wind-Down, the Orders, the Related Section 363 Transactions and the Cases, the Borrower shall, and shall cause each Group Member to, (a) keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities, and (b) permit representatives of any Lender, the Special Inspector General of the Troubled Asset Relief Program or the Comptroller General of the United States to visit and inspect any of its properties and examine and make abstracts from any of its books and records and other data delivered to them pursuant to the Loan Documents at any reasonable time and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of the Group Members with officers and employees of the Group Members and with its independent certified public accountants.

5.26. <u>Governance of Borrower</u>. Promptly after the Effective Date, the Borrower shall cause its by-laws to be amended and maintained to provide as follows:

(a) From the date of such amendment until a plan of liquidation confirmed by the Bankruptcy Court is effective for each of the Cases (such date, the "<u>Liquidation Plan</u> <u>Effective Date</u>"):

(i) the Borrower's Board of Directors shall be comprised of five (5) members (it being understood that so long as the Borrower is diligently and in good faith pursuing the nomination and appointment of members to the Borrower's Board of Directors, no Default shall arise under the Wind-Down Facility Agreement from the fact that from time to time, the Borrower's Board of Directors might consist of fewer than five (5) members);

(ii) subject to clauses (iii) and (iv) below, (A) the Required Lenders, as a group, shall have the right to nominate three (3) individuals as members to the Board of Directors and (B) the Creditors' Committee, as a group, shall have the right to nominate two (2) individuals as members to the Borrower's Board of Directors, and each of the Required Lenders, the Creditors' Committee, and the Borrower shall use its commercially reasonable efforts to cause the election to the Board of Directors of such individuals as directors of Borrower (unless the Board of Directors reasonably concludes that any such individual is not eligible to serve as a director, in which event the Required Lenders or Creditors' Committee, as the case may be, shall nominate a substitute individual);

(iii) prior to the appointment of any individual as director of the Borrower by the Board of Directors, such individual shall be subject to a review by and shall be reasonably acceptable to the Required Lenders and the Creditors' Committee (it being understood that so long as the Borrower is diligently and in good faith pursuing the nomination and appointment of members to its Board of Directors that satisfy the requirements of the undertaking set forth in this Annex, no Default shall arise under the Wind-Down Facility Agreement from the fact that the foregoing parties have not agreed on acceptable nominees);

(iv) upon the vacancy of a director's position on the Borrower's Board of Directors (whether by resignation of a director or otherwise), the party with the right to nominate such director hereby shall be entitled to nominate such director's replacement; <u>provided</u> that, at no time shall the majority of the members serving on the Borrower's Board of Directors be members nominated by the Creditors' Committee; and

(v) at least one director nominated by each of the Required Lenders and the Creditors' Committee shall be appointed to any committee of the Borrower's Board of Directors.

(b) The provisions of the Borrower's by-laws relating to the matters set forth in clause (a) above, as amended in accordance with the terms thereof shall remain in effect and may not be amended or repealed in whole or in any part, nor may any provision inconsistent with any of the preceding provisions (in whole or in part) be adopted other than (i) with respect to any period, by a unanimous approval of the Borrower's Board of Directors or (ii) with respect to the period on or after the Liquidation Plan Effective Date, by a unanimous approval of the Borrower's Board of Directors, or if such unanimous approval of the Borrower's Board of Directors is not obtained, as determined by the Bankruptcy Court.

(c) Notwithstanding anything in this Agreement to the contrary, the Creditors' Committee (or the Unsecured Creditors Representative, as applicable) is intended to and shall be a third-party beneficiary of this Section 5.26, and shall be legally entitled to enforce the provisions hereof, but only to the extent that the Creditors' Committee (or the Unsecured Creditors Representative, as applicable) shall have take the action contemplated by this Section 5.26 to have been taken by such Person.

## **SECTION 6**

## **NEGATIVE COVENANTS**

Each Loan Party hereby covenants and agrees to, and to cause itself and each of its Subsidiaries that is a North American Group Member to, so long as any Loan or any interest or fee payable hereunder is owing to any Lender, each North American Group Member will abide by the following negative covenants, in each case except as shall be required in connection with the Wind-Down and subject to the Orders, the Related Section 363 Transactions, the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court issued in connection with the Cases:

6.1. <u>Prohibition on Fundamental Changes</u>. No North American Group Member shall, at any time, directly or indirectly, (i) enter into any transaction of merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation, winding up or dissolution) or Dispose of all or substantially all of its Property without the Lender's prior consent, <u>provided</u>, any Guarantor may merge, consolidate, amalgamate into, or Dispose of all or substantially all of its Property to another North American Group Member; or (ii) form or enter into any partnership, syndicate or other combination (other than joint ventures permitted by Section 6.14) that could reasonably be expected to have a Material Adverse Effect.

6.2. <u>Lines of Business</u>. No North American Group Member will engage to any substantial extent in any line or lines of business activity other than the businesses generally carried on by the North American Group Members as of the Closing Date or businesses reasonably related thereto.

6.3. <u>Transactions with Affiliates</u>. No North American Group Member will (a) enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property (including Collateral) or the rendering of any service, with any Affiliate unless such transaction is (i) in the ordinary course of such North American Group Member's business, and (ii) generally upon fair and reasonable terms and, with respect to any transaction with an Affiliate that is not a Group Member, no less favorable to such North American Group Member than it would obtain in an arm's length transaction with a Person which is not an Affiliate (other than any transaction that occurs pursuant to an agreement in effect as of the Petition Date), and in either case, is otherwise permitted under this Agreement, or (b) make a payment that is not otherwise permitted by this Section 6.3 to any Affiliate. Irrespective of whether such transactions comply with the provisions of this Section 6.3, but subject to the other restrictions set forth elsewhere in this Agreement, the Loan Parties shall be permitted to (x) transact business

in the ordinary course with (i) the joint ventures in which the Loan Parties or their Subsidiaries participate and (ii) [intentionally omitted], and (y) make Restricted Payments permitted under Section 6.5.

6.4. <u>Limitation on Liens</u>. No North American Group Member will, create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except Permitted Liens.

6.5. <u>Restricted Payments</u>. Without the Lenders' consent, no North American Group Member shall, (i) declare or pay any dividend (other than dividends payable solely in common Capital Stock of the Person making such dividend) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of any Capital Stock of any North American Group Member, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any North American Group Member and (ii) optionally prepay, repurchase, redeem or otherwise optionally satisfy or defease with cash or Cash Equivalents any Indebtedness (any such payment referred to in clauses (i) and (ii), a "<u>Restricted Payment</u>"), other than:

(a) redemptions, acquisitions or the retirement for value or repurchases (or loans, distributions or advances to effect the same) of shares of Capital Stock from current or former officers, directors, consultants and employees, including upon the exercise of stock options or warrants for such Capital Stock, or any executive or employee savings or compensation plans, or, in each case to the extent applicable, their respective estates, spouses, former spouses or family members or other permitted transferees;

(b) any Subsidiary (including an Excluded Subsidiary) may make Restricted Payments to its direct parent or to the Borrower or any Guarantor that is a Wholly Owned Subsidiary;

(c) any JV Subsidiary may make Restricted Payments required or permitted to be made pursuant to the terms of the joint venture arrangements in effect on the Closing Date (or otherwise as approved by the Required Lenders) of holders of its Capital Stock, <u>provided</u> that, the Borrower and its Subsidiaries have received their *pro rata* portion of such Restricted Payments; and

(d) any Subsidiary that is not a North American Group Member may make Restricted Payments to any other Subsidiary or Subsidiaries that are not North American Group Members.

For the avoidance of doubt this Section 6.5 shall not restrict in any manner any North American Group Member from Disposing of any New GM Equity Interests.

6.6. <u>Amendments to Transaction Documents</u>. (a) No North American Group Member will amend, supplement or otherwise modify (pursuant to a waiver or otherwise) the terms and conditions of the indemnities and licenses furnished to New CarCo and its successors or any of its Subsidiaries pursuant to the Transaction Documents such that after giving effect thereto such indemnities or licenses, taken as a whole, shall be materially less favorable to the interests of the Lenders with respect thereto or (b) otherwise amend, supplement or otherwise modify the terms and conditions of the Transaction Documents.

6.7. <u>Changes in Fiscal Periods</u>. No North American Group Member will permit its fiscal year to end on a day other than December 31 or change its method of determining fiscal quarters, in each case, unless otherwise agreed by the Required Lenders.

6.8. <u>Negative Pledge</u>. No North American Group Member will, enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any North American Group Member to create, incur, assume or permit to exist any Lien upon any of the Collateral, whether now owned or hereafter acquired, other than this Agreement, the other Loan Documents, the Existing Agreements, and Permitted Liens; <u>provided</u> that the agreements excepted from the restrictions of this Section shall include customary negative pledge clauses in agreements providing refinancing Indebtedness or permitted unsecured Indebtedness.

6.9. <u>Indebtedness</u>. No North American Group Member will, create, incur, assume or suffer to exist any Indebtedness except Permitted Indebtedness.

6.10. <u>Investments</u>. No North American Group Member will make any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting a business unit of, or make any other investment in, any Person (all of the foregoing, "<u>Investments</u>"), except Permitted Investments.

6.11. <u>Action Adverse to the Collateral</u>. Except as permitted under any provision of this Agreement, no Loan Party shall or shall permit any Pledged Entity that is a Subsidiary to take any action that would directly or indirectly materially impair or materially adversely affect such North American Group Member's title to, or the value of, the Collateral, or materially increase the duties, responsibilities or obligation of any North American Group Member.

6.12. <u>Limitation on Sale of Assets</u>. Subject to the Wind-Down, the Orders, the Related Section 363 Transactions and the Cases and any other applicable provision of any Loan Document, each North American Group Member shall have the right to Dispose freely of any of its Property (including, without limitation, receivables and leasehold interests) whether now owned or hereafter acquired.

6.13. [Intentionally Omitted].

6.14. <u>JV Agreements</u>. No North American Group Member or Pledged Entity shall allow any modification or amendment to any JV Agreement, except that any such party that is not a Debtor may modify or amend any JV Agreement; <u>provided</u> that such amendment or modification could not reasonably be expected to have a Material Adverse Effect.

6.15. <u>Swap Agreements</u>. The North American Group Members will not itself, and will not permit any of their respective Subsidiaries to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which the Borrower or any Subsidiary has actual or anticipated exposure (other than those in respect of Capital Stock) and

(b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates with respect to any interest-bearing liability or investment of the Borrower or any Subsidiary.

6.16. Clauses Restricting Subsidiary Distributions. The Borrower will not, and will not permit any Guarantor to, enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any such Guarantor to (a) make Restricted Payments in respect of any Capital Stock of such Guarantor held by, or pay any Indebtedness owed to, the Borrower or any other Guarantor, (b) make loans or advances to, or other Investments in, the Borrower or any other Guarantor or (c) transfer any of its assets to the Borrower or any other Guarantor, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions with respect to a Guarantor imposed pursuant to an agreement that has been entered into in connection with the Disposition of all or substantially all of the Capital Stock or assets of such Guarantor, (iii) any agreement or instrument governing Indebtedness assumed in connection with the acquisition of assets by the Borrower or any Guarantor permitted hereunder or secured by a Lien encumbering assets acquired in connection therewith, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired, (iv) restrictions on the transfer of assets subject to any Lien permitted by Section 6.4 imposed by the holder of such Lien or on the transfer of assets subject to a Disposition permitted by Section 6.12 imposed by the acquirer of such assets, (v) provisions in joint venture agreements and other similar agreements (in each case relating solely to the respective joint venture or similar entity or the Capital Stock therein) entered into in the ordinary course of business, (vi) restrictions contained in the terms of any agreements governing purchase money obligations, Capital Lease Obligations or attributable obligations not incurred in violation of this Agreement; provided that, such restrictions relate only to the property financed with such Indebtedness, (vii) restrictions on cash or other deposits imposed by customers under contracts or other arrangements entered into or agreed to in the ordinary course of business, or (viii) customary non-assignment provisions in leases, contracts, licenses and other agreements entered into in the ordinary course of business and consistent with past practices.

6.17. <u>Sale/Leaseback Transactions</u>. No North American Group Member will enter into any arrangement with any Person providing for the leasing by any such North American Group Member of real or personal property that has been or is to be sold or transferred by any such North American Group Member to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of any such North American Group Member (a "<u>Sale/Leaseback Transaction</u>") other than any Sale/Leaseback Transaction in effect on the Closing Date.

# 6.18. [Intentionally Omitted].

6.19. <u>Modification of Organizational Documents</u>. No North American Group Member will modify any organizational documents, except (i) as required by the Bankruptcy Code or (ii) in connection with a Disposition permitted by Section 6.12.

## **SECTION 7**

### **EVENTS OF DEFAULT**

7.1. <u>Events of Default</u>. Notwithstanding the provisions of section 362(c) of the Bankruptcy Code, and without notice, application or motion to, hearing before, or order of the Bankruptcy Court, or any notice to any of the North American Group Members, and subject to the provisions of this Section 7, each of the following events shall constitute an "<u>Event of Default</u>", provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied:

(a) the Borrower shall default in the payment of any principal of or interest on any Loan when due (whether at stated maturity or upon acceleration), including the failure to pay the Administrative Priority Claim Payment Amount on or before the Administrative/Priority Claim Payment Date; or

- ...
- (b) any Guarantor shall default in its payment obligations under the Guaranty;

or

(c) any Loan Party shall default in the payment of any other amount payable by it hereunder or under any other Loan Document after notification by the Lenders of such default, and such default shall have continued unremedied for three (3) Business Days; or

(d) any North American Group Member shall breach any covenant contained in Section 5.16 (Executive Privileges and Compensation), Section 5.17 (Aircraft), Section 5.18 (Restrictions on Expenses), Section 5.19 (Employ American Workers Act), Section 5.20 (Internal Controls; Recordkeeping; Additional Reporting), Section 5.21 (Waivers) or Section 6 hereof; or

(e) any North American Group Member shall default in performance of or otherwise breach non-payment obligations or covenants under any of the Loan Documents not covered by another clause in this Section 7, and such default has not been remedied within the applicable grace period provided therein, or if no grace period, within ten (10) Business Days; or

(f) any representation, warranty or certification made or deemed made herein or in any other Loan Document by any North American Group Member or any certificate furnished to the Lenders pursuant to the provisions hereof or thereof, shall prove to have been false or misleading in any material respect as of the time made or furnished; or

- (g) [intentionally omitted]; or
- (h) [intentionally omitted]; or
- (i) [intentionally omitted]; or
- (j) [intentionally omitted]; or

(k) any of the Cases shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code; a trustee or interim trustee under chapter 7 or chapter 11 of the Bankruptcy Code, a receiver and manager, or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases; or an application shall be filed by the Borrower or any of its Subsidiaries for the approval of any other Superpriority Claim (other than the Carve-Out) in any of the Cases which is *pari passu* with or senior to the claims of the Lenders against any Borrower or any other Loan Party hereunder or under any of the other Loan Documents, or there shall arise or be granted any such *pari passu* or senior Superpriority Claim; or

(1) except as expressly agreed to in writing by the Required Lenders, any Debtor shall make any Prepetition Payment to any general unsecured creditor other than any such Prepetition Payments that are (i) payable pursuant to an order by the Bankruptcy Court or (ii) consistent with the Wind-Down Budget; or

- (m) [intentionally omitted]; or
- (n) [intentionally omitted]; or
- (o) [intentionally omitted]; or

(p) any Loan Document shall for whatever reason be terminated, any default or event of default shall have occurred under any Loan Document, the Loan Documents shall for any reason cease to create a valid, security interest in any of the Collateral purported to be covered hereby or thereby, or any North American Group Member's material obligations (including the Borrower's Obligations hereunder) shall cease to be in full force and effect, or the enforceability thereof shall be contested by any North American Group Member; or

(q) the filing of a motion, pleading or proceeding by any of the other Loan Parties which could reasonably be expected to result in a material impairment of the rights or interests of any Lender under any Loan Document, or a determination by a court with respect to a motion, pleading or proceeding brought by another party which results in a material impairment of the rights or interests of any Lender under any Loan Document; or

(r) (i) any order shall be entered reversing, amending, supplementing, staying for a period in excess of five days, vacating or otherwise modifying in any material respect the Final Order without the prior written consent of the Lenders, (ii) the Final Order shall cease to create a valid and perfected Lien or to be otherwise in full force and effect or (iii) any Debtor shall fail to, or fail to cause any North American Group Member to, comply with the Orders; or

(s) the North American Group Members or any other material Subsidiaries of the Borrower shall take any action in support of any of the events set forth in clauses (k), (l), (m), (q) or (s) or any person other than the North American Group Members or any other material Subsidiaries of the Borrower shall do so, and such application is not contested in good faith by the North American Group Members or any other material Subsidiaries of the Borrower and the relief requested is granted in an order that is not stayed pending appeal; or (t) [intentionally omitted]; or

(u) any Change of Control shall have occurred without the prior consent of the Lenders other than pursuant to the Related Section 363 Transaction; or

(v) any North American Group Member shall grant, or suffer to exist, any Lien on any Collateral other than Permitted Liens; or the Liens contemplated under the Loan Documents shall cease to be perfected Liens on the Collateral in favor of the Lenders of the requisite priority hereunder with respect to such Collateral (subject to the Permitted Liens); or

- (w) [intentionally omitted]; or
- (x) [intentionally omitted]; or
- (y) [intentionally omitted]; or
- (z) [intentionally omitted]; or
- (aa) [intentionally omitted]; or

(bb) any North American Group Member (other than a Debtor) shall admit its inability to, or intention not to, perform any of such party's material Obligations hereunder; or

(cc) a plan shall be confirmed in any of the Cases that does not, or any order shall be entered which dismisses any of the Cases and which order does not comply with the repayment provisions of this Agreement; or any of the Debtors shall seek support, or fail to contest in good faith the filing or confirmation of such a plan or the entry of such an order.

7.2. <u>Remedies upon Event of Default</u>. (a) If any Event of Default occurs and is continuing under Section 7.1(l), the Required Lenders may, by written notice to the Borrower, take any action set forth in Section 7.2(c).

(b) After the Maturity Date, if any Obligations remain outstanding, the Required Lenders may, by written notice to the Borrower, take any action set forth in Section 7.2(c).

(c) Upon (but only upon) the occurrence of an event set forth in Section 7.2(a) and (b), the Required Lenders may take any or all of the following actions, at the same or different times, in each case without further order of or application to the Bankruptcy Court (<u>provided</u> that (x) with respect to clause (iii) below and the enforcement of Liens or other remedies with respect to the Collateral under clause (v) below, the Lenders shall provide the Borrower (with a copy to counsel for each Committee and to the United States Trustee for the Southern District of New York) with five Business Days' written notice prior to taking the action contemplated thereby, (y) upon receipt of any such notice, the Borrower may only make disbursements in the ordinary course of business and with respect to the Carve-Out, but may not disburse any other amounts, and (z) in any hearing after the giving of the aforementioned notice, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, the specific Event of Default giving rise to the enforcement has occurred and is continuing):

(i) declare the principal of and accrued interest on the outstanding Loans to be immediately due and payable;

(ii) [intentionally omitted]

(iii) set-off any amounts (other than Excluded Collateral) held in any accounts maintained by any Loan Party with respect to which any Lender is a party to a control agreement;

(iv) compel any Debtor to or to cause any North American Group Member to sell any or all of its assets (other than the Excluded Collateral) that comprise collateral consistent with Section 363(b) of the Bankruptcy Code or any other Applicable Law, and credit bid the Loans in any such sale pursuant to Section 363(k) of the Bankruptcy Code or other Applicable Law; or

(v) take any other action or exercise any other right or remedy (including, without limitation, with respect to the Liens in favor of the Lenders) permitted under and consistent with the Loan Documents or by Applicable Law.

(d) Notwithstanding any other provision in this Agreement or the other Loan Documents, the Lenders' rights and remedies set forth in Section 7.2(a), (b) and (c) shall for all purposes be the sole and exclusive remedy of the Lenders and their respective Affiliates under this Agreement and the other Loan Documents, at law or in equity, for all purposes against the Borrower, any of its direct or indirect Subsidiaries (including, the Guarantors), the Pledgors, and any of their respective former, current and future direct or indirect equity holders, controlling persons, stockholders, directors, officers, employees, agents, members, managers, general or limited partners or assignees upon any Event of Default or for any loss or damage suffered as a result of the breach of any representation, warranty, covenant or agreement contained in this Agreement, the other Loan Documents or otherwise by the Borrower or any of its direct or indirect or indirect Subsidiaries, any Pledgor or any Guarantor.

## **SECTION 8**

## MISCELLANEOUS

8.1. <u>Amendments and Waivers</u>. Neither this Agreement, any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 8.1 or as otherwise expressly provided herein. The Required Lenders and the Borrower (on its own behalf and as agent on behalf of any other Loan Party party to the relevant Loan Document) may, from time to time, (a) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights or obligations of the Lenders or of the Loan Parties hereunder or thereunder or (b) waive, on such terms and conditions as the Lenders may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; except that (x) the consent of each Lender directly affected thereby shall be required with respect to (i) reductions in the amount or

extensions of the Maturity Date of any Loan or any change to the definition of "Maturity Date", (ii) reductions in the rate of interest or any fee or extensions of any due date thereof, (iii) [intentionally omitted], (iv) imposition of any additional restrictions on assignments and participations, (v) [intentionally omitted] and (vi) modifications to the pro rata treatment and sharing provisions of the Loan Documents, and (y) the consent of 100% of the Lenders shall be required with respect to (i) modifications to this Section of any of the voting percentages, the definition of "Required Lenders", or the minimum requirement necessary for all Lenders or Required Lenders to take action hereunder, (ii) prior to the consummation of the Related Section 363 Transactions, the release or subordination of any of the Guarantors or a material portion of the Collateral other than in connection with the Related Section 363 Transactions, (iii) after the consummation of the Related Section 363 Transactions, the release or subordination of all or substantially all of the Guarantors or all or substantially all of the Collateral, (iv) the assignment, delegation or other transfer by any Loan Party of any of its rights and obligations under this Agreement and (v) amendments, supplements, modifications or waivers of Sections 2.12 (or the rights and obligations contained therein), 4.1(a), 4.1(c)(ii), 4.1(e), 4.1(f), 4.1(m) or 7.1(r), the definition of "ABR" or the minimum notice requirements contained in Section 2.4.

Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders and all future holders of the Loans. In the case of any waiver, the Loan Parties and the Lenders shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Any such waiver, amendment, supplement or modification shall be effected by a written instrument signed by the parties required to sign pursuant to the foregoing provisions of this Section 8.1; <u>provided</u> that, delivery of an executed signature page of any such instrument by facsimile transmission shall be effective as delivery of a manually executed counterpart thereof.

8.2. <u>Notices</u>. (a) All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy or electronic transmission), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three Business Days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice or electronic transmission or overnight or hand delivery, when received, addressed as follows in the case of the Borrower and the Lenders, or to such other address as may be hereafter notified by the respective parties hereto:

### Borrower:

Motors Liquidation Company GM Global Headquarters Att. Mail Code 482-C37-A99 300 Renaissance Center Detroit, MI 48265 Attn: Treasurer, James Selzer Telecopy: 248-262-8491 with a copy to:

Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, NY 10153-0119 Attention: Stephen Karotkin Richard Ginsburg Soo-Jin Shim Telecopy: 212-310-8007

Treasury:

The United States Department of the Treasury 1500 Pennsylvania Avenue, NW Washington, D.C. 20220 Attention: Chief Counsel Office of Financial Stability Telecopy: 202-927-9225 Email: OFSChiefCounselNotices@do.treas.gov

with a copy to:

Cadwalader, Wickersham & Taft LLP One World Financial Center New York, NY 10281 Attention: John J. Rapisardi Telecopy: 212-504-6666 Telephone: 212-504-6000

Canadian Lender:

Export Development Canada 151 O'Connor Street Ottawa, Ontario Canada K1A 1K3 Attention: Loans Services Telecopy: 613-598-2514

with a copy to:

Export Development Canada 151 O'Connor Street Ottawa, Ontario Canada K1A 1K3 Attention: Asset Management/Covenants Officer Telecopy: 613-598-3186 <u>provided</u> that any notice, request or demand to or upon the Lenders shall not be effective until received.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by each Lender in its sole discretion. The Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; <u>provided</u> that approval of such procedures may be limited to particular notices or communications.

8.3. <u>No Waiver; Cumulative Remedies</u>. No failure to exercise and no delay in exercising, on the part of any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privileges. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

8.4. <u>Survival of Representations and Warranties</u>. All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

8.5. Payment of Expenses. The Borrower agrees (a) to pay or reimburse the Lenders and any other Canadian Lender Consortium Member for all their (i) reasonable out-ofpocket costs and expenses incurred in connection with the development, preparation and execution of, and any amendment, supplement or modification to, this Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby (including the reasonable out-of-pocket costs and expenses of the advisors and counsel to each Lender and each other Canadian Lender Consortium Member, but excluding the professional fees of such advisors and counsel to each Lender and each other Canadian Lender Consortium Member), and (ii) costs and expenses incurred in connection with the enforcement or preservation of any rights or exercise of remedies under this Agreement, the other Loan Documents and any other documents prepared in connection herewith or therewith in respect of any Event of Default or otherwise, including the fees and disbursements of counsel (including the allocated fees and disbursements and other charges of in-house counsel) to each Lender and each other Canadian Lender Consortium Member, (b) to pay, indemnify, or reimburse each Lender and each other Canadian Lender Consortium Member for, and hold each Lender and each other Canadian Lender Consortium Member harmless from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying such fees, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Loan Documents and any such other documents, and (c) to pay, indemnify or reimburse each Lender and each other Canadian Lender Consortium Member, their respective affiliates, and their respective officers, directors, partners, employees, advisors, agents,

controlling persons and trustees (each, an "Indemnitee") for, and hold each Indemnitee harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever incurred by an Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of, the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, including any of the foregoing relating to the use or proposed use of proceeds of the Loans or the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations or assets of any Group Member, including any of the Mortgaged Properties, and the reasonable fees and expenses of legal counsel in connection with claims, actions or proceedings by any Indemnitee against any Loan Party under any Loan Document or any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by any third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto (all the foregoing in this clause (c), collectively, the "Indemnified Liabilities"), provided that the Borrower shall have no obligation hereunder to any Indemnitee (x) for Taxes (it being understood that the Borrower's obligations with respect to Taxes are set forth in Section 2.12) or (y) with respect to Indemnified Liabilities to the extent such Indemnified Liabilities resulted from the gross negligence or willful misconduct of, in each case as determined by a final and nonappealable decision of a court of competent jurisdiction, such Indemnitee, any of its affiliates or its or their respective officers, directors, partners, employees, agents or controlling persons. No Indemnitee shall be liable for any damages arising from the use by unauthorized persons of information or other materials sent through electronic, telecommunications or other information transmission systems that are intercepted by such persons or for any special, indirect, consequential or punitive damages in connection with the Loans. Without limiting the foregoing, and to the extent permitted by Applicable Law, the Borrower agrees not to assert and to cause its Subsidiaries not to assert, and hereby waives and agrees to cause its Subsidiaries to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnitee. All amounts due under this Section 8.5 shall be payable not later than 30 days after written demand therefor. Statements payable by the Borrower pursuant to this Section 8.5 shall be submitted to the Treasurer of the Borrower as set forth in Section 8.2, or to such other Person or address as may be hereafter designated by the Borrower in a written notice to the Lenders. The agreements in this Section 8.5 shall survive repayment of the Loans and all other amounts payable hereunder.

8.6. <u>Successors and Assigns; Participations and Assignments</u>. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, all future holders of the Loans and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder (except to its Debtor Successor) without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 8.6.

(b) Any Lender may, without the consent of the Borrower, assign to one or more assignees (each, an "<u>Assignee</u>") all or a portion of its rights and obligations under this Agreement (including all or a portion of its Loans at the time owing to it) pursuant to an Assignment and Assumption, executed by such Assignee and such Lender and delivered to the Borrower for its records, to any other branch, division or agency of the United States or Canadian governments or any government of any state, province, commonwealth or territory of the United States or Canada or to New CarCo, together with any related rights and obligations thereunder, without the consent of the Borrower. The Borrower or its agent will maintain a register ("<u>Register</u>") of each Lender and Assignee. The Register shall contain the names and addresses of the Lenders and Assignees and the principal amount of the loans (and stated interest thereon) held by each such Lender and Assignee from time to time. The entries in the Register shall be conclusive and binding, absent manifest error.

Any Lender may, without the consent of the Borrower, sell participations (c) to any other branch, division or agency of the United States or Canadian governments or any government of any state, province, commonwealth or territory of the United States or Canada (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (C) the Borrower and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to the proviso to the second sentence of Section 8.1 and (2) directly affects such Participant. Subject to paragraph (c) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Section 2.10 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 8.6. To the extent permitted by law, and subject to paragraph (c) of this Section, each Participant also shall be entitled to the benefits of Section 8.7 as though it were a Lender. Notwithstanding anything to the contrary in this Section 8.6, each Lender shall have the right to sell one or more participations in all or any part of its Loans or other Obligations to one or more lenders or other Persons that provide financing to such Lender in the form of sales and repurchases of participations without having to satisfy the foregoing requirements. In the event that a Lender sells a participation in such Lender's rights and obligations under this Agreement, the Lender, on behalf of Borrower, shall maintain a register on which it enters the name, address and interest in this Agreement of all Participants.

8.7. <u>Adjustments</u>; <u>Set-off</u>. (a) Except to the extent that this Agreement expressly provides for payments to be allocated to a particular Lender or to the Lenders, if any Lender (a "<u>Benefitted Lender</u>") shall, at any time after the Loans and other amounts payable hereunder shall immediately become due and payable pursuant to Section 7, receive any payment of all or part of the Obligations owing to it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of the Obligations owing

to such other Lender, such Benefitted Lender shall purchase for cash in Dollars from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such collateral or the proceeds thereof, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) In addition to any rights and remedies of the Lenders provided by law, subject to any notice or other requirement contained in the Orders, each Lender shall have the right, without (i) further order of or application to the Bankruptcy Court, or (ii) prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by Applicable Law, upon all amounts owing hereunder becoming due and payable (whether at the stated maturity, by acceleration or otherwise) to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the Borrower. Each Lender agrees promptly to notify the Borrower and the other Lenders after any such set-off and application made by such Lender; <u>provided</u> that, the failure to give such notice shall not affect the validity of such set off and application.

8.8. <u>Counterparts</u>. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Lenders.

8.9. <u>Severability</u>. Any provision of this Agreement that is held to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.10. <u>Integration</u>. This Agreement and the other Loan Documents represent the entire agreement of the Borrower and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents. Subject to Section 8.18, in the event of any conflict between this Agreement or any other Loan Document and the Orders, the Orders shall control.

#### 8.11. <u>Governing Law</u>. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH,

# THE LAW OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

8.12. <u>Submission to Jurisdiction; Waivers</u>. All judicial proceedings brought against any Loan Party hereto arising out of or relating to this Agreement or any other Loan Document, or any Obligations hereunder and thereunder, may be brought in the Bankruptcy Court and, if the Bankruptcy Court does not have (or abstains from) jurisdiction, the courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof. Each Loan Party hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any such legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non exclusive general jurisdiction of the courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such party at its address set forth in Section 8.2 or at such other address of which the Lenders shall have been notified pursuant thereto; and

(d) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

8.13. <u>Acknowledgments</u>. The Loan Party hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) no Lender has any fiduciary relationship with or duty to any Group Member arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Lenders, on one hand, and any Group Member, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower or any Subsidiary and the Lenders.

8.14. <u>Release of Guaranties</u>. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Lenders hereby agree to take promptly, any action requested by the Borrower having the effect of releasing, or evidencing the release of, any

guarantee by any Loan Party of the Obligations to the extent necessary to permit consummation of any transaction not prohibited by any Loan Document or that has been consented to in accordance with Section 8.1.

8.15. Confidentiality. Each of the Lenders agrees to keep confidential all non-public information provided to it by any Loan Party or any other Lender pursuant to this Agreement that is designated by such Loan Party as confidential; provided that nothing herein shall prevent any Lender from disclosing any such information (a) to any other Lender or any affiliate of any thereof, (b) subject to an agreement to comply with the provisions of this Section 8.15 (or other provisions at least as restrictive as this Section), to any actual or prospective Transferee or any pledgee of Loans or any direct or indirect contractual counterparty (or the professional advisors thereto) to any swap or derivative transaction relating to the Loan Party and its obligations, (c) to its affiliates, employees, directors, trustees, agents, attorneys, accountants and other professional advisors, or those of any of its affiliates for performing the purposes of a Loan Document, subject to such Lender, as the case may be, advising such Person of the confidentiality provisions contained herein, (d) upon the request or demand of any Governmental Authority or regulatory agency (including self-regulated agencies) having jurisdiction (or purporting to have jurisdiction) over it upon notice (other than in connection with routine examinations or inspections by regulators) to the Borrower thereof unless such notice is prohibited or the Governmental Authority or regulatory agency shall require otherwise, (e) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law, after notice to the Borrower if reasonably feasible, and, if applicable, after exhaustion of the Group Members' rights and remedies under Section 1.6 of the Department of the Treasury Regulations, 31 C.F.R. Part 1, Subpart A; Sections 27-29 inclusive and 44 of the Access to Information Act, R.S.C., ch A-1 (1985) and Section 28 and Part IV (Sections 50-56 inclusive) of the Freedom of Information and Protection of Privacy Act, R.S.O., ch. F.31 (1990), after notice to the Borrower if reasonably feasible, (f) if requested or required to do so in connection with any litigation or similar proceeding, after notice to the Borrower if reasonably feasible, (g) that has been publicly disclosed, other than in breach of this Section, (h) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender or (i) in connection with the exercise of any remedy hereunder or under any other Loan Document.

#### 8.16. <u>Waivers of Jury Trial</u>. THE BORROWER AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

8.17. <u>USA PATRIOT Act</u>. Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the USA PATRIOT Act.

8.18. <u>Orders</u>. The terms and conditions hereunder shall be subject to the terms and conditions of the Final Order. In the event of any inconsistency between the terms or

conditions of this Agreement and the terms and conditions of the Orders, the terms and conditions of the Orders shall control. Notwithstanding the foregoing, in the event of any inconsistency between the terms or conditions of Section 8.1 and the terms and conditions of the Orders, the terms and conditions of Section 8.1 shall control.

8.19. Effect of Amendment and Restatement of the Existing Credit Agreement. On the Effective Date, the Existing Credit Agreement shall be amended, restated and superseded in its entirety. The parties hereto acknowledge and agree that (a) this Agreement and the other Loan Documents, whether executed and delivered in connection herewith or otherwise, do not constitute a novation, payment and reborrowing, or termination of the "Obligations" (as defined in the Existing Credit Agreement) under the Existing Credit Agreement as in effect prior to the Effective Date and (b) such "Obligations" are in all respects continuing (as amended and restated hereby) with only the terms thereof being modified as provided in this Agreement.

8.20. <u>New GM Equity Interests.</u> Each Lender hereby acknowledges and agrees that it, and each Affiliate of any Lender, (a) shall have no right, in any manner whatsoever, to the New GM Equity Interests or any proceeds received from the sale or distribution thereof in satisfaction or repayment of the Loans and (b) will not initiate or prosecute any claims, causes of action, adversary proceedings or other litigation seeking recourse against the New GM Equity Interests or any proceeds from the sale or distribution thereof in satisfaction or repayment of the Loans or other litigation seeking recourse against the New GM Equity Interests or any proceeds received from the sale or distribution thereof in satisfaction or repayment of the Loans or otherwise.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

# MOTORS LIQUIDATION COMPANY

By:_____

Name: Title:

# [GUARANTOR]

By:_____ Name: Title:

#### UNITED STATES DEPARTMENT OF THE TREASURY, as a Lender

By:______ Title: Interim Assistant Secretary of the Treasury for Financial Stability

# EXPORT DEVELOPMENT CANADA, as a Lender

By:_____

Name: Title:

By:_____

Name:

Title:

# Exhibit 9

#### Mayer, Thomas Moers

From: Caton, Amy

Sent: Tuesday, June 23, 2009 9:58 AM

To: Mayer, Thomas Moers; 'Mintz, Douglas'; john.rapisardi@cwt.com

Cc: Novod, Gordon; Sharret, Jennifer; Campana, Kristen; Eckstein, Kenneth H.

Subject: RE: GUM -- DIP Order Draft

Doug and John -- below are the global comments we gave to the Debtors regarding the DIP and cash collateral orders. These are based on our meeting on Friday with the Debtors and Treasury. Could you please forward to your team as appropriate. We can discuss these on this morning's call, or on a follow-up call if that makes more sense.

We talked briefly with Weil last night about the issues we have with transforming the DIP facility into a wind-down facility, which will require stripping a lot of the DIP facility provisions. What we suggested was the following solution and changes to the DIP order: (1) a finding or so-ordered paragraph in the order that, upon the closing of the sale process, Treasury will fund \$950mm to Old GM, to be used for wind-down expenses, (2) a finding in the order that, based on testimony from Alix Partners, that the \$950mm being left behind is sufficient to fund wind-down expenses and pay administrative and priority claims, (3) a timeline for when the wind-down budget and amendments will be proposed, with the Committee being consulted on the drafting of the amendments and wind-down budget and an opportunity to object.

We can circulate more detailed comments to the Final Order as well. Of note, we have not yet seen the Final Budget, which is referenced in the Final Order.

1. **Consent** / **Review Rights.** The Committee should be granted consultation rights over the Final Budget and any winddown Budget (as referenced in Section 2.14 of the DIP loan agreement), with at least a 5 day notice period and opportunity to object. In addition, the Committee should receive the same reports from the Company that the Company is providing to the DIP lender under Section 5.2 of the DIP loan agreement or Final DIP Order.

2. **Excluded Collateral.** Definition of "Excluded Collateral" should specifically include stock and warrants being left for Old GM and chapter 5 actions against the prepetition lenders. The DIP Loan should be non-recourse to these assets.

3. Wind-Down Budget and Costs. Before any Section 506(c) waiver is granted, Final DIP order should provide that the DIP Lender is committing to fund the Wind-Down Budget and the expenses contained therein by no more than \$950 million. We need to have testimony from Alix Partners that the \$950 million is enough to cover wind-down expenses, and confirm that the wind-down budget and requirements of the DIP credit agreement match. For example, the June 12 draft wind-down budget provides that an estimated \$92.5mm in asset sale proceeds will be used to fund wind-down costs, whereas under the DIP credit agreement, those amounts are to be used to mandatorily prepay and reduce the DIP. Administrative and priority claims should be senior in right of payment out of the \$950 million to any repayment of the DIP/wind-down loan.

We do not yet understand how the wind-down loan is going to fit in through the current DIP facility documents. Won't the wind-down facility have stripped-down covenants, events of default, mandatory prepayment provisions, etc, to avoid defaults and potential early repayment of the \$950mm. In addition, if the Treasury leaves its claim for the \$950mm outstanding, is it going to create a veto over the plan, or even a potential administrative insolvency.

4. **Investigation Period.** The Committee should be granted a 60 day investigation period to review the prepetition lenders' liens and claims against the prepetition lenders.

# Exhibit 10

From:	Caton, Amy <acaton@kramerlevin.com></acaton@kramerlevin.com>
Sent:	Tuesday, June 30, 2009 6:37 PM
То:	ram.burshtine@weil.com; Perry.Hicks@cwt.com; Julian.Chung@cwt.com; Jeff.Morneau@weil.com; soo-jin.shim@weil.com; richard.ginsburg@weil.com; steven.karotkin@weil.com
Cc:	Katz, Alyssa R. <akatz95503590@exchange.com>; campana@KRAMERLEVIN.com; arosenberg@paulweiss.com; mphillips@paulweiss.com; jhamill@paulweiss.com; Mayer, Thomas Moers <tmayer@exchange.com>; Eckstein, Kenneth H. <keckstein@exchange.com></keckstein@exchange.com></tmayer@exchange.com></akatz95503590@exchange.com>
Subject:	GM Wind-Down Facility: KL Comments
Attach:	KL Markup Wind-Down CA 6-30-09.doc

All,

We continue to be concerned that the wind-down credit agreement as drafted does not reflect the business deal that we understood would be implemented here. Our understanding of the business deal is as follows:

First, the wind-down loan is to be repaid only to the extent that the wind-down is complete and there is cash left over. The repayment provisions must reflect that, and the provisions of the DIP order that require payment of amounts contemplated under the wind-down budget must be included in this agreement.

Second, the wind-down is supposed to continue until we have a plan of distribution, without Treasury having the right to pull the plug on the wind-down, unless funds are not being used in accordance with the business of a wind-down and the wind-down budget. This is why we have removed some of the covenants and events of default. If there is a default under any of the sale documents, New GM has its remedies against Old GM under those documents.

Third, the only amounts that are going to prepay the loan are proceeds from asset sales. [See Section __, which has added back in the concept of Extraordinary Receipts].

Finally, we have not yet seen a revised wind-down budget. From recent conversations between FTI and Alix, we understand that the \$950mm is not enough to pay administrative and priority expense claims, as well as pay for certain claims (including environmental liabilities, claims secured by real property that is being sold to New GM, and others) that New GM intends to leave behind with the estate.

These issues are of utmost importance to the Creditors' Committee. We have attached a mark-up of the draft credit agreement that implement our requested changes and understanding of the business deal on the wind-down.

Please let us know at your earliest convenience how you would like to proceed.

#### PRIVILEGED AND CONFIDENTIAL <u>CWT-DRAFTKLNF COMMENTS 6/2930/09</u>

### \$[950,000,000] AMENDED AND RESTATED SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT

among

#### GENERAL MOTORS CORPORATION, a Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code, as the Borrower,

#### THE GUARANTORS

and

#### THE LENDERS PARTIES HERETO FROM TIME TO TIME

Dated as of July __, 2009

# TABLE OF CONTENTS

#### **SECTION 1**

#### DEFINITIONS

1.1	Defined Terms	2
1.2	Other Definitional Provisions	23
1.3	Conversion of Foreign Currencies	24

## **SECTION 2**

# AMOUNT AND TERMS OF THE LOANS

2.1	Loans	
2.2	[Intentionally Omitted]	
2.3	Repayment of Loans; Evidence of Debt	
2.4	Optional Prepayments	
2.5	Mandatory Prepayments	
2.6	Interest Rates and Payment Dates/Fee Payment Dates/Fees	
2.7	Computation of Interest and Fees	
2.8	Inability to Determine Interest Rate; Illegality	
2.9	Treatment of Borrowings and Payments; Evidence of Debt	
2.10	Indemnity	
2.11	Superpriority Nature of Obligations and Lenders' Liens	
2.12	Taxes	

# **SECTION 3**

## REPRESENTATIONS AND WARRANTIES

Existence	31
[Intentionally Omitted.]	31
[Intentionally Omitted.]	31
[Intentionally Omitted.]	31
Action, Binding Obligations	32
Approvals	
[Intentionally Omitted.]	32
Investment Company Act	32
[Intentionally Omitted.]	32
Chief Executive Office; Chief Operating Office	
Location of Books and Records	32
[Intentionally Omitted.]	32
	[Intentionally Omitted.] [Intentionally Omitted.] [Intentionally Omitted.] Action, Binding Obligations Approvals [Intentionally Omitted.] Investment Company Act [Intentionally Omitted.] Chief Executive Office; Chief Operating Office. Location of Books and Records

# <u>Page</u>

3.13	[Intentionally Omitted.]	32
3.14	Expense Policy	
3.15	Subsidiaries	
3.16	Capitalization	33
3.17	Fraudulent Conveyance	33
3.18	USA PATRIOT Act	33
3.19	Embargoed Person	33
3.20	Use of Proceeds	34
3.21	Representations Concerning the Collateral	35
3.22	[Intentionally Omitted]	35
3.23	[Intentionally Omitted]	35
3.24	Lien Priority	35
3.25	[Intentionally Omitted]	36
3.26	[Intentionally Omitted.]	36
3.27	[Intentionally Omitted]	36
3.28	Excluded Collateral	36
3.29	[Intentionally Omitted]	37
3.30	[Intentionally Omitted]	37
3.31	The Final Order	37
3.32	Wind-Down Budget	37

# SECTION 4

# CONDITIONS PRECEDENT

4.1	Conditions to Effectiveness	
-----	-----------------------------	--

# **SECTION 5**

# AFFIRMATIVE COVENANTS

5.1	Financial Statements	40
5.2	Notices; Reporting Requirements	41
5.3	Existence	
5.4	Payments of Taxes	43
5.5	Use of Proceeds	43
5.6	Maintenance of Existence; Payment of Obligations; Compliance with Law	44
5.7	Further Identification of Collateral	44
5.8	Defense of Title	44
5.9	Preservation of Collateral	44
5.10	Maintenance of Papers, Records and Files	45
5.11	Maintenance of Licenses	45
5.12	Payment of Obligations	45
5.13	OFAC	46
5.14	Investment Company	46
5.15	Further Assurances	46

# <u>Page</u>

5.16	Executive Privileges and Compensation	46
	Aircraft	
5.18	Restrictions on Expenses	47
5.19	Employ American Workers Act	48
5.20	Internal Controls; Recordkeeping; Additional Reporting	48
5.21	Waivers	49
5.22	[Intentionally Omitted]	49
5.23	Additional Guarantors	49
5.24	Provide Additional Information	49
5.25	Inspection of Property; Books and Records; Discussions	50

# **SECTION 6**

## NEGATIVE COVENANTS

6.1	Prohibition on Fundamental Changes	.50
6.2	Lines of Business.	.50
6.3	Transactions with Affiliates	.50
6.4	Limitation on Liens	.51
6.5	Restricted Payments	.51
6.6	Amendments to Transaction Documents	.51
6.7	Changes in Fiscal Periods	. 52
6.8	Negative Pledge	.52
6.9	Indebtedness	. 52
6.10	Investments	.52
6.11	Action Adverse to the Collateral	
6.12	Limitation on Sale of Assets	.52
6.13	[Intentionally Omitted]	.52
6.14	JV Agreements	.52
6.15	Swap Agreements	. 53
6.16	Clauses Restricting Subsidiary Distributions	
6.17	Sale/Leaseback Transactions	
6.18	[Intentionally Omitted]	.53
6.19	Modification of Organizational Documents	

# SECTION 7

# EVENTS OF DEFAULT

7.1	Events of Default	54
7.2	Remedies upon Event of Default	57

# <u>Page</u>

## **SECTION 8**

# MISCELLANEOUS

57
. 58
60
60
. 60
62
63
63
64
64
64
64
65
65
65
66
66
66
. 66

#### ANNEXES:

I Wind-Down Budget

#### SCHEDULES:

- 1.1A Outstanding Amounts of Tranche C Term Loans
- 1.1B Guarantors
- 1.1C Mortgaged Property
- 1.1D Pledgors
- 1.1E [Intentionally Omitted]
- 1.1F [Intentionally Omitted]
- 1.1G Certain Excluded Subsidiaries
- 3.3 Material Litigation
- 3.10 Chief Executive Office and Chief Operating Office
- 3.11 Location of Books and Records
- 3.15 Subsidiaries
- 3.16 Ownership of North American Group Members
- 3.21 Jurisdictions and Recording Offices
- 3.25 Intellectual Property
- 3.26 JV Agreements
- 3.28 Excluded Collateral

## EXHIBITS:

- A Form of Amended and Restated Guaranty and Security Agreement
- B-1 Form of Secretary's Certificate
- B-2 Form of Officer's Certificate
- C Form of Assignment and Assumption
- D-1 Form of Waiver for the Loan Parties
- D-2 Form of Waiver of SEO to Treasury
- D-3 Form of Consent and Waiver of SEO to Borrower
- D-4 Form of Waiver of Senior Employee to Treasury
- D-5 Form of Consent and Waiver of Senior Employee to Borrower
- E-1 Form of Legal Opinion of Weil, Gotshal & Manges LLP
- E-2 Form of Legal Opinion of In-House Counsel
- F Form of Compliance Certificate
- G Form of Amended and Restated Note
- H [Intentionally Omitted]
- I Form of Amended and Restated Environmental Indemnity Agreement
- J Form of Amended and Restated Mortgage
- K [Intentionally Omitted]
- L Form of Amended and Restated Equity Pledge Agreement

AMENDED AND RESTATED SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this "<u>Agreement</u>"), dated as of July ___, 2009, by and among GENERAL MOTORS CORPORATION, a Delaware corporation and a debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code (as defined below) (the "<u>Borrower</u>"), the Guarantors (as defined below), and the several lenders from time to time parties to this Agreement (the "<u>Lenders</u>").

#### $\underline{W} \underline{I} \underline{T} \underline{N} \underline{E} \underline{S} \underline{S} \underline{E} \underline{T} \underline{H}$ :

WHEREAS, on June 1, 2009 (the "<u>Petition Date</u>"), the Borrower, Saturn, LLC, a Delaware limited liability company, Saturn Distribution Corporation, a Delaware corporation, and Chevrolet-Saturn of Harlem, Inc., a Delaware corporation (each an "<u>Initial Debtor</u>" and collectively, the "<u>Initial Debtors</u>") filed voluntary petitions in the Bankruptcy Court (as defined below) for relief, and commenced cases (each an "<u>Initial Case</u>" and collectively, the "<u>Initial Cases</u>") under the Bankruptcy Code and have continued in the possession of their assets and in the management of their businesses pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, on June 3, 2009, the Borrower entered into the Secured Superpriority Debtor-In-Possession Credit Agreement, among the Borrower and the Lenders (the "Existing Credit Agreement");

WHEREAS, pursuant to the Existing Credit Agreement, the Lenders provided the Borrower with a multiple-draw term loan facility in an aggregate principal amount not to exceed \$33,300,000,000, comprised of (i) term loans in an aggregate amount equal to \$_____ (the "<u>Tranche B Term Loans</u>") and (ii) term loans in an aggregate amount equal to <u>no less than</u> \$[950,000,000] (provided that any greater amount shall be subject to approval by the Lenders) (the "<u>Tranche C Term Loans</u>");

WHEREAS, on June 25, 2009, the Bankruptcy Court entered the Final Order pursuant to the Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (the "Final Order") approving the Existing Credit Agreement, and providing *inter alia*, that (i) obligations owing to the Lenders under the Existing Credit Agreement shall be accorded administrative expense status withand subject only to the Carve-Out (as defined below), have priority over any and all other administrative expenses arising in these Cases; provided, however, that subsequent to the closing of the Related Section 363 Sale Transactions (as defined below), claims against the Debtors' estates that have priority under Sections 503(b) and 507(a) of the Bankruptcy Code, including costs and expenses of administration that are attendant to the formulation and confirmation of a liquidating chapter 11 plan, as well as other expenses incurred under the Wind-Down Budget, whether incurred prior or subsequent to the consummation of the Related Section 363 Sale Transactions (up to the amount of the Tranche C Term Loans) owing to the Lenders under this Agreement and (ii) the obligations owing under the Existing Credit Agreement shall be secured by fully perfected security interests and Liens upon all Collateral;

WHEREAS, pursuant to the Master Transaction Agreement (as defined below), on [July __, 2009] [the date hereof] the Treasury (as defined below) exchanged a portion of its Tranche B Term Loans in an amount equal to \$______ together with, its Additional Note (as defined in the Existing Credit Agreement) and its rights under the Existing UST Term Loan Agreement (as defined below) to New CarCo (as defined below) in exchange for common and preferred Capital Stock (as defined below) of New CarCo;

WHEREAS, pursuant to the Master Transaction Agreement, on [July __, 2009] [the date hereof] the Canadian Lender exchanged a portion of its Tranche B Term Loans in an amount equal to \$______ together with its Additional Note to New CarCo in exchange for common and preferred Capital Stock of New CarCo;

WHEREAS, pursuant to the Master Transaction Agreement-(as-defined-below) and in accordance with the Section 363 Sale Order (as defined below), the Borrower sold to New CarCo all or substantially all of the Borrower's assets and property, and New CarCo assumed certain liabilities of the Borrower and its subsidiaries, including a portion of the Treasury's Tranche B Term Loans in an aggregate amount equal to \$7,072,488,605 pursuant to the Assignment and Assumption Agreement, dated as of the date hereof (the "<u>New CarCo Assignment and Assumption</u>"), between the Borrower and New CarCo (collectively, and together with the other transactions contemplated by the Transaction Documents, the "<u>Related Section 363 Sale Transactions</u>");

WHEREAS, after giving effect to the Related Section 363 Sale Transactions, the remaining obligations of the Borrower to the Lenders is comprised solely of the Tranche C Term Loans; and

WHEREAS, the Borrower has requested, and the Lenders have agreed, to amend and restate the portion of the Existing Credit Agreement relating to the Tranche C Term Loans on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, the parties hereto agree that on the Effective Date, as provided in Section 8.19, the Existing Credit Agreement shall be amended and restated in its entirety as follows:

# **SECTION 1**

#### DEFINITIONS

1.1. <u>Defined Terms</u>. As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

"<u>ABR</u>": for any day, a rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the greater of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day <u>plus</u>  $\frac{1}{2}$  of 1% and (c) the three month Eurodollar Rate (for the avoidance of doubt after giving effect to the provisos in the definition thereof) <u>plus</u>

1.00%; <u>provided</u> that, in the event the Required Lenders shall have determined that adequate and reasonable means do not exist for ascertaining the calculation of clause (c), such calculation shall be replaced with the last available calculation of the three month Eurodollar Rate <u>plus</u> 1.00%. Any change in the ABR due to a change in the Prime Rate, the Federal Funds Effective Rate or the three month Eurodollar Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate, the Federal Funds Effective Rate or the three month Eurodollar Rate, respectively.

ABR.

"<u>ABR Loans</u>": Loans the rate of interest applicable to which is based upon the

"Additional Guarantor": as defined in Section 5.23.

"<u>Affiliate</u>": with respect to any Person, any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such Person. For purposes of this Agreement, "control" (together with the correlative meanings of "controlled by" and "under common control with") means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract, or otherwise. For the avoidance of doubt, pension plans of a Person and entities holdings the assets of such plans, shall not be deemed to be Affiliates of such Person.

"<u>Aggregate Exposure Percentage</u>": with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender's aggregate then unpaid principal amount of such Lender's Loans at such time to the sum of the aggregate then unpaid principal amount of all Lenders at such time.

"<u>Agreement</u>": as defined in the preamble hereto.

"<u>Anti-Money Laundering Laws</u>": as defined in Section 3.18(d).

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

"<u>Applicable Margin</u>": (A) 2.0% per annum in the case of ABR Loans and (B) 3.0% per annum in the case of Eurodollar Loans.

"<u>Asset Sale</u>": any Disposition of property or series of related Dispositions of property occurring contemporaneously. The term "Asset Sale" shall not include any issuance of Capital Stock or any event that constitutes a Recovery Event.

"Assignee": as defined in Section 8.6(b).

"Assignment and Assumption": an Assignment and Assumption, substantially in the form of Exhibit C.

"Bankruptcy Code": the United States Bankruptcy Code, 11 U.S.C. Section 101

et seq.

"<u>Bankruptcy Court</u>": the United States Bankruptcy Court for the Southern District of New York (together with the District Court for the Southern District of New York, where applicable).

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

"<u>Bankruptcy Rules</u>": the Federal Rules of Bankruptcy Procedure and local rules of the Bankruptcy Court, each as amended, and applicable to the Cases.

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

"Benefitted Lender": as defined in Section 8.7(a).

"<u>Board</u>": the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Borrower": as defined in the preamble hereto.

"<u>Business Day</u>": any day other than a Saturday, Sunday or other day on which banks in New York City or Ottawa, Ontario, Canada are permitted to close; <u>provided</u>, <u>however</u>, that when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London Interbank market.

"<u>Canadian Lender</u>": Export Development Canada, a corporation established pursuant to the laws of Canada, and its successors and assigns.

"<u>Canadian Lender Consortium Members</u>": each of the Export Development Canada, the Government of Canada and the Government of Ontario.

"<u>Canadian Post-Sale Facility</u>": the Amended and Restated Loan Agreement, dated as of the [Effective Date], by and among General Motors of Canada Limited, as borrower, the other loan parties thereto, and the Canadian Lender, as amended, supplemented or respected from time to time.

"<u>Canadian PV Note</u>": the [Note], dated as of the [Effective Date], by and among Vehicle Acquisition Holdings LLC, as borrower, the other loan parties thereto, and the Canadian Lender, as amended, supplemented or replaced from time to time.

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

"<u>Capital Stock</u>": any and all equity interests, including any shares of stock, membership or partnership interests, participations or other equivalents whether certificated or uncertificated (however designated) of a corporation, limited liability company, partnership or any other entity, and any and all similar ownership interests in a Person and any and all warrants or options to purchase any of the foregoing.

"<u>Carve-Out</u>": as defined in the Orders.

"<u>Cases</u>": the Initial Cases and each other case of a Debtor filed with the Bankruptcy Court and joined with the Initial Cases.

"Cash Equivalents": shall mean (a) U.S. dollars, or money in other currencies received in the ordinary course of business, (b) securities with maturities of one (1) year or less from the date of acquisition issued or fully guaranteed or insured by the United States or Canadian government or any agency thereof, (c) securities with maturities of one (1) year or less from the date of acquisition issued or fully guaranteed by any state, province, commonwealth or territory of the United States or Canada, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least "A" by S&P or "A" by Moody's or equivalent rating, (d) demand deposit, certificates of deposit and time deposits with maturities of one (1) year or less from the date of acquisition and overnight bank deposits of any commercial bank, supranational bank or trust company having capital and surplus in excess of \$500,000,000, (e) repurchase obligations with respect to securities of the types (but not necessarily maturity) described in clauses (b) and (c) above, having a term of not more than 90 days, of banks (or bank holding companies) or subsidiaries of such banks (or bank holding companies) and non-bank brokerdealers listed on the Federal Reserve Bank of New York's list of primary and other reporting dealers ("Repo Counterparties"), which Repo Counterparties have capital, surplus and undivided profits aggregating in excess of \$500,000,000 (or the foreign equivalent thereof) and which Repo Counterparties or their parents (if the Repo Counterparties are not rated) will at the time of the transaction be rated "A-1" by S&P (or such similar equivalent rating) or higher by at least one nationally recognized statistical rating organization, (f) commercial paper rated at least A-1 or the equivalent thereof by S&P or P-1 or the equivalent thereof by Moody's and in either case maturing within one (1) year after the day of acquisition, (g) short-term marketable securities of comparable credit quality. (h) shares of money market mutual or similar funds which invest at least 95% in assets satisfying the requirements of clauses (a) through (g) of this definition, and (i) in the case of a Foreign Subsidiary, substantially similar investments, of comparable credit quality, denominated in the currency of any jurisdiction in which such Person conducts business.

"<u>Change of Control</u>": with respect to the Borrower, the acquisition, after the Closing Date, by any other Person, or two or more other Persons acting in concert other than the Permitted Holders, the Lenders or any Affiliate of the Lenders, of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act of outstanding shares of voting stock of the Borrower at any time if after giving effect to such acquisition such Person or Persons owns twenty percent (20%) or more of such outstanding voting stock.

"Closing Date": June 3, 2009.

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

"<u>Collateral</u>": all property and assets of the Loan Parties of every kind or type whatsoever, including tangible, intangible, real, personal or mixed, whether now owned or hereafter acquired or arising, wherever located, all property of the estates of each Debtor within the meaning of section 541 of the Bankruptcy Code (including avoidance actions arising under Chapter 5 of the Bankruptcy Code and applicable state law except avoidance actions against the Prepetition Senior Facilities Secured Parties (as defined in the Final Order)), all property pledged to secure the Obligations under each Collateral Document (other than the Orders) and all proceeds, rents and products of the foregoing other than Excluded Collateral. For the avoidance of doubt, the proceeds of the Tranche C Term Loans constitute Collateral.

"<u>Collateral Documents</u>": means, collectively, the Orders, the Guaranty, the Equity Pledge Agreement, each Mortgage, collateral assignment, security agreement, pledge agreement or similar agreements delivered to the Lenders to secure the Obligations. The Collateral Documents (other than the Orders) shall supplement, and shall not limit, the grant of Collateral pursuant to the Orders.

"<u>Committee</u>": any statutory committee appointed in the Cases.

"<u>Compensation Regulations</u>": as defined in Section 5.16(i).

"<u>Compliance Certificate</u>": a certificate duly executed by a Responsible Officer, substantially in the form of Exhibit F, for the immediately prior calendar month and on a cumulative basis from the Petition Date.

"Consolidated": the consolidation of accounts in accordance with GAAP.

"<u>Contractual Obligation</u>": as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control": as defined in the definition of "Affiliate".

"<u>Controlled Affiliate</u>": as defined in Section 3.18(a).

"<u>Convention</u>": as defined in Section 2.12(d).

"<u>Debtor</u>": each of the Initial Debtors and, subject to the written consent of the Required Lenders, each other Subsidiary of the Initial Debtors to the extent that (i) such Subsidiary files with the Bankruptcy Court, (ii) such case is joined with the Cases and (iii) such Subsidiary is subject, by order of the Bankruptcy Court, to the previously issued orders relating to the Cases (including the Orders).

"<u>Default</u>": any event, that with the giving of notice, the lapse of time, or both, would become an Event of Default.

"DIP Liens": the Liens described in Sections 3.24(b) and 3.24(c).

"<u>Disposition</u>": with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof; and the terms "Dispose" and "Disposed of" shall have correlative meanings.

"Dollar Equivalent": on any date of determination, (a) with respect to any amount denominated in Dollars, such amount and (b) with respect to an amount denominated in any other currency, the equivalent in Dollars of such amount as determined by the Treasury in accordance with normal banking industry practice using the Exchange Rate on the date of determination of such equivalent. In making any determination of the Dollar Equivalent, the Treasury shall use the relevant Exchange Rate in effect on the date on which a Dollar Equivalent is required to be determined pursuant to the provisions of this Agreement. As appropriate, amounts specified herein as amounts in Dollars shall include any relevant Dollar Equivalent amount.

"Dollars" and "<u>\$</u>": the lawful money of the United States.

"<u>Domestic Subsidiary</u>": any Subsidiary that is organized or existing under the laws of the United States or Canada or any state, province, commonwealth or territory of the United States or Canada.

"<u>EAWA</u>": the Employ American Workers Act (Section 1611 of Division A, Title XVI of the American Recovery and Reinvestment Act of 2009), Public Law No. 111-5, effective as of February 17, 2009, as may be amended and in effect from time to time.

"<u>EESA</u>": the Emergency Economic Stabilization Act of 2008, Public Law No. 110-343, effective as of October 3, 2008, as amended by Section 7000 *et al.* of Division A, Title VII of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, effective as of February 17, 2009, as may be further amended and in effect from time to time.

"<u>Effective Date</u>": the date on which the conditions precedent set forth in Section 4.1 shall have been satisfied which date shall not be later than the date on which the Related Section 363<u>Sale</u> Transactions are consummated.

"<u>EISA</u>": the Energy Independence and Security Act of 2007, Public Law No. 110-140, effective as of January 1, 2009, as may be amended and in effect from time to time.

"Embargoed Person": as defined in Section 3.19.

"<u>Environmental Indemnity Agreement</u>": the Amended and Restated Environmental Indemnity Agreement dated as of the date hereof, executed by the Loan Parties for the benefit of the Lenders, substantially in the form of Exhibit I.

"<u>Environmental Laws</u>": any and all foreign, Federal, state, provincial, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health, the environment or natural resources, as now or may at any time hereafter be in effect.

"<u>Environmental Permits</u>": any and all permits, licenses, approvals, registrations, notifications, exemptions and other authorizations required under any Environmental Law.

"<u>Equity Pledge Agreement</u>": the Amended and Restated Equity Pledge Agreement dated as of the date hereof, made by each Pledgor in favor of the Lenders, substantially in the form of Exhibit L.

"<u>ERISA</u>": the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Eurocurrency Reserve Requirements": for any day as applied to a Eurodollar Loan, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including basic, supplemental, marginal and emergency reserves) under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board) maintained by a member bank of the Federal Reserve System; provided that the Eurocurrency Reserve Requirements shall be \$0 with respect to the Canadian Lender.

"Eurodollar Base Rate": with respect to each day during each Interest Period pertaining to a Eurodollar Loan, the rate per annum determined on the basis of the rate for deposits in Dollars for a period equal to such Interest Period commencing on the first day of such Interest Period appearing on page LIBOR01 of the Reuters screen as of 11:00 a.m. (London time) two Business Days prior to the beginning of such Interest Period. In the event that such rate does not appear on such page of the Reuters screen (or otherwise on such screen), the Eurodollar Base Rate shall be determined by reference to such other comparable publicly available service for displaying eurodollar rates as may be selected by the Treasury or, in the absence of such availability, by reference to the rate at which a reference institution selected by the Treasury is offered Dollar deposits at or about 11:00 a.m. (New York City time) two Business Days prior to the beginning of such Interest Period in the interbank eurodollar market where its eurodollar and foreign currency and exchange operations are then being conducted for delivery on the first day of such Interest Period for the number of days comprised therein.

"<u>Eurodollar Loans</u>": Loans the rate of interest applicable to which is based upon the Eurodollar Rate.

"<u>Eurodollar Rate</u>": with respect to each day during each Interest Period pertaining to a Eurodollar Loan, a rate per annum determined for such day in accordance with the following formula (rounded upward to the nearest 1/100th of 1%):

#### Eurodollar Base Rate 1.00 – Eurocurrency Reserve Requirements

; provided that, in no event shall the Eurodollar Rate be less than 2.00%.

"<u>Eurodollar Tranche</u>": the collective reference to Eurodollar Loans the thencurrent Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

"Event of Default": as defined in Section 7.

"Exchange Act": the Securities and Exchange Act of 1934, as amended.

"Exchange Rate": for any day with respect to any currency (other than Dollars), the rate at which such currency may be exchanged into Dollars, as set forth at 11:00 a.m. (New York time) on such day on the applicable Bloomberg currency page with respect to such currency. In the event that such rate does not appear on the applicable Bloomberg currency page, the Exchange Rate with respect to such currency shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Treasury and the Borrower or, in the absence of such agreement, such Exchange Rate shall instead be the spot rate of exchange of a reference institution selected by the Treasury in the London Interbank market or other market where such reference institution's foreign currency exchange operations in respect of such currency are then being conducted, at or about 11:00 a.m. (New York time) on such day for the purchase of Dollars with such currency, for delivery two Business Days later; provided, however, that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Treasury may use any reasonable method it deems appropriate to determine such rate, and such determination shall be conclusive absent manifest error.

"Excluded Collateral": as defined in Section 3.28.

"Excluded Subsidiary": (i) any JV Subsidiary in which any Loan Party owns less than 80% of the voting or economic interest, (ii) any U.S. Subsidiary of the Borrower listed as one of the "Domestic Entities" on Annex 1 to <u>Schedule 3.28</u> other than the Loan Parties listed therein, (iii) any Subsidiary of the Borrower existing on the Closing Date that the Borrower does not Control as of the Closing Date (including, without limitation, dealerships wholly owned by the Borrower that are operated by a third party pursuant to an agreement in effect on the Petition Date), (iv) [intentionally omitted] and (v) any Subsidiary set forth on <u>Schedule 1.1G</u> as such <u>Schedule 1.1G</u> may be amended from time to time with the consent of the Required Lenders.

"Executive Order": as defined in Section 3.19.

"<u>Existing Agreements</u>": the agreements of the Loan Parties and their Subsidiaries in effect on the Closing Date and any extensions, renewals and replacements thereof so long as any such extension, renewal and replacement could not reasonably be expected to have a material adverse effect on the rights and remedies of the Lenders under any of the Loan Documents.

"Existing Credit Agreement": as defined in the recitals.

"<u>Existing UST Term Loan Agreement</u>": the Loan and Security Agreement, dated as of December 31, 2008, between the Borrower and the Treasury.

"<u>Expense Policy</u>": the Borrower's comprehensive written policy on corporate expenses maintained and implemented in accordance with Section 3.14.

"Extraordinary Receipts": any (i) insurance proceeds (other than the proceeds of self-insurance) that are not the proceeds of a Recovery Event, (ii) downward purchase price adjustments, (iii) tax refunds (other than tax refunds received by Canadian Subsidiaries), judgments and litigation settlements, pension plan reversions and indemnity payments, and (iv) similar receipts outside of the ordinary course of business.

"<u>Federal Funds Effective Rate</u>": for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by JPMorgan Chase Bank, N.A. from three federal funds brokers of recognized standing selected by it.

"<u>Final Order</u>": one or more orders of the Bankruptcy Court approving the terms and conditions of the Loan Documents substantially in the form of the Interim Order, unless provided in this Agreement or as otherwise agreed to by the Required Lenders.

"Foreign Assets Control Regulations": as defined in Section 3.19.

"<u>Foreign Geographic Region</u>": any of (i) the Asia Pacific region, (ii) the Latin America, Africa and Middle East region, and (iii) the European region.

"<u>Foreign 956 Subsidiary</u>": any Non-U.S. Subsidiary of the Borrower that is a "controlled foreign corporation" as defined in Code Section 957.

"Foreign Subsidiary": any Subsidiary that is not a Domestic Subsidiary.

"<u>Funding Office</u>": the office of each Lender specified in <u>Schedule 1.1A</u> or such other office as may be specified from time to time by such Lender as its funding office by written notice to the Borrower.

"<u>GAAP</u>": generally accepted accounting principles as in effect from time to time in the United States.

"<u>Governmental Authority</u>": any federal, state, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality, or any federal, state or municipal court, in each case whether of the United States or a foreign jurisdiction.

"Group Members": the collective reference to the Borrower and its Subsidiaries.

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

"<u>Guarantor</u>": each Person listed on <u>Schedule 1.1B</u> and each other Person that becomes an Additional Guarantor.

"<u>Guaranty</u>": the Amended and Restated Guaranty and Security Agreement dated as of the date hereof, executed and delivered by the Borrower and each Guarantor, substantially in the form of Exhibit A.

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

"Indemnified Liabilities": as defined in Section 8.5.

"Indemnitee": as defined in Section 8.5.

"<u>Initial Case</u>": as defined in the recitals.

"Initial Debtors": as defined in the recitals.

"Interest Payment Date": (a) as to any ABR Loan, the first day of each March, June, September and December to occur while such Loan is outstanding and the final maturity date of such Loan, (b) as to any Eurodollar Loan, the last day of such Interest Period, and (c) as to any Loan, the date of any repayment or prepayment made in respect thereof.

"Interest Period": as to any Eurodollar Loan, (i) initially, the period commencing on the Borrowing Date (as defined in the Existing Credit Agreement) with respect to such Loan and ending three months thereafter; and (ii) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Loan and ending three months thereafter; <u>provided</u> that all of the foregoing provisions relating to Interest Periods are subject to the following:

(A) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(B) any Interest Period that would otherwise extend beyond the Maturity Date shall end on the Maturity Date; and

(C) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period.

"Interim Order": the Interim Order entered June 2, 2009 by the Bankruptcy Court pursuant to Bankruptcy Code sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (a) approving this Agreement and authorizing the Loan Parties to obtain Postpetition financing pursuant thereto, (b) granting related Liens and Superpriority Claims, (c) granting adequate protection to certain Prepetition secured parties, and (d) scheduling a final hearing.

"Investments": as defined in Section 6.10.

"<u>JV Agreement</u>": each partnership or limited liability company agreement (or similar agreement) between a North American Group Member or one of its Subsidiaries and the relevant JV Partner as the same may be amended, restated, supplemented or otherwise modified from time to time, in accordance with the terms hereof.

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

"JV Subsidiary": any Subsidiary of a Group Member which is not a Wholly Owned Subsidiary and as to which the business and management thereof is jointly controlled by the holders of the Capital Stock therein pursuant to customary joint venture arrangements.

"Lenders": as defined in the preamble hereto.

"<u>Lien</u>": any mortgage, pledge, security interest, lien or other charge or encumbrance (in the nature of a security interest), including the lien or retained security title of a conditional vendor, upon or with respect to any property or assets.

"Loans": as defined in Section 2.1.

"Loan Documents": this Agreement, the Notes, the Environmental Indemnity Agreement, the Collateral Documents and each post-closing letter or agreement now and hereafter entered into among the parties hereto.

"Loan Parties": the Borrower, each Guarantor and the Pledgors.

"<u>Master Transaction Agreement</u>": that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009, among New CarCo and the sellers party thereto.

"<u>Material Adverse Effect</u>": a material adverse effect on (a) the business, operations, property, condition (financial or otherwise) or prospects of the Borrower and its Subsidiaries (taken as a whole), (b) the ability of the Loan Parties (taken as a whole) to perform any of their obligations under any of the Loan Documents to which they are a party, (c) the validity or enforceability in any material respect of any of the Loan Documents to which the Loan Parties are a party, (d) the rights and remedies of the Lenders under any of the Loan Documents, or (e) the Collateral (taken as a whole); provided that, (w) the taking of any action by the Borrower and its Subsidiaries, including the cessation of production, pursuant to and in accordance with the Wind-Down Budget, (x) the filing of the Cases, and (y) any sale pursuant to any Related Section 363 <u>Sale</u> Transactions or any other action taken pursuant to the Orders, <u>shall be taken into consideration</u>.

"Material Environmental Amount": \$50,000,000.

"<u>Maturity Date</u>": the date on which the earliest to occur of (such earliest date, which may be extended by the Lenders in their sole discretion in accordance with Section 8.1): (a) the date on which all Claims against the Debtors have been resolved such that there are no remaining disputed Claims, all assets of the Debtors (other than remaining cash) have been liquidated, all distributions on account of allowed Claims have been made, and all other actions that are required under the plan of liquidation (other than the dissolution of the last remaining Debtor) have been completed; (b) the acceleration of any Loans in accordance with the terms of this Agreement; (c) the date of the dissolution of the Borrower; and (d) December 30, 2011. On the Maturity Date occurring pursuant to clause (a), the plan administrator or other individual or entity charged with administering the liquidation plan shall be entitled to retain a de minimis amount of funds to complete the dissolution of the last remaining Debtor.

"Moody's": Moody's Investors Service, Inc. and its successors.

"<u>Mortgage</u>": each of the mortgages and deeds of trust made by the Borrower or any Guarantor in favor of, or for the benefit of, the Lenders, substantially in the form of Exhibit J, taking into consideration the law and jurisdiction in which such mortgage or deed of trust is to be recorded or filed, to the extent applicable.

"<u>Mortgaged Property</u>": each property listed on <u>Schedule 1.1C</u>, as to which the Lenders shall be granted a Lien pursuant to the Orders or the Mortgages.

"Net Cash Proceeds": with respect to any event, (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, net of (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid or contractually committed to be paid to third parties (other than Affiliates) in connection with such event, (ii) in the case of a Disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than the Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event and (iii) the amount of all taxes paid (or reasonably estimated to be payable, including under any tax sharing arrangements) and, with respect to amounts that will be expatriated as a result of any event attributable to a Non-U.S. Subsidiary, the amount of any taxes that will be payable by any Group Member as a result of the expatriation, and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case that are directly attributable to such event (as determined reasonably and in good faith by a Responsible Officer); provided that Net Cash Proceeds for any Recovery Event shall exclude any amounts required to be paid to New CarCo pursuant to the terms of the Transaction Documents, to the extent such proceeds are actually paid to New CarCo within the time period set forth for such prepayments in Section 2.5(b).

"New CarCo": NGMCO, Inc.

"<u>New CarCo Assignment and Assumption</u>": as defined in the recitals.

"<u>New GM Entities</u>": New CarCo and its subsidiaries.

"New GM Equity Interests": any stock, warrants, options or other equity interests issued to or held by any Debtor pursuant to the Related Section 363 Sale Transactions.

"<u>Non-Debtor</u>": each Subsidiary of the Borrower that is not a Debtor.

"<u>Non-Excluded Taxes</u>": as defined in Section 2.12(a).

"<u>Non-U.S. Lender</u>": as defined in Section 2.12(d).

"<u>Non-U.S. Subsidiary</u>": any Subsidiary of any Loan Party that is not a U.S. Subsidiary.

"<u>North American Group Members</u>": collectively, the Loan Parties and each Domestic Subsidiary that is not an Excluded Subsidiary.

"Notes": as defined in Section 4.1(a)(vi) and any promissory notes issued in connection with an assignment contemplated by Section 2.3(b).

"Obligations": the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans and all other obligations and liabilities of any Loan Party to any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including, without limitation, all fees, charges and disbursements of counsel to any Lender that are required to be paid by any Loan Party pursuant hereto) or otherwise.

"<u>OFAC</u>": the Office of Foreign Assets Control of the Treasury.

"<u>Orders</u>": the Interim Order and the Final Order.

"<u>Other Foreign 956 Subsidiary</u>": any Non-U.S. Subsidiary substantially all of the value of whose assets consist of equity of one or more Foreign 956 Subsidiaries for U.S. federal income tax purposes.

"<u>Other Taxes</u>": any and all present or future stamp or documentary taxes and any other excise or property taxes, intangible or mortgage recording taxes, charges or similar levies imposed by the United States or any taxing authority thereof or therein arising from any payment made, or from the execution, delivery or enforcement of, or otherwise with respect to this Agreement or any other Loan Document.

"Outstanding Amount": as of any date of determination (a) with respect to Indebtedness, the aggregate outstanding principal amount thereof, (b) with respect to banker's acceptances, letters of credit or letters of guarantee, the aggregate undrawn, unexpired face amount thereof <u>plus</u> the aggregate unreimbursed drawn amount thereof, (c) with respect to hedging obligations, the aggregate amount recorded by the Borrower or any Subsidiary as its net termination liability thereunder calculated in accordance with the Borrower's customary accounting procedures, (d) with respect to cash management obligations or guarantees, the aggregate maximum amount thereof (i) that the relevant cash management provider is entitled to assert as such as agreed from time to time by the Borrower or any Subsidiary and such provider or (ii) the principal amount of the Indebtedness being guaranteed or, if less, the maximum amount of such guarantee set forth in the relevant guarantee and (e) with respect to any other obligations, the aggregate outstanding amount thereof. "<u>Participant</u>": as defined in Section 8.6(c).

"<u>Permitted Holders</u>": any holder of any Capital Stock of the Borrower as of the Closing Date.

"Permitted Indebtedness":

- (a) Indebtedness created under any Loan Document;
- (b) [intentionally omitted];
- (c) trade payables, if any, in the ordinary course of its business;

(d) Indebtedness existing on the Petition Date and any refinancings, refundings, renewals or extensions thereof (without any increase, or any shortening of the maturity, of any principal amount thereof);

(e) intercompany Indebtedness of a North American Group Member in the ordinary course of business; <u>provided</u> that, the right to receive any repayment of such Indebtedness (other than Indebtedness meeting the criteria of clause (d) above, or any extensions, renewals, exchanges or replacements thereof) shall be subordinated to the Lenders' rights to receive repayment of the Obligations;

- (f) [intentionally omitted];
- (g) [intentionally omitted];

(h) Swap Agreements permitted pursuant to Section 6.15 that are not entered into for speculative purposes;

(i) Indebtedness with respect to (x) letters of credit, bankers' acceptances and similar instruments issued in the ordinary course of business, including letters of credit, bankers' acceptances and similar instruments in respect of the financing of insurance premiums, customs, stay, performance, bid, surety or appeal bonds and similar obligations, completion guaranties, "take or pay" obligations in supply agreements, reimbursement obligations regarding workers' compensation claims, indemnification, adjustment of purchase price and similar obligations incurred in connection with the acquisition or disposition of any business or assets, and sales contracts, coverage of long-term counterparty risk in respect of insurance companies, purchasing and supply agreements, rental deposits, judicial appeals and service contracts and (y) appeal, bid, performance, surety, customs or similar bonds issued for the account of any Loan Party in the ordinary course of business;

(j) Indebtedness incurred in the ordinary course of business in connection with cash management and deposit accounts and operations, netting services, employee credit card programs and similar arrangements and Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument

drawn against insufficient funds in the ordinary course of business, <u>provided</u> that such Indebtedness is extinguished within five Business Days of its incurrence;

- (k) any guarantee by any Loan Party of Permitted Indebtedness; and
- (1) Indebtedness entered into under Section 136 of EISA.

"Permitted Investments":

(a) any Investment in Cash Equivalents;

(b) any Investment by a Loan Party in the Borrower, another Loan Party, or a Pledged Entity that is a Domestic Subsidiary;

(c) [intentionally omitted];

(d) any Investment (i) existing on the Closing Date, or (ii) consisting of any extension, modification or renewal of any Investment existing on the Closing Date; <u>provided</u> that the amount of any such Investment is not increased through such extension, modification or renewal;

- (e) [intentionally omitted];
- (f) [intentionally omitted];
- (g) [intentionally omitted];
- (h) any Investment otherwise permitted under this Agreement;

(i) Investments in Indebtedness of, or Investments guaranteed by, Governmental Authorities, in connection with industrial revenue, municipal, pollution control, development or other bonds or similar financing arrangements;[intentionally omitted];

(j) any capped call, ratio capped call or other similar derivative transaction entered into by a Loan Party on or before the Closing Date;[intentionally omitted];

- (k) Trade Credit;
- (1) [intentionally omitted];

(m) Investments (i) received in satisfaction or partial satisfaction of delinquent accounts and disputes with customers or suppliers in the ordinary course of business, or (ii) acquired as a result of foreclosure of a Lien securing an Investment or the transfer of the assets subject to such Lien in lieu of foreclosure;

(n) commercial transactions in the ordinary course of business with the Borrower or any of its Subsidiaries to the extent such transactions would constitute an Investment; and

(o) conveyance of Collateral in an arm's-length transaction to a Subsidiary that is not a Loan Party or an Affiliate of the Borrower for non-cash consideration consisting of Trade Credit or other Property to become Collateral having a fair market value equal to or greater than the fair market value of the conveyed Collateral.

"<u>Permitted Liens</u>": with respect to any Property of any North American Group Member:

(a) Liens created under the Loan Documents;

(b) Liens on Property of a North American Group Member existing on the date hereof (including Liens on Property of a North American Group Member pursuant to Existing Agreements; <u>provided</u> that such Liens shall secure only those obligations and any permitted refinancing that they secure on the date hereof);

(c) [intentionally omitted];

(d) Liens for taxes and utility charges not yet due or that are being contested in good faith, by proper proceedings diligently pursued, and as to which adequate reserves have been provided;

(e) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business and securing obligations that are not due and payable or that are being contested in compliance with Section 5.8;

(f) Liens securing reimbursement obligations with respect to letters of credit that encumber documents and other property relating to such letters of credit and the proceeds thereof;

(g) Liens securing Swap Agreements permitted pursuant to Section 6.15;

(h) Liens created in the ordinary course of business in favor of banks and other financial institutions over balances of any accounts held at such banks or financial institutions or over investment property held in a securities account, as the case may be, to facilitate the operation of cash pooling, cash management or interest set-off arrangements;

(i) customary Liens in favor of trustees and escrow agents, and netting and set-off rights, banker's liens and the like in favor of counterparties to financial obligations and instruments, including, without limitation, Swap Agreements permitted pursuant to Section 6.15;

(j) Liens securing Indebtedness incurred under Section 136 of EISA;

(k) pledges and deposits made in the ordinary course of business in compliance with workmen's compensation, unemployment or other insurance and other social security laws or regulations;

(1) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory obligations, surety, customs and appeal bonds, performance bonds and other obligations of a like nature, or to secure the payment of import or customs duties, in each case incurred in the ordinary course of business;

(m) zoning and environmental restrictions, easements, rights-of-way, restrictions on use of real property or groundwater, institutional controls and other similar encumbrances or deed restrictions incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and do not materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any North American Group Member;

- (n) [intentionally omitted];
- (o) judgment Liens securing judgments;

(p) any Lien consisting of rights reserved to or vested in any Governmental Authority by statutory provision, not securing Indebtendess;

(q) Liens securing Indebtedness described in clauses (d) and (e) of the definition of Permitted Indebtedness;

(r) pledges or deposits made to secure reimbursement obligations in respect of letters of credit issued to support any obligations or liabilities described in clauses (k) or (l) of this definition;

- (s) [intentionally omitted];
- (t) [intentionally omitted]; and

(u) other Liens created or assumed in the ordinary course of business of the North American Group Member; <u>provided</u> that the obligations secured by all such Liens shall not exceed the principal amount of \$10,000,000.

"<u>Person</u>": any individual, corporation, company, voluntary association, partnership, joint venture, limited liability company, trust, unincorporated association or government (or any agency, instrumentality or political subdivision thereof).

"<u>Petition Date</u>": as defined in the recitals hereto.

"<u>Pledged Entity</u>": a Subsidiary of a Loan Party whose Capital Stock is subject to a security interest in favor of the Lenders pursuant to the Orders or the Collateral Documents.

"<u>Pledgors</u>": the parties set forth on <u>Schedule 1.1D</u> and each other Person that makes a pledge in favor of the Lenders under the Equity Pledge Agreement.

"<u>Postpetition</u>": when used with respect to any agreement or instrument, any claim or proceeding or any other matter, shall refer to an agreement or instrument that was entered into or became effective, a claim or proceeding that first arose or was first instituted, or another matter that first occurred, after the commencement of the Cases.

"<u>Prepetition</u>": when used with respect to any agreement or instrument, any claim or proceeding or any other matter, shall refer to an agreement or instrument that was entered into or became effective, a claim or proceeding that arose or was instituted, or another matter that occurred, prior to the Petition Date.

"<u>Prepetition Payment</u>": a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any Prepetition Indebtedness or trade payables or other Prepetition claims against any Debtor.

"<u>Prime Rate</u>": the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A. as its prime rate in effect at its principal office in New York City (the Prime Rate not being intended to be the lowest rate of interest charged by JPMorgan Chase Bank, N.A. in connection with extensions of credit to borrowers).

"<u>Prohibited Jurisdiction</u>": any country or jurisdiction, from time to time, that is the subject of a prohibition order (or any similar order or directive), sanctions or restrictions promulgated or administered by any Governmental Authority of the United States.

"<u>Prohibited Person</u>": any Person:

(a) subject to the provisions of the Executive Order;

(b) that is owned or controlled by, or acting for or on behalf of, any person or entity that is subject to the provisions of the Executive Order;

(c) with whom a Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;

(d) who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order;

(e) that is named as a "specially designated national and blocked person" on the most current list published by the OFAC at its official website, http://www.treas.goofac/t11sdn.pdf or at any replacement website or other replacement official publication of such list; or

(f) who is an Affiliate or affiliated with a Person listed above.

"<u>Property</u>": any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

"<u>Quarterly Report</u>": as defined in Section 5.1(f).

"<u>Records</u>": all books, instruments, agreements, customer lists, credit files, computer files, storage media, tapes, disks, cards, software, data, computer programs, printouts and other computer materials and records generated by other media for the storage of information maintained by any Person with respect to the business and operations of the Loan Parties and the Collateral.

"<u>Recovery Event</u>": any settlement of or payment in respect of any property or casualty insurance claim (other than the proceeds of any self-insurance) or any condemnation proceeding relating to any asset of any Group Member.

"<u>Register</u>": as defined in Section 8.6(b).

"<u>Regulation D</u>": Regulation D of the Board as in effect from time to time.

"<u>Related Section 363 Sale Transactions</u>": as defined in the recitals.

"<u>Reorganization Plan</u>": a plan of reorganization in any of the Cases of the Debtors.

"<u>Required Lenders</u>": at any time, Lenders with Loans constituting a majority of the Loans of all Lenders.

"<u>Requirements of Law</u>": as to any Person, the Certificate of Incorporation and By-Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court of competent jurisdiction or other Governmental Authority, in each case applicable to and binding upon such Person and any of its property, and to which such Person and any of its property is subject.

"<u>Responsible Officer</u>": as to any Person, the chief executive officer or, with respect to financial matters (including without limitation those matters set forth in Sections 5.1(f) and 5.2(h)), the chief financial officer, treasurer or assistant treasurer of such Person, an individual so designated from time to time by such Person's board of directors or, for the purposes of Section 5.2 only (other than Sections 5.1(f) and 5.2(h)), to include the secretary or an assistant secretary of the Borrower, or, in the event any such officer is unavailable at any time he or she is required to take any action hereunder, Responsible Officer shall mean any officer authorized to act on such officer's behalf as demonstrated by a certificate of corporate resolution (or equivalent); provided that the Lenders are notified in writing of the identity of such Responsible Officer.

"<u>Restricted Payments</u>": as defined in Section 6.5.

"<u>S&P</u>": Standard & Poor's Ratings Services and its successors.

"Sale/Leaseback Transaction": as defined in Section 6.17.

"<u>SEC</u>": the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

"<u>Section 363 Sale Order</u>": an order of the Bankruptcy Court approving the Related Section 363 <u>Sale</u> Transactions in form and substance substantially in the form attached to the Transaction Documents or otherwise satisfactory to the Required Lenders.

"<u>Senior Employee</u>": with respect to the Loan Parties collectively, any of the 25 most highly compensated employees (including the SEOs).

"<u>SEO</u>": a Senior Executive Officer as defined in the EESA and any interpretation of such term by the Treasury thereunder, including the rules set forth in 31 C.F.R. Part 30.

"<u>Special Inspector General of the Troubled Asset Relief Program</u>": The Special Inspector General of the Troubled Asset Relief Program, as contemplated by Section 121 of the EESA.

"Specified Benefit Plan": any employee benefit plan within the meaning of section 3(3) of ERISA and any other plan, arrangement or agreement which provides for compensation, benefits, fringe benefits or other remuneration to any employee, former employee, individual independent contractor or director, including any bonus, incentive, supplemental retirement plan, golden parachute, employment, individual consulting, change of control, bonus or retention agreement, whether provided directly or indirectly by any Group Member or otherwise.

"Subsidiary": with respect to any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or shall have the right to have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person. Unless otherwise qualified, all references to a "Subsidiary" or "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Superpriority Claim": a claim against the Borrower or any other Debtor in any of the Cases pursuant to section 364(c)(1) of the Bankruptcy Code having priority over any or all administrative expenses including administrative expenses specified in sections 503 and 507 of the Bankruptcy Code, whether or not such claim or expenses may become secured by a judgment lien or other non-consensual lien, levy or attachment.

"<u>Swap Agreement</u>": any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; <u>provided</u> that no phantom stock or similar plan providing for payments only on account of services provided by current or former

directors, officers, employees or consultants of the Borrower or any of its Subsidiaries shall be a "Swap Agreement."

"<u>Taxes</u>": as defined in Section 2.12(a).

"<u>Trade Credit</u>": accounts receivable, trade credit or other advances extended to, or investment made in, customers, suppliers, including intercompany, in the ordinary course of business.

"Trading With the Enemy Act": as defined in Section 3.19.

"<u>Tranche B Term Loan</u>": as defined in the recitals.

"Tranche C Term Loan": as defined in the recitals.

"<u>Transaction Documents</u>": each of, and collectively, (i) the Master Transaction Agreement, (ii) the Section 363 Sale Order, (iii) the Transition Services Agreement and (iv) the related manufacturing agreements, asset purchase agreements, organizational documents, finance support agreements and all other related documentation, each as amended, supplemented or modified from time to time in accordance with Section 6.6.

"Transferee": any Assignee or Participant.

"<u>Transition Services Agreement</u>": the Transition Services Agreement, dated as of the date hereof, among the Borrower, the other Initial Debtors, and New CarCo, substantially in the form of Exhibit T to the Master Transaction Agreement.

"Treasury": The United States Department of the Treasury.

"<u>Uniform Commercial Code</u>": the Uniform Commercial Code as in effect from time to time in the State of New York.

"<u>United States</u>": the United States of America.

"<u>USA PATRIOT Act</u>": as defined in Section 3.18(d).

" $\underline{U.S. Subsidiary}$ ": any Subsidiary of any Loan Party that is organized or existing under the laws of the United States or any state thereof or the District of Columbia.

"<u>Warrant</u>": the Warrant to Purchase Common Stock, dated as of December 31, 2008, issued by the Borrower in favor of the Treasury pursuant to the Warrant Agreement.

"<u>Warrant Agreement</u>": the Warrant Agreement, dated as December 31, 2008, by and between the Borrower and the Treasury.

"<u>Wholly Owned Subsidiary</u>": as to any Person, any other Person all of the Capital Stock of which (other than directors' qualifying shares required by law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

"<u>Wind-Down</u>": the sale or shutdown of certain businesses and properties of the Debtors and the Subsidiaries thereof.

"<u>Wind-Down Budget</u>": the budget, attached as Annex I hereto, setting forth in reasonable detail all anticipated receipts and disbursements of the Borrower and certain of its U.S. Subsidiaries on a calendar [year] basis from the Effective Date through and including [December 30, 2011];2011, as amended by each Quarterly Report delivered pursuant to Section 5.1(f).

1.2. <u>Other Definitional Provisions</u>. (a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, (i) accounting terms relating to Group Members not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP, (ii) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," (iii) the word "incur" shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words "incurred" and "incurrence" shall have correlative meanings), (iv) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Capital Stock, securities, revenues, accounts, leasehold interests and contract rights, (v) references to agreements or other Contractual Obligations shall, unless amended, supplemented, restated or otherwise modified from time to time and (vi) references to any Person shall include its successors and assigns.

(c) The words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole (including the Schedules and Exhibits hereto) and not to any particular provision of this Agreement (or the Schedules and Exhibits hereto), and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

1.3. <u>Conversion of Foreign Currencies</u>. (a) For purposes of this Agreement and the other Loan Documents, with respect to any monetary amounts in a currency other than Dollars, the Dollar Equivalent thereof shall be determined based on the Exchange Rate in effect at the time of such determination (unless otherwise explicitly provided herein).

(b) The Treasury may set up appropriate rounding off mechanisms or otherwise round-off amounts hereunder to the nearest higher or lower amount in whole Dollar or cent to ensure amounts owing by any party hereunder or that otherwise need to be calculated or converted hereunder are expressed in whole Dollars or in whole cents, as may be necessary or appropriate.

### **SECTION 2**

#### AMOUNT AND TERMS OF THE LOANS

2.1. Loans. On the Effective Date, the Lenders made the Tranche C Term Loans in Dollars to the Borrower in the aggregate amount of \$[950,000,000] (the "Loans"). The Loans shall be non-recourse to the Borrower and recourse only to the Collateral. Nothing in this Agreement shall in any way be construed to authorize or permit the Lenders to seek recourse against any of the New GM Equity Interests at any time. The Loans may from time to time be Eurodollar Loans or, solely in the circumstances specified in Section 2.8, ABR Loans. Loans repaid or prepaid may not be reborrowed.

#### 2.2. [Intentionally Omitted].

2.3. <u>Repayment of Loans; Evidence of Debt</u>. (a) <u>The Loans To the extent that</u> any cash and Cash Equivalents remain after the consummation of the Wind-Down, such excess amount shall be repayable on the Maturity Date. in accordance with Section 2.5(c).

(b) Pursuant to Section 4.1(a), the Borrower shall execute and deliver the Notes on the Effective Date. Following any assignment of the Loans pursuant to Section 8.6, the Borrower agrees that, upon the request of any Lender, the Borrower shall promptly execute and deliver to such Lender Notes reflecting the Loans assigned and the Loans retained by such Lender, if any.

2.4. <u>Optional Prepayments</u>. The Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to each Lender and the Committee no later than 12:00 noon (New York City time) three Business Days prior to the date such prepayment is requested to be made, which notice shall specify the date of such prepayment, the aggregate amount of such prepayment and such Lender's Aggregate Exposure Percentage of such payment; <u>provided</u> that, if a Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.10. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with accrued interest to such date on the amount prepaid and shall be applied as provided in Section 2.5(c). Partial prepayments of Loans shall be in an aggregate principal amount of \$20,000,000 or a whole multiple thereof or, if less, the entire principal amount thereof then outstanding.

2.5. <u>Mandatory Prepayments</u>. (a) Unless the Required Lenders shall otherwise agree, if any Indebtedness is incurred or issued, except for Indebtedness permitted by Section 6.9, as the same may be amended, restated, supplemented or modified from time to time hereafter in accordance with the terms and conditions of this Agreement and the other Loan Documents, by any Group Member, then promptly upon such incurrence or issuance, as the case may be (and in any case not more than three (3) Business Days thereafter), the Loans shall be prepaid by an amount equal to the amount of the Net Cash Proceeds of such incurrence or issuance, as set forth in Section 2.5(c); provided that no prepayment shall be required under this Section 2.5(a) if the Indebtedness was incurred or issued by a Foreign Subsidiary for the purpose of funding operations in the jurisdiction where such Foreign Subsidiary is organized or within

the same Foreign Geographic Region as the jurisdiction of organization of such Foreign Subsidiary. With respect to any Indebtedness incurred or issued by a Non-U.S. Subsidiary, the aggregate amount of the Net Cash Proceeds thereof required to be applied pursuant to Section 2.5(c) to the prepayment of the Loans shall be subject to reduction to the extent that expatriation of such Net Cash Proceeds (1) would result in material adverse tax or legal consequences (including, without limitation, violation of contractual liabilities), (2) would be reasonably likely to result in adverse personal liability of any director of any Group Member, or (3) would result in the insolvency of the applicable Foreign Subsidiary. The provisions of this Section do not constitute a consent to the incurrence of any Indebtedness by any Group Member.

(b) Unless the Required Lenders shall otherwise agree, if on any date any Group Member shall receive Net Cash Proceeds from any Asset Sale; or Recovery Event-or Extraordinary Receipt, promptly upon receipt by such Group Member of such Net Cash Proceeds (and in any case not more than three (3) Business Days thereafter), the Loans shall be prepaid by an amount equal to the amount of such Net Cash Proceeds, as set forth in Section 2.5(c). With respect to any Net Cash Proceeds realized or received by a Non-U.S. Subsidiary in connection with any Asset Sale; or Recovery Event-or Extraordinary Receipt, the aggregate amount of such Net Cash Proceeds required to be applied pursuant to Section 2.5(c) to the prepayment of the Loans shall be subject to reduction to the extent that expatriation of such Net Cash Proceeds (1) would result in material adverse tax or legal consequences (including, without limitation, violation of contractual liabilities), (2) would be reasonably likely to result in adverse personal liability of any director of any Group Member, or (3) would result in the insolvency of the applicable Foreign Subsidiary. The provisions of this Section 2.5 do not constitute a consent to the consummation of any Disposition not permitted by Section 6.12.

(c) Unless the Required Lenders shall otherwise agree, amounts to be applied in connection with prepayments made pursuant to Section 2.4 and this Section 2.5 shall be applied, (i) <u>first</u>, to pay accrued and unpaid interest on, and expenses in respect of, the Loans, and (ii) <u>second</u>, to repay the Loans. Any such prepayment shall be accompanied by a notice to each Lender specifying the aggregate amount of such prepayment and such Lender's Aggregate Exposure Percentage of such prepayment.

(d) The Borrower shall apply any cash and Cash Equivalents remaining after the consummation of the Wind-Down to the prepayment of the Loans in accordance with Section 2.5(c).

2.6. <u>Interest Rates and Payment Dates/Fee Payment Dates/Fees</u>. (a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Eurodollar Rate determined for such Interest Period <u>plus</u> the Applicable Margin.

(b) Each ABR Loan shall bear interest at a rate per annum equal to the ABR plus the Applicable Margin.

(c) When any Event of Default has occurred and is continuing and the Required Lenders have determined in their sole discretion not to permit such continuations, no Eurodollar Loan may be continued as such.

(d) (i) At any time any Event of Default shall have occurred and be continuing, (i) all outstanding Loans shall bear interest at a rate per annum equal to the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section 2.6 <u>plus</u> 5% per annum, which, in the sole discretion of the Treasury, may be the rate of interest then applicable to ABR Loans, and (ii) all other outstanding Obligations shall bear interest at 5% above the rate per annum equal to the rate of interest then applicable to ABR Loans.

(e) [Intentionally Omitted].

(f) Interest shall be payable in arrears on each Interest Payment Date, <u>provided</u> that, (i) interest on the Loans shall not be payable on each Interest Payment Date but shall instead be added to the principal of the Loans on each Interest Payment Date and shall be payable in cash on the Maturity Date, and (ii) interest accruing pursuant to paragraph (d) of this Section 2.6 shall be payable from time to time on demand.

2.7. <u>Computation of Interest and Fees</u>. (a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that with respect to ABR Loans the rate of interest on which is calculated on the basis of the Prime Rate, the interest thereon shall be calculated on the basis of a 365- (or 366-) day year for the actual days elapsed. The Treasury shall, as soon as practicable, and promptly, notify the Borrower and the other Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Loan resulting from a change in the ABR or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective. The Treasury shall, as soon as practicable, and promptly, notify the Borrower and the other Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Treasury pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Treasury shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Treasury in determining any interest rate pursuant to Section 2.7(a).

2.8. <u>Inability to Determine Interest Rate; Illegality</u>. (a) If prior to the first day of any Interest Period:

(i) any Lender shall have determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period, or

(ii) any Lender shall have determined that the Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lender (as conclusively certified by such Lender) of making or maintaining their affected Loans during such Interest Period;

such Lender shall give telecopy or telephonic notice thereof to the Borrower and the other Lenders as soon as practicable thereafter. If such notice is given pursuant to clause (i) or (ii) of

this Section 2.8(a) in respect of Eurodollar Loans, then (1) any Eurodollar Loans requested to be made on the first day of such Interest Period shall be made by the affected Lenders as ABR Loans, and (2) any outstanding Eurodollar Loans of the affected Lender, shall be converted, on the last day of the then-current Interest Period, to ABR Loans. Until such relevant notice has been withdrawn by such Lender, no further Eurodollar Loans by the affected Lenders shall be made or continued as such, nor shall the Borrower have the right to convert ABR Loans to Eurodollar Loans.

(b) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof shall make it unlawful for any Lender to make or maintain Eurodollar Loans as contemplated by this Agreement, such Lender shall give notice thereof to the Borrower describing the relevant provisions of such Requirement of Law, following which, (i) in the case of Eurodollar Loans, (A) the commitment of such Lender hereunder to make Eurodollar Loans and continue such Eurodollar Loans as such and (B) such Lender's outstanding Eurodollar Loans shall be converted automatically on the last day of the then current Interest Periods with respect to such Loans (or within such earlier period as shall be required by law) to ABR Loans. If any such conversion or prepayment of a Eurodollar Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, the Borrower shall pay to such Lender such amounts, if any, as may be required pursuant to Section 2.10.

2.9. <u>Treatment of Borrowings and Payments; Evidence of Debt.</u> (a) [Intentionally Omitted].

(b) Each payment (including each prepayment) by the Borrower on account of principal of and interest on the Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Loans then held by the Lenders. Amounts paid on account of the Loans may not be reborrowed.

(c) [Intentionally Omitted].

(d) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without setoff or counterclaim and shall be made prior to 3:00 p.m. (New York City time) on the due date thereof to the Lenders at their respective Funding Offices, in Dollars and in immediately available funds. If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

2.10. <u>Indemnity</u>. The Borrower agrees to indemnify each Lender for, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of Eurodollar Loans after the

Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment after the Borrower has given a notice thereof in accordance with the provisions of this Agreement or (c) the making of a prepayment of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto. Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, for the period from the date of such prepayment or of such failure to borrow to the last day of such Interest Period (or, in the case of a failure to borrow the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank Eurodollar market. A certificate as to any amounts payable pursuant to this Section 2.10 submitted to the Borrower by any Lender shall be conclusive in the absence of manifest error and shall be payable within 30 days of receipt of any such notice. The agreements in this Section 2.10 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

2.11. <u>Superpriority Nature of Obligations and Lenders' Liens</u>. The priority of Lenders' Liens on the Collateral owned by the Loan Parties shall be set forth in the Final Order entered with respect to the Cases.

2.12. <u>Taxes</u>. (a) All payments made by the Borrower under this Agreement or any other Loan Document shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereinafter imposed, levied, collected, withheld or assessed by any Governmental Authority (collectively, "Taxes"), except for any deduction or withholding required by law. If the Borrower is required to withhold any Non-Excluded Taxes from any amounts payable to any Lender (i) the Borrower shall make such deductions and shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable laws and (ii) the amounts so payable to such Lender shall be increased to the extent necessary to pay to such Lender such additional amounts as may be necessary so that the Lender receives, free and clear of all such Non-Excluded Taxes, a net amount equal to the amount it would have received from the Borrower under this Agreement or any other Loan Document if no such deduction or withholding had been made. For purposes of this Agreement or any other Loan Document, "Non-Excluded Taxes" are withholding Taxes imposed by the United States or any taxing authority thereof or therein on payments made by the Borrower under this Agreement or any other Loan Document other than (a) withholding Taxes imposed on any Lender as a result of a present or former connection between such Lender and the jurisdiction of the United States or any taxing authority thereof or therein imposing such Tax (other than any such connection arising solely from such Lender having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any other Loan Document), (b) any branch profits taxes imposed by the United States, (c) any withholding Taxes that exist on the date the Lender becomes a Lender or that arise as a result of a change in status of the Lender as a Governmental Authority which is an agency of the Canadian federal government that is exempt from withholding under the Convention as in effect on the date the Lender becomes a Lender, and (d) withholding Taxes that could be eliminated or reduced by the Lender providing tax forms, certifications, or other documentation.

(b) In addition, the Borrower shall pay any Other Taxes over to the relevant Governmental Authority in accordance with Applicable Law.

(c) Whenever any Non-Excluded Taxes or Other Taxes are payable by the Borrower, as promptly as possible thereafter, the Borrower shall send to the Lender, as the case may be, a certified copy of an original official receipt received by the Borrower showing payment thereof (or if an official receipt is not available, such other evidence of payment as shall be reasonably satisfactory to such Lender). If the Borrower fails to pay any Non-Excluded Taxes or Other Taxes required to be paid by the Borrower when due to the appropriate taxing authority or fails to remit to the Lender the required receipts or other required documentary evidence, in each case after receiving at least five days' advance written notice from the Lender, the Borrower shall indemnify the Lender, as the case may be, for any incremental taxes, Non-Excluded Taxes or Other Taxes, interest, additions to tax, expenses or penalties that may become payable by any Lender, as the case may be, as a result of such failure. The indemnification payments under this Section 2.12(c) shall be made within 30 days after the date such Lender, as the case may be, makes a written demand therefor (together with a reasonably detailed calculation of such amounts).

(d)Each Lender (or any Transferee) (other than the United States government (including the Treasury)) that either (i) is not incorporated under the laws of the United States, any state thereof, or the District of Columbia or (ii) whose name does not include "Incorporated," "Inc.," "Corporation," "Corp.," "P.C.," "insurance company," or "assurance company" (a "Non-U.S. Lender") shall deliver to the Borrower, so long as such Lender is legally entitled to do so, two originals of either U.S. Internal Revenue Service Form W-9, Form W-8BEN, Form W-8EXP, Form W-8ECI, or in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payment of "portfolio interest", a Form W-8BEN (along with a statement as to certain requirements in order to claim an exemption for "portfolio interest" reasonably acceptable to the Borrower), or Form W-8IMY (with applicable attachments), or any subsequent versions thereof or successors thereto, properly completed and duly executed by such Non-U.S. Lender claiming a complete exemption from (or reduced rate of) United States federal withholding tax on all payments by the Borrower under this Agreement or any other Loan Document. In addition, each Lender shall provide any other U.S. tax forms (with applicable attachments) as will reduce or eliminate United States federal withholding tax on payments by the Borrower under this Agreement or any other Loan Document. For the avoidance of doubt, the Canadian Lender shall provide a Form W-8BEN claiming exemption from withholding under the Convention between the United States of America and Canada with respect to Taxes on Income and on Capital (the "Convention") on the Closing Date. Each Lender (other than the United States government (including the Treasury)) shall provide the appropriate documentation under this clause (d) at the following times (i) prior to the first payment date after becoming a party to this Agreement, (ii) upon a change in circumstances or upon a change in law, in each case, requiring or making appropriate a new or additional form, certificate or documentation, (iii) upon or before the expiration, obsolescence or invalidity of any documentation previously provided to the Borrower and (iv) upon reasonable request by the Borrower. If a Lender is entitled to an exemption from or a reduction of any non-U.S. withholding Tax under the laws of any jurisdiction imposing such Tax on any payments made by the Borrower under this Agreement, then the Lender shall deliver to the Borrower, at the time or times prescribed by Applicable Law and as reasonably requested by the Borrower, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate, <u>provided</u> that the Lender is legally entitled to complete, execute and deliver such documentation and without material adverse consequences to the Lender.

If any Lender determines, in its sole good faith discretion, that it has (e) received a refund, credit or other tax benefit in respect of any Non-Excluded Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.12, it shall pay over such refund to the Borrower (but only to the extent of Non-Excluded Taxes or Other Taxes paid by the Borrower plus any interest thereon paid by the relevant Governmental Authority with respect to such refund), net of all out of pocket third-party expenses of the Lender related to claiming such refund or credit, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund) within 30 days of the date of such Notwithstanding anything to the contrary in this Agreement or any other Loan receipt Document, upon the request of the Lender, as the case may be, the Borrower agrees to repay any amount paid over to the Borrower by such Lender pursuant to the immediately preceding sentence if such Lender, as the case may be, is required to repay such amount to such Governmental Authority. This paragraph shall not be construed to (i) interfere with the rights of any Lender to arrange its tax affairs in whatever manner it sees fit, (ii) obligate any Lender to claim any tax refund, (iii) require any Lender to make available its tax returns (or any other information relating to its taxes or any computation with respect thereof which it deems in its sole discretion to be confidential) to the Borrower or any other Person, or (iv) require any Lender to do anything that would in its sole discretion prejudice its ability to benefit from any other refunds, credits, reliefs, remissions or repayments to which it may be entitled.

(f) Each Lender that is an Assignee shall be bound by this Section 2.12.

(g) The agreements contained in this Section 2.12 shall survive the termination of this Agreement or any other Loan Document and the payments contemplated hereunder or thereunder.

### **SECTION 3**

### **REPRESENTATIONS AND WARRANTIES**

To induce the Lenders to enter into this Agreement, each Loan Party represents to the Lenders, with respect to itself and each of its Subsidiaries that is a North American Group Member, in each case subject to the Wind-Down, the Orders, the Related Section 363<u>Sale</u> Transactions, the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court issued in connection with the Cases, that as of the Effective Date:

3.1. <u>Existence</u>. Each North American Group Member (a) is a corporation, limited partnership or limited liability company duly organized, validly existing and in good

standing under the laws of the jurisdiction of its organization, (b) has all requisite corporate or other power, and has all governmental licenses, authorizations, consents and approvals, necessary to own its assets and carry on its business as now being or as proposed to be conducted, except where the lack of such licenses, authorizations, consents and approvals would not be reasonably likely to have a Material Adverse Effect, (c) is qualified to do business and is in good standing in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary, except where failure so to qualify would not be reasonably likely (either individually or in the aggregate) to have a Material Adverse Effect, and (d) is in compliance in all material respects with all Requirements of Law.

- 3.2. [Intentionally Omitted.]
- 3.3. [Intentionally Omitted.]
- 3.4. [Intentionally Omitted.]

3.5. <u>Action, Binding Obligations</u>. (i) Each North American Group Member has all necessary corporate or other power, authority and legal right to execute, deliver and perform its obligations under each of the Loan Documents to which it is a party; (ii) the execution, delivery and performance by each North American Group Member of each of the Loan Documents to which it is a party has been duly authorized by all necessary corporate or other action on its part; and (iii) each Loan Document has been duly and validly executed and delivered by each North American Group Member party thereto and constitutes a legal, valid and binding obligation of all of the North American Group Members party thereto, enforceable against such North American Group Members in accordance with its terms, subject to the Bankruptcy Exceptions.

3.6. <u>Approvals</u>. Except as required under applicable state and federal bankruptcy rules, no authorizations, approvals or consents of, and no filings or registrations with, any Governmental Authority, or any other Person, are necessary for the execution, delivery or performance by each North American Group Member of the Loan Documents to which it is a party for the legality, validity or enforceability thereof, except with respect to North American Group Members other than the Debtors for filings and recordings or other actions in respect of the Liens pursuant to the Collateral Documents, unless the same has already been obtained and provided to the Lenders.

3.7. [Intentionally Omitted.]

3.8. <u>Investment Company Act</u>. None of the Loan Parties is required to register as an "investment company", or is a company "controlled" by a Person required to register as an "investment company", within the meaning of the Investment Company Act of 1940, as amended. No Loan Party is subject to any Federal or state statute or regulation which limits its ability to incur Indebtedness.

3.9. [Intentionally Omitted.]

3.10. <u>Chief Executive Office; Chief Operating Office</u>. The chief executive office and the chief operating office on the Closing Date for each North American Group Member is located at the location set forth on <u>Schedule 3.10</u> hereto.

3.11. Location of Books and Records. The location where the North American Group Members keep their books and records including all Records relating to their business and operations and the Collateral are located in the locations set forth in <u>Schedule 3.11</u>.

## 3.12. [Intentionally Omitted.]

## 3.13. [Intentionally Omitted.]

3.14. <u>Expense Policy</u>. The Borrower has taken steps necessary to ensure that (a) the Expense Policy conforms to the requirements set forth herein and (b) the Borrower and its Subsidiaries are in compliance with the Expense Policy.

3.15. <u>Subsidiaries</u>. All of the Subsidiaries of each Loan Party at the date hereof are listed on <u>Schedule 3.15</u>, which schedule sets forth the name and jurisdiction of formation of each of their Subsidiaries and, as to each such Subsidiary, the percentage of each class of Capital Stock owned by each Loan Party or any of their Subsidiaries except as set forth on <u>Schedule 3.15</u>.

3.16. <u>Capitalization</u>. One hundred percent (100%) of the issued and outstanding Capital Stock of each North American Group Member (other than Borrower) is owned by the Persons listed on <u>Schedule 3.16</u> and, to the knowledge of each Loan Party, such Capital Stock are owned by such Persons, free and clear of all Liens other than Permitted Liens. No Loan Party has issued or granted any options or rights with respect to the issuance of its respective Capital Stock which is presently outstanding except as set forth on <u>Schedule 3.16</u> hereto.

3.17. <u>Fraudulent Conveyance</u>. Each North American Group Member acknowledges that it will benefit from the Loans contemplated by this Agreement. No North American Group Member is incurring Indebtedness or transferring any Collateral with any intent to hinder, delay or defraud any of its creditors.

3.18. <u>USA PATRIOT Act</u>. (a) Each North American Group Member represents and warrants that neither it nor any of its respective Affiliates over which it exercises management control (a "<u>Controlled Affiliate</u>") is a Prohibited Person, and such Controlled Affiliates are in compliance with all applicable orders, rules, regulations and recommendations of OFAC.

(b) Each North American Group Member represents and warrants that neither it nor any of its members, directors, officers, employees, parents, Subsidiaries or Affiliates: (1) are subject to U.S. or multilateral economic or trade sanctions currently in force; (2) are owned or controlled by, or act on behalf of, any governments, corporations, entities or individuals that are subject to U.S. or multilateral economic or trade sanctions currently in force; (3) is a Prohibited Person or is otherwise named, identified or described on any blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list or other list of individuals or entities with whom U.S. persons may not conduct business, including but not limited to lists published or maintained by OFAC, lists published or maintained by the U.S. Department of Commerce, and lists published or maintained by the U.S. Department of State.

(c) None of the Collateral are traded or used, directly or indirectly by a Prohibited Person or organized in a Prohibited Jurisdiction.

(d) Each North American Group Member has established an anti-money laundering compliance program as required by all applicable anti-money laundering laws and regulations, including without limitation the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (the "<u>USA PATRIOT Act</u>") (collectively, the "<u>Anti-Money Laundering Laws</u>").

Embargoed Person. As of the date hereof and at all times throughout the 3.19. term of any Loan, (a) none of any North American Group Member's funds or other assets constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq. (the "Trading With the Enemy Act"), any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or regulations promulgated thereunder or executive order relating thereto (which for the avoidance of doubt shall include but shall not be limited to (i) Executive Order No. 13224, effective as of September 24, 2001 and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (ii) the USA PATRIOT Act, with the result that the investment in the Borrower (whether directly or indirectly), is prohibited by law or any Loan made by the Lenders is in violation of law ("Embargoed Person"); (b) no Embargoed Person has any interest of any nature whatsoever in it with the result that the investment in it (whether directly or indirectly), is prohibited by law or any Loan is in violation of law; (c) none of its funds have been derived from any unlawful activity with the result that the investment in it (whether directly or indirectly), is prohibited by law or any Loans is in violation of law; and (d) neither it nor any of its Affiliates (i) is or will become a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (ii) engages or will engage in any dealings or transactions, or be otherwise associated, with any such "blocked person". For purposes of determining whether or not a representation with respect to any indirect ownership is true or a covenant is being complied with under this Section 3.19, no North American Group Member shall be required to make any investigation into (i) the ownership of publicly traded stock or other publicly traded securities or (ii) the ownership of assets by a collective investment fund that holds assets for employee benefit plans or retirement arrangements.

3.20. <u>Use of Proceeds</u>. (a) The proceeds of the Loans shall be used to finance working capital needs and other general corporate purposes incurred in connection with the Wind-Down, including the payment of expenses associated with the administration of the Cases; <u>provided</u> that, the North American Group Members may not prepay Indebtedness without the prior written consent of the Required Lenders.

(b) Notwithstanding anything to the contrary herein, none of the proceeds of the Loans shall be used in connection with (i) any investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against any Lender, (ii) the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against any Lender, any of their respective affiliates or other Canadian Lender Consortium Member with respect to any loans or other financial accommodations made to any North American Group Member prior to the Petition Date, or (iii) any loans, advances, extensions of credit, dividends or other investments to any person not a North American Group Member-except to the extent permitted pursuant to clause (c) of the Permitted Investments definition; provided, however, that the limitations set forth in this Section 3.20(b) shall not preclude the use of the proceeds of the Loans in connection with any claims, causes of action, adversary proceedings or other litigations against any Governmental Authority (excluding the Canadian Lender Consortium Members) with respect to the imposition or administration of any Tax laws.

(c) The North American Group Members are the ultimate beneficiaries of this Agreement and the proceeds of Loans to be received hereunder. The use of the Loans will comply with all Applicable Laws, including Anti-Money Laundering Laws. No portion of any Loan is to be used, for the "purpose of purchasing or carrying" any "margin stock" as such terms are used in Regulations U and X of the Board, as amended, and the Borrower is not engaged in the business of extending credit to others for such purpose.

3.21. <u>Representations Concerning the Collateral</u>. Each Loan Party represents and warrants to the Lenders that as of each day that a Loan is outstanding pursuant to this Agreement:

(a) No Loan Party has assigned, pledged, conveyed, or encumbered any Collateral to any other Person (other than Permitted Liens) and immediately prior to the pledge of any such Collateral, a Loan Party was the sole owner of such Collateral and had good and marketable title thereto, free and clear of all Liens (other than Permitted Liens), and no Person, other than the Lenders has any Lien (other than Permitted Liens) on any Collateral. No security agreement, financing statement, equivalent security or lien instrument or continuation statement covering all or any part of the Collateral which has been signed by any Loan Party or which any Loan Party has authorized any other Person to sign or file or record, is on file or of record with any public office, except such as may have been filed by or on behalf of a Loan Party in favor of the Lenders pursuant to the Loan Documents or in respect of applicable Permitted Liens.

(b) The provisions of the Loan Documents are effective to create in favor of the Lenders a valid security interest in all right, title, and interest of each Loan Party in, to and under the Collateral, subject only to applicable Permitted Liens.

(c) Upon the entry and effectiveness of the Orders and the filing of financing statements on Form UCC-1 naming the Lenders as "Secured Parties" and each Loan Party as "Debtor", and describing the Collateral, in the jurisdictions and recording offices listed on <u>Schedule 3.21</u> attached hereto, the security interests granted in the Collateral pursuant to the Collateral Documents will constitute perfected first priority security interests under the Uniform Commercial Code in all right, title and interest of the applicable Loan Party in, to and under such

Collateral, which can be perfected by filing under the Uniform Commercial Code, in each case, subject to applicable Permitted Liens and as provided in Section 3.24.

(d) Each Loan Party has and will continue to have the full right, power and authority, to pledge the Collateral, subject to Permitted Liens, and the pledge of the Collateral may be further assigned without any requirement.

# 3.22. [Intentionally Omitted].

3.23. [Intentionally Omitted].

3.24. Lien Priority. (a) On and after the Closing Date, and the entry of the Orders and after giving effect thereto and the filing of financing statements on Form UCC-1 naming the Lenders as "Secured Parties" and each Loan Party as "Debtor", and describing the Collateral, in the jurisdictions and recording offices listed on <u>Schedule 3.21</u> attached hereto subject to the Permitted Liens, the provisions of the Loan Documents are effective to create in favor of the Lenders, legal, valid and perfected Liens on and security interests (having the priority provided for herein and in the Orders) in all right, title and interest in the Collateral, enforceable against each Loan Party that owns an interest in such Collateral and any other Person.

(b) On and after the entry of the Orders and after giving effect thereto and the filing of financing statements on Form UCC-1 naming the Lenders as "Secured Parties" and each Loan Party as "Debtor", and describing the Collateral, in the jurisdictions and recording offices listed on <u>Schedule 3.21</u> attached hereto, all Obligations owing by the Loan Parties will be secured by:

(i) valid, perfected, first-priority security interests in and liens (i) with respect to the Debtors, pursuant to section 364(c)(2) of the Bankruptcy Code and (ii) with respect to the Non-Debtor Loan Parties, pursuant to the Collateral Documents (other than the Orders), in each case, on the Collateral that is not subject to non avoidable, valid and perfected liens in existence as of the Petition Date (or to non avoidable valid liens in existence as of the Petition Date that are subsequently perfected as permitted by section 546(b) of the Bankruptcy Code), subject only to Permitted Liens (other than Liens permitted under clause (a) thereof) and the Carve-Out; and

(ii) valid, perfected, security, junior interests in and liens pursuant to (i) with respect to the Debtors, section 364(c)(3) of the Bankruptcy Code and (ii) with respect to the Non-Debtor Loan Parties, pursuant to the Collateral Documents (other than the Orders), in each case, on the Collateral that is subject to non avoidable, valid and perfected liens in existence as of the Petition Date, or to non avoidable valid liens in existence as of the Petition Date that are subsequently perfected as permitted by section 546(b) of the Bankruptcy Code, subject only to the Carve-Out.

(c) On and after the entry of the Orders and after giving effect thereto, all Obligations owing by the Debtors will be an allowed administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code in each of the Cases having priority over all administrative expenses of the kind specified in sections 503 and 507 of the Bankruptcy Code

and any and all expenses and claims of the Borrower and the other Debtors, whether heretofore or hereafter incurred, including, but not limited to, the kind specified in sections 105, 326, 328, 506(c), 507(a) or 1114 of the Bankruptcy Code, subject only to the Carve-Out.

- 3.25. [Intentionally Omitted].
- 3.26. [Intentionally Omitted.].
- 3.27. [Intentionally Omitted].

3.28. Excluded Collateral. Set forth on Schedule 3.28 is a complete and accurate list of all (i) domestic joint ventures and Domestic Subsidiaries that comprise Excluded Collateral-and₄ (ii) all "first tier" foreign joint ventures and Controlled Foreign Subsidiaries that are owned by the Borrower or any of its Domestic Subsidiaries that comprise Excluded Collateral, and (iii) the New GM Equity Interests that comprise Excluded Collateral, and in each case, are described in Schedule 3.28. All such Property together with the other Property described in Schedule 3.28 shall be excluded from the Collateral (collectively, "Excluded Collateral").

- 3.29. [Intentionally Omitted].
- 3.30. [Intentionally Omitted].

3.31. <u>The Final Order</u>. Upon the maturity (whether by the acceleration or otherwise) of any of the Obligations, the Lenders shall, subject to the provisions of Section 7 and the applicable provisions of the Final Order, be entitled to immediate payment of such Obligations, and to enforce the remedies provided for hereunder, without further application to or order by the Bankruptcy Court.

3.32. <u>Wind-Down Budget</u>. All material facts in the Wind-Down Budget are accurate and the Borrower has disclosed to each Lender all assumptions in the Wind-Down Budget, it being understood that in the case of projections, such projections are based on reasonable estimates, on the date as of which such information is stated or certified.

### **SECTION 4**

### **CONDITIONS PRECEDENT**

4.1. <u>Conditions to Effectiveness</u>. The effectiveness of this Agreement is subject to the satisfaction of the following conditions precedent, satisfaction of such conditions precedent to be determined by the Required Lenders in their reasonable discretion, except as otherwise set forth below:

(a) <u>Loan Documents</u>. The Lenders shall have received the following documents, which shall be in form satisfactory to each Lender:

(i) this Agreement executed and delivered by the Borrower;

(ii) the Guaranty, executed and delivered by each Guarantor;

(iii) the Equity Pledge Agreement, executed and delivered by each

Pledgor;

(iv) [intentionally omitted];

(v) the Environmental Indemnity Agreement, executed and delivered by each Loan Party party thereto; and

(vi) a promissory note of the Borrower evidencing the Loans of such Lender, substantially in the form of Exhibit G (the "<u>Note</u>"), with appropriate insertions as to date and principal amount.

(b) <u>Related Section 363 Sale Transactions</u>. The Lender and its counsel shall be reasonably satisfied that the terms of the Related Section 363 Sale Transactions and of the Transaction Documents are consistent in all material respects with the information provided to the Lender in advance of the date hereof or are otherwise reasonably satisfactory to the Lender (the Lender acknowledges that the form of Transaction Documents provided to it on or prior to the date hereof are satisfactory). The Transaction Documents shall have been duly executed and delivered by the parties thereto, all conditions precedent to the Related Section 363 Sale Transactions set forth in the Transaction Documents shall have been satisfied, and the Related Section 363 Sale Transactions shall have been consummated pursuant to such Transaction Documents substantially contemporaneously with the conditions precedent set forth in this Section 4.1, and no provision thereof shall have been waived, amended, supplemented or otherwise modified, in each case in a manner adverse to the Lender, without the Lender's consent.

(c) <u>Final Order</u>. (i) The Final Order shall have been entered by the Bankruptcy Court and shall have been in full force and effect.

(ii) The Final Order shall not have been reversed, modified, amended, stayed or vacated, in the case of any modification or amendment, in a manner, or relating to a matter, without the consent of the Lenders.

(iii) The Debtors and their respective Subsidiaries shall be in compliance in all respects with the Final Order.

- (iv) [Intentionally Omitted].
- (v) [Intentionally Omitted].

(d) <u>New CarCo Assignment and Assumption</u>. The Borrower and New CarCo shall have executed and delivered the New CarCo Assignment and Assumption, and all conditions precedent to New CarCo's \$[7,072,488,605] First Lien Credit Agreement between New CarCo and the Lender shall have been satisfied or waived by the Treasury in accordance with the terms therewith substantially contemporaneously with the conditions precedent set forth in this Section 4.1.

(e) <u>Canadian Post-Sale Facility</u>. The Canadian Post-Sale Facility, in form and substance satisfactory to the Canadian Lender, shall have become effective and the Canadian Lender shall have received all documents, instruments and related agreements in connection with the Canadian Post-Sale Facility.

(f) <u>Canadian PV Note</u>. The Canadian PV Note, in form and substance satisfactory to the Canadian Lender, shall have become effective and the Canadian Lender shall have received all documents, instruments and related agreements in connection with the Canadian PV Note.

- (g) [Intentionally Omitted].
- (h) [Intentionally Omitted].

(i) <u>Wind-Down Budget</u>. The Borrower shall have delivered to the Lenders the Wind-Down Budget in form and substance satisfactory to the Required Lenders.

(j) [Intentionally Omitted].

(k) <u>Litigation</u>. There shall not exist any action, suit, investigation, litigation or proceeding pending (other than the Cases) or threatened in any court or before any arbitrator or Governmental Authority that, in the sole discretion of the Required Lenders, materially or adversely affects any of the transactions contemplated hereby, or that has or could be reasonably likely to have a Material Adverse Effect.

(1) [Intentionally Omitted].

(m) <u>Consents</u>. The Lenders shall have received all necessary third party and governmental waivers and consents, and each Loan Party shall have complied with all applicable laws, decrees and material agreements.

(n) <u>No Default</u>. No Default or Event of Default shall exist on the Effective Date or after giving effect to the transactions contemplated to be consummated on the Effective Date pursuant to the Transaction Documents and the Loan Documents.

(o) <u>Accuracy of Representations and Warranties</u>. All representations and warranties made by the North American Group Members in or pursuant to the Loan Documents shall be true and correct in all material respects.

(p) <u>Closing Certificate; Certified Certificate of Incorporation; Good Standing</u> <u>Certificates</u>. The Lenders shall have received (i) a certificate of the secretary or assistant secretary of each Loan Party, dated the Effective Date, substantially in the form of <u>Exhibit B-1</u>, with appropriate insertions and attachments, including the certificate of incorporation (or equivalent organizational document) of each Loan Party, certified by the relevant authority of the jurisdiction of organization of such Loan Party (<u>provided</u> that, to the extent applicable, in lieu of delivering the certificate of incorporation and other organizational documents, such certificate may include a certification that such documents not have been amended, supplemented or otherwise modified since the Closing Date), (ii) bring down good standing certifications for each Loan Party from its jurisdiction of organization and (iii) a certificate of the Borrower and each Guarantor, dated the Effective Date, to the effect that the conditions set forth in this Section 4.1 have been satisfied, substantially in the form of <u>Exhibit B-2</u>.

(q) <u>Legal Opinions</u>. The Lenders shall have received the executed legal opinion of (i) Weil, Gotshal and Manges LLP, New York counsel to the Loan Parties, substantially in the form of Exhibit E-1, as to New York law, United States federal law and the Delaware General Corporation Law, and (ii) in-house counsel to the Loan Parties, substantially in the form of Exhibit E-2.

## **SECTION 5**

### **AFFIRMATIVE COVENANTS**

Each Loan Party covenants and agrees to, and to cause each of its Subsidiaries that is a North American Group Member to, so long as any Loan is outstanding and until payment in full of all Obligations, in each case subject to the Wind-Down, the Orders, the Related Section 363<u>Sale</u> Transactions, the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court issued in connection with the Cases:

5.1. <u>Financial Statements</u>. The Borrower shall deliver to the Lenders:

(a) as soon as reasonably possible after receipt by the subject North American Group Member, a copy of any material report that may be prepared and submitted by such North American Group Member's independent certified public accountants at any time or any other material report with respect to the North American Group Members provided to the Borrower and its Subsidiaries pursuant to the Transition Services Agreement;

(b) from time to time such other information regarding the financial condition, operations, or business of any North American Group Member as any Lender may reasonably request;

(c) promptly upon their becoming available, copies of such other financial statements and reports, if any, as any North American Group Member may be required to publicly file with the SEC or any similar or corresponding governmental commission, department or agency substituted therefor, or any similar or corresponding governmental commission, department, board, bureau, or agency, federal or state;

(d) [intentionally omitted];

(e) notice of and copies of each Debtors' pleadings filed in the Cases in connection with any material contested matter or adversary proceeding in the Cases (but the foregoing may be satisfied by including each of the Lenders and their counsel in a "core service group," to receive copies of all pleadings under any order establishing notice and service requirements in the Cases), and such additional information with respect to such matters as either of the Lenders may reasonably request, and which notice shall also include sending copies of any pleadings or other documents that the Borrower or other Debtors seek to file under seal to each

of the lenders and their counsel, <u>provided</u>, <u>however</u>, that if (in addition to the confidentiality provisions of this Agreement) additional confidentiality provisions are needed (i.e. if required by third parties), the Lenders and the Borrower shall endeavor to work out reasonable additional confidentiality terms; and

(f) no later than the twentieth Business Day following the last day of each fiscal quarter, a report (a "Quarterly Report") setting forth in reasonable detail the anticipated receipts and disbursements for the immediately succeeding twelve-mothmonth period and the aggregate amount of cash and Cash Equivalents as of the last day of the immediately preceding fiscal quarter, in form and substance reasonably satisfactory to the Required Lenders. Each Quarterly Report shall be accompanied by a certificate of a Responsible Officer certifying that such Quarterly Report was prepared in good faith and are based on reasonable estimates on the date as of which such information is certified.

5.2. <u>Notices; Reporting Requirements</u>. The relevant Loan Party shall deliver written notice to the Lenders of the following:

(a) <u>Defaults</u>. Promptly after a Responsible Officer or any officer of a North American Group Member with a title of at least executive vice president becomes aware of the occurrence of any Default or Event of Default, or any event of default under any publicly filed material Contractual Obligation of any Group Member;

(b) <u>Litigation</u>. Promptly after a Responsible Officer or an attorney in the general counsel's office of a North American Group Member obtains knowledge of any action, suit or proceeding instituted by or against such North American Group Member or any of its Subsidiaries in any federal or state court or before any commission, regulatory body or Governmental Authority (i) in which the amount in controversy, in each case, is an amount equal to \$25,000,000 or more, (ii) in which injunctive or similar relief is sought, or (iii) which relates to any Loan Document, the relevant Loan Party shall furnish to the Lenders notice of such action, suit or proceeding;

(c) <u>Material Adverse Effect on Collateral</u>. Promptly upon any North American Group Member becoming aware of any default or any event or change in circumstances related to any Collateral which, in each case, could reasonably be expected to have a Material Adverse Effect;

(d) <u>Judgments</u>. Promptly upon the entry of a judgment or decree against any Loan Party or any of its Subsidiaries in an amount in excess of \$15,000,000;

(e) <u>Environmental Events</u>. As soon as possible and in any event within seven (7) Business Days of obtaining knowledge thereof: (i) any development, event, or condition occurring after the date hereof that, individually or in the aggregate with other developments, events or conditions occurring after the date hereof, could reasonably be expected to result in the payment by the Group Members, in the aggregate, of a Material Environmental Amount; and (ii) any notice that any Governmental Authority may deny any application for an Environmental Permit sought by, or revoke or refuse to renew any Environmental Permit held by, any Group Member; (f) <u>Material Adverse Effect</u>. Any development or event that has had or could reasonably be expected to have a Material Adverse Effect;

(g) <u>Insurance</u>. Promptly upon any material change in the insurance coverage required of any Loan Party or any other Person pursuant to any Loan Document, with copy of evidence of same attached;

(h) <u>Compliance Certificate</u>. On the tenth Business Day of each calendar month, beginning with the first month to occur after the Effective Date, a Compliance Certificate, executed by a Responsible Officer of the Borrower, stating that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate;

- (i) [Intentionally Omitted];
- (j) [Intentionally Omitted];
- (k) [Intentionally Omitted];

(1) <u>Expense Policy</u>. Within 15 days after the conclusion of each calendar month, beginning with the month in which the Closing Date occurs, the Borrower shall deliver to the Lenders a certification signed by a Responsible Officer of the Borrower and its Subsidiaries that (i) the Expense Policy conforms to the requirements set forth herein; (ii) the Borrower and its Subsidiaries are in compliance with the Expense Policy; and (iii) there have been no material amendments to the Expense Policy or deviations from the Expense Policy other than those that have been disclosed to and approved by the Lenders; <u>provided</u> that the requirement to deliver the certification referenced in this Section 5.2(1) may be qualified as to the best of such Responsible Officer's knowledge after due inquiry and investigation;

(m) <u>Executive Privileges and Compensation</u>. The Borrower shall submit a certification on the last day of each month beginning July 2009, certifying that the Borrower has complied with and is in compliance with the provisions set forth in Section 5.16. Such certification shall be made to the Lenders by an SEO of the Borrower, subject to the requirements and penalties set forth in Title 18, United States Code, Section 1001;

(n) <u>Organizational Documents</u>. Subject to Section 6.6, each North American Group Member shall furnish prompt written notice to the Lenders of any material amendment to such entity's organizational documents and copies of such amendments; and

(o) [Intentionally Omitted].

Each notice required to be provided pursuant to this Section 5.2(a)-(f) shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the Borrower proposes to take with respect thereto.

5.3. <u>Existence</u>. (a) Preserve and maintain its legal existence and all of its material rights, privileges, licenses and franchises;

(b) pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all their Postpetition obligations of whatever nature, except (i) where such payment, discharge or satisfaction is prohibited by the Orders, the Bankruptcy Code, the Bankruptcy Rules or an order of the Bankruptcy Court or by this Agreement or the Wind-Down Budget, or (ii) where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the Borrower or its Subsidiaries, as the case may be;

(c) comply with the requirements of all Applicable Laws, rules, regulations and orders of Governmental Authorities if failure to comply with such requirements could be reasonably likely (either individually or in the aggregate) to have a Material Adverse Effect on any Loan Party or the Collateral;

(d) keep adequate records and books of account, in which complete entries will be made in accordance with GAAP consistently applied, and maintain adequate accounts and reserves for all taxes (including income taxes), all depreciation, depletion, obsolescence and amortization of its properties, all contingencies, and all other reserves;

(e) (i) change the location of its chief executive office/chief place of business from that specified in Section 3.10, (ii) change its name, identity or corporate structure (or the equivalent) or change the location where it maintains records with respect to the Collateral, or (iii) reincorporate or reorganize under the laws of another jurisdiction, it shall give the Lenders written notice thereof not later than ten (10) days after such event occurs, and shall deliver to the Lenders all Uniform Commercial Code financing statements and amendments as the Lenders shall request and take all other actions deemed reasonably necessary by the Lenders to continue its perfected status in the Collateral with the same or better priority;

(f) keep in full force and effect the provisions of its charter documents, certificate of incorporation, by-laws, operating agreements or similar organizational documents; and

(g) comply (i) in the case of each North American Group Member that is not a Debtor, with all Contractual Obligations in a manner such that a Material Adverse Effect could not reasonably be expected to result and (ii) in the case of each Debtor, with all material Postpetition Contractual Obligations (including the Transition Services Agreement).

5.4. <u>Payments of Taxes</u>. Except as prohibited by the Bankruptcy Code, the Borrower will and will cause each Group Member (i) to timely file or cause to be filed all federal and material state and other Tax returns that are required to be filed and all such Tax returns shall be true and correct and (ii) to timely pay and discharge or cause to be paid and discharged promptly all Taxes, assessments and governmental charges or levies arising Postpetition and imposed upon the Borrower or any of the other Group Members or upon any of their respective incomes or receipts or upon any of their respective properties before the same shall become in default or past due, as well as all lawful claims for labor, materials and supplies or otherwise which, if unpaid, might result in the imposition of a Lien or charge upon such properties or any part thereof; <u>provided</u> that it shall not constitute a violation of the provisions of this Section 5.4 if the Borrower or any of the other Group Members shall fail to pay any such Tax, assessment, government charge or levy or claim for labor, materials or supplies which is being contested in good faith, by proper proceedings diligently pursued, and as to which adequate reserves have been provided.

5.5. <u>Use of Proceeds.</u> The Loan Parties and their Subsidiaries shall use the Loan proceeds only for the purposes set forth in Section 3.20 and in a manner generally consistent with the Wind-Down Budget.

5.6. <u>Maintenance of Existence</u>; <u>Payment of Obligations</u>; <u>Compliance with</u> <u>Law</u>. Subject to the Orders, the Related Section 363 <u>Sale</u> Transactions and the Cases, each Loan Party shall:

(a) keep all property useful and necessary in its business in good working order and condition; and

(b) maintain errors and omissions insurance and blanket bond coverage in such amounts as are in effect on the Closing Date (as disclosed to the Lenders in writing except in the event of self-insurance) and shall not reduce such coverage without the written consent of the Lenders, and shall also maintain such other insurance with financially sound and reputable insurance companies, and with respect to property and risks of a character usually maintained by entities engaged in the same or similar business similarly situated, against loss, damage and liability of the kinds and in the amounts customarily maintained by such entities. Notwithstanding anything to the contrary in this Section 5.6, to the extent that any North American Group Member is engaged in self-insurance with respect to any of its property as of the Closing Date, such Loan Party may, if consistent with past practices, continue to engage in such self-insurance throughout the term of this Agreement; provided, that the North American Group Members shall promptly obtain third party insurance that conforms to the criteria in this Section 5.6 at the request of the Lenders.

5.7. <u>Further Identification of Collateral</u>. Each Loan Party will furnish to the Lenders from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as any Lender may reasonably request, all in reasonable detail.

5.8. <u>Defense of Title</u>. Subject to the Wind-Down, the Orders, the Related Section 363 <u>Sale</u> Transactions, the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court, each Loan Party warrants and will defend the right, title and interest of the Lenders in and to all Collateral against all adverse claims and demands of all Persons whomsoever, subject to (x) the restrictions imposed by the Existing Agreements to the extent that such restrictions are valid and enforceable under the applicable Uniform Commercial Code and other Requirements of Law and (y) the rights of holders of any Permitted Lien. 5.9. <u>Preservation of Collateral</u>. Subject to the Wind-Down, the Orders, the Related Section 363<u>Sale</u> Transactions, the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court, each Loan Party shall do all things necessary to preserve the Collateral so that the Collateral remains subject to a perfected security interest with the priority provided for such security interest under the Loan Documents. Without limiting the foregoing, each Loan Party will comply with all Applicable Laws, rules and regulations of any Governmental Authority applicable to such Loan Party or relating to the Collateral and will cause the Collateral to comply, with all Applicable Laws, rules and regulations of any such Governmental Authority, except where failure to so comply would not reasonably be expected to have a Material Adverse Effect. No Loan Party will allow any default to occur for which any Loan Party is responsible under any Loan Documents and each Loan Party shall fully perform or cause to be performed when due all of its obligations under the Loan Documents.

# 5.10. Maintenance of Papers, Records and Files.

(a) each North American Group Member will maintain all Records in good and complete condition and preserve them against loss or destruction, all in accordance with industry and customary practices;

(b) each North American Group Member shall collect and maintain or cause to be collected and maintained all Records relating to its business and operations and the Collateral in accordance with industry custom and practice, including those maintained pursuant to the preceding subsection, and all such Records shall be in the possession of the North American Group Members or reasonably obtainable upon the request of any Lender unless the Lenders otherwise approve; and

(c) for so long as any Lender has an interest in or Lien on any Collateral, each North American Group Member will hold or cause to be held all related Records in trust for such Lender. Each North American Group Member shall notify, or cause to be notified, every other party holding any such Records of the interests and Liens granted hereby.

5.11. <u>Maintenance of Licenses</u>. Subject to the Wind-Down, the Orders, the Related Section 363<u>Sale</u> Transactions and the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court, except where the failure to do so could not reasonably be likely to have a Material Adverse Effect, each Loan Party shall (i) maintain all licenses, permits, authorizations or other approvals necessary for such Loan Party to conduct its business and to perform its obligations under the Loan Documents, (ii) remain in good standing under the laws of the jurisdiction of its organization, and in each other jurisdiction where such qualification and good standing are necessary for the successful operation of such Loan Party's business, and (iii) shall conduct its business in accordance with Applicable Law in all material respects.

5.12. <u>Payment of Obligations</u>. The Borrower will duly and punctually pay or cause to be paid the principal and interest on the Loans and each North American Group Member will duly and punctually pay or cause to be paid all fees and other amounts from time to time owing by it hereunder or under the other Loan Documents, all in accordance with the terms of this Agreement and the other Loan Documents. Each North American Group Member will, and will cause each of its Subsidiaries to, pay (i) with respect to each Debtor its Postpetition

obligations; and (ii) with respect to each other Group Member its obligations, in each case including tax liabilities, assessments and governmental charges or levies imposed upon such Person or upon its income and profits or upon any of its property, real, personal or mixed (including without limitation, the Collateral) or upon any part thereof, as well as any other lawful claims which, if unpaid, could reasonably be expected to become a Lien upon such properties or any part thereof, that, if not paid, could reasonably be expected to result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the relevant Loan Party, or such Subsidiary, has set aside on its books adequate reserves with respect thereto and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

5.13. <u>OFAC</u>. At all times throughout the term of this Agreement, each Loan Party and its Controlled Affiliates (a) shall be in full compliance with all applicable orders, rules, regulations and recommendations of OFAC and (b) shall not permit any Collateral to be maintained, insured, traded, or used (directly or indirectly) in violation of any United States statutes, rules or regulations, in a Prohibited Jurisdiction or by a Prohibited Person, and no lessee or sublessee shall be a Prohibited Person or a Person organized in a Prohibited Jurisdiction.

5.14. <u>Investment Company</u>. Each North American Group Member will conduct its operations in a manner which will not subject it to registration as an "<u>investment company</u>" as such term is defined in the Investment Company Act of 1940, as amended from time to time.

Further Assurances. Subject to the Wind-Down, the Orders, the Related 5.15. Section 363 Sale Transactions and the Cases, the Borrower shall, and shall cause each North American Group Member to, from time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take such actions, as the Lenders may reasonably request for the purposes of implementing or effectuating the provisions of this Agreement and the other Loan Documents, or of more fully perfecting or renewing the rights of the Lenders with respect to the Collateral (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets hereafter acquired by any Group Member which may be deemed to be part of the Collateral) pursuant hereto or thereto. Upon the exercise by any Lender of any power, right, privilege or remedy pursuant to this Agreement or the other Loan Documents that requires any consent, approval, recording, qualification or authorization of any Governmental Authority, the Borrower will execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that such Lender may be required to obtain from the Borrower or any Group Member such governmental consent, approval, recording, qualification or authorization.

5.16. <u>Executive Privileges and Compensation</u>. (a) Subject to the Wind-Down, the Orders, the Related Section 363<u>Sale</u> Transactions and the Cases, the Borrower shall comply with the following restrictions on executive privileges and compensation:

(i) the Borrower shall take all necessary action to ensure that its Specified Benefit Plans comply in all respects with the EESA, including, without limitation, the provisions for the Capital Purchase Program, as implemented by any guidance or regulation thereunder, including the rules set forth in 31 C.F.R. Part 30, or any other guidance or regulations under the EESA, as the same shall be in effect from time to time (collectively, the "<u>Compensation Regulations</u>"), and shall not adopt any new Specified Benefit Plan (x) that does not comply therewith or (y) that does not expressly state and require that such Specified Benefit Plan and any compensation thereunder shall be subject to all relevant Compensation Regulations adopted, issued or released on or after the date any such Specified Benefit Plan is adopted. To the extent that the Compensation Regulations change during the period when any Obligations remain outstanding in a manner that requires changes to then-existing Specified Benefit Plans, the Borrower shall effect such changes to its Specified Benefit Plans as promptly as practicable after it has actual knowledge of such changes in order to be in compliance with this Section 5.16(i) (and shall be deemed to be in compliance for a reasonable period within which to effect such changes);

(ii) the Borrower shall be subject to the limits on annual executive compensation deductibles imposed by section 162(m)(5) of the Code, as applicable;

(iii) the Borrower shall not pay or accrue any bonus or incentive compensation to the Senior Employees, except as may be permitted under the EESA or the Compensation Regulations;

(iv) the Borrower shall not adopt or maintain any compensation plan that would encourage manipulation of its reported earnings to enhance the compensation of any of its employees; and

(v) the Borrower shall maintain all suspensions and other restrictions of contributions to Specified Benefit Plans that are in place or initiated as of the Closing Date.

At all times throughout the term of this Agreement, the Required Lenders shall have the right to require any Group Member to claw back any bonuses or other compensation, including golden parachutes, paid to any Senior Employees in violation of any of the foregoing.

(b) On or prior to June 30, July _____, 2009, the Borrower shall cause the principal executive officer (or person acting in a similar capacity) to certify in writing to the Treasury's Chief Compliance Officer that its compensation committee has reviewed the compensation arrangements of the SEOs with its senior risk officers and determined that the compensation arrangements do not encourage the SEOs to take unnecessary and excessive risks that threaten the value of the Borrower. The Borrower shall preserve appropriate documentation and records to substantiate such certification in an easily accessible place for a period not less than three years following the Maturity Date.

From the Closing Date until the repayment of all ObligationsMaturity Date, the Borrower shall comply with the provisions of this Section 5.16.

5.17. <u>Aircraft</u>. With respect to any private passenger aircraft or interest in such aircraft that is owned or held by the Borrower or any of its respective Subsidiaries immediately

prior to the Closing Date, such party shall demonstrate to the satisfaction of the Treasury that it is taking all reasonable steps to divest itself of such aircraft or interest. In addition, the Borrower shall not acquire or lease any private passenger aircraft or interest in private passenger aircraft after the Closing Date.

5.18. <u>Restrictions on Expenses</u>. (a) At all times throughout the term of this Agreement, the Borrower shall maintain and implement an Expense Policy and distribute the Expense Policy to all employees covered under the Expense Policy. Any material amendments to the Expense Policy shall require the prior written consent of the Treasury, and any material deviations from the Expense Policy, whether in contravention thereof or pursuant to waivers provided for thereunder, shall promptly be reported to the Treasury.

(b) The Expense Policy shall, at a minimum: (i) require compliance with all Requirements of Law, (ii) apply to the Borrower and all of its Subsidiaries, (iii) govern (A) the hosting, sponsorship or other payment for conferences and events, (B) travel accommodations and expenditures, (C) consulting arrangements with outside service providers, (D) any new lease or acquisition of real estate, (E) expenses relating to office or facility renovations or relocations, and (F) expenses relating to entertainment or holiday parties, and (iv) provide for (A) internal reporting and oversight, and (B) mechanisms for addressing non-compliance with the Expense Policy.

5.19. <u>Employ American Workers Act</u>. The Borrower shall comply, and the Borrower shall take all necessary action to ensure that its Subsidiaries comply, in all respects with the provisions of the EAWA in all respects.

5.20. Internal Controls; Recordkeeping; Additional Reporting. (a) The Borrower shall promptly establish internal controls to provide reasonable assurance of compliance in all material respects with each of the Borrower's covenants and agreements set forth in Sections 5.16, 5.17, 5.18, 5.19 and 5.20(b) hereof and shall collect, maintain and preserve reasonable records evidencing such internal controls and compliance therewith, a copy of which records shall be provided to the Lenders promptly upon request. On the 15th day after the last day of each calendar quarter (or, if such day is not a Business Day, on the first Business Day after such day) commencing with September 30, 2009, the Borrower shall deliver to the Treasury (at its address set forth in Section 8.2) a report setting forth in reasonable detail (x) the status of implementing such internal controls and (y) the Borrower's compliance (including any instances of material non-compliance) with such covenants and agreements. Such report shall be accompanied by a certification duly executed by an SEO of the Borrower stating that such quarterly report is accurate in all material respects to the best of such SEO's knowledge, which certification shall be made subject to the requirements and penalties set forth in Title 18, United States Code, Section 1001.

(b) The Borrower shall use its reasonable best efforts to account for the use and expected use of the proceeds from the Loans. On the 15th day after the last day of each calendar quarter (or, if such day is not a Business Day, on the first Business Day after such day) commencing with September 30, 2009, the Borrower shall deliver to the Lenders (at their respective addresses set forth in Section 8.2) a report setting forth in reasonable detail the actual use of the proceeds from the Loans. Such report shall be accompanied by a certification duly executed by an SEO of the Borrower that such quarterly report is accurate in all material respects to the best of such SEO's knowledge, which certification shall be made subject to the requirements and penalties set forth in Title 18, United States Code, section 1001.

(c) The Borrower shall collect, maintain and preserve reasonable records relating to the implementation of all Federal support programs provided to the Borrower or any of its Subsidiaries pursuant to the EESA, the use of the proceeds thereunder and the compliance with the terms and provisions of such programs; <u>provided</u> that the Borrower shall have no obligation to comply with the foregoing in connection with any such program to the extent that such program independently requires, by its express terms, the Borrower to collect, maintain and preserve any records in connection therewith. The Borrower shall provide the Treasury with copy of all such reasonable records promptly upon request.

5.21. <u>Waivers</u>. (a) For any Person who is a Loan Party as of the Closing Date and any Person that becomes a Loan Party after the Closing Date, the Borrower shall cause a waiver, in substantially the form attached hereto as Exhibit D-1, to be duly executed by such North American Group Member and promptly delivered to the Treasury.

(b) For any Person who is an SEO as of the Closing Date and any Person that becomes an SEO after the Closing Date, the Borrower shall cause a waiver, in substantially the form attached hereto as Exhibit D-2, to be duly executed by such SEO, and promptly delivered to the Treasury.

(c) For any Person who is an SEO as of the Closing Date and any Person that becomes an SEO after the Closing Date, the Borrower shall cause a consent and waiver, in substantially the form attached hereto as Exhibit D-3, to be duly executed by such SEO, and promptly delivered to the Borrower (with a copy to the Treasury).

(d) For any Person who is a Senior Employee as of the Closing Date and any Person that becomes an Senior Employee after the Closing Date, the Borrower shall cause a waiver, in substantially the form attached hereto as Exhibit D-4, to be duly executed by such Senior Employee, and promptly delivered to the Treasury.

(e) For any Person who is a Senior Employee as of the Closing Date and any Person that becomes an Senior Employee after the Closing Date, the Borrower shall cause a consent and waiver, in substantially the form attached hereto as Exhibit D-5, to be duly executed by such Senior Employee, and promptly delivered to the Borrower (with a copy to the Treasury).

(f) For the avoidance of doubt, this requirement will be deemed satisfied for the United States with respect to Loan Parties that are party to the Existing UST Term Loan Agreement and any SEO or Senior Employee, to the extent such Loan Party, SEO or Senior Employee has previously provided such a waiver to the Treasury.

# 5.22. [Intentionally Omitted].

5.23. <u>Additional Guarantors</u>. Except as otherwise agreed to by the Required Lenders, the Borrower shall cause each Domestic Subsidiary of a North American Group Member who becomes a Debtor after the Closing Date to become a Guarantor (each, an

"<u>Additional Guarantor</u>") in accordance with Section 4.24 of the Guaranty, other than (i) [intentionally omitted], (ii) any Foreign 956 Subsidiary, (iii) any Other Foreign 956 Subsidiary and (iv) any Non-U.S. Subsidiary owned in whole or in part by a Foreign 956 Subsidiary, except in the case of clauses (i) through (iv), any Subsidiaries that were guarantors under the Existing UST Term Loan Agreement.

5.24. <u>Provide Additional Information</u>. Each North American Group Member shall, promptly, from time to time and upon request of any Lender, furnish to such Lender such information, documents, records or reports with respect to the Collateral, the Indebtedness of the North American Group Members or any Subsidiary thereof or the corporate affairs, conditions or operations, financial or otherwise, of such North American Group Member as any Lender may reasonably request, including without limitation, providing to such Lender reasonably detailed information with respect to each inquiry of such Lender raised with the North American Group Members prior to the Closing Date.

5.25. Inspection of Property; Books and Records; Discussions. Subject to the Wind-Down, the Orders, the Related Section 363 Sale Transactions and the Cases, the Borrower shall, and shall cause each Group Member to, (a) keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities, and (b) permit representatives of any Lender, the Special Inspector General of the Troubled Asset Relief Program or the Comptroller General of the United States to visit and inspect any of its properties and examine and make abstracts from any of its books and records and other data delivered to them pursuant to the Loan Documents at any reasonable time and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of the Group Members with officers and employees of the Group Members and with its independent certified public accountants.

### **SECTION 6**

### **NEGATIVE COVENANTS**

Each Loan Party hereby covenants and agrees to, and to cause itself and each of its Subsidiaries that is a North American Group Member to, so long as any Loan or any interest or fee payable hereunder is owing to any Lender, each North American Group Member will abide by the following negative covenants, in each case subject to the Wind-Down, the Orders, the Related Section 363 Sale Transactions, the Cases, the Bankruptcy Code and all orders of the Bankruptcy Court issued in connection with the Cases:

6.1. <u>Prohibition on Fundamental Changes</u>. No North American Group Member shall, at any time, directly or indirectly, (i) enter into any transaction of merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation, winding up or dissolution) or Dispose of all or substantially all of its Property without the Lender's prior consent, provided, any Guarantor may merge, consolidate, amalgamate into, or Dispose of all or substantially all of its Property to another North American Group Member; or (ii) form or enter into any partnership, syndicate or other combination (other than joint ventures permitted by Section 6.14) that could reasonably be expected to have a Material Adverse Effect. 6.2. <u>Lines of Business</u>. No North American Group Member will engage to any substantial extent in any line or lines of business activity other than the businesses generally carried on by the North American Group Members as of the Closing Date or businesses reasonably related thereto.

Transactions with Affiliates. No North American Group Member will (a) 6.3. enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property (including Collateral) or the rendering of any service, with any Affiliate unless such transaction is (i) in the ordinary course of such North American Group Member's business, and (ii) generally upon fair and reasonable terms and, with respect to any transaction with an Affiliate that is not a Group Member, no less favorable to such North American Group Member than it would obtain in an arm's length transaction with a Person which is not an Affiliate (other than any transaction that occurs pursuant to an agreement in effect as of the Petition Date), and in either case, is otherwise permitted under this Agreement, or (b) make a payment that is not otherwise permitted by this Section 6.3 to any Affiliate. Irrespective of whether such transactions comply with the provisions of this Section 6.3, but subject to the other restrictions set forth elsewhere in this Agreement, the Loan Parties shall be permitted to (x) transact business in the ordinary course with (i) the joint ventures in which the Loan Parties or their Subsidiaries participate and (ii) [intentionally omitted], and (y) make Restricted Payments permitted under Section 6.5.

6.4. <u>Limitation on Liens</u>. No North American Group Member will, create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except Permitted Liens.

6.5. <u>Restricted Payments</u>. Without the Lenders' consent, no North American Group Member shall, (i) declare or pay any dividend (other than dividends payable solely in common Capital Stock of the Person making such dividend) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of any Capital Stock of any North American Group Member, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any North American Group Member and (ii) optionally prepay, repurchase, redeem or otherwise optionally satisfy or defease with cash or Cash Equivalents any Indebtedness (any such payment referred to in clauses (i) and (ii), a "<u>Restricted Payment</u>"), other than:

(a) redemptions, acquisitions or the retirement for value or repurchases (or loans, distributions or advances to effect the same) of shares of Capital Stock from current or former officers, directors, consultants and employees, including upon the exercise of stock options or warrants for such Capital Stock, or any executive or employee savings or compensation plans, or, in each case to the extent applicable, their respective estates, spouses, former spouses or family members or other permitted transferees;

(b) any Subsidiary (including an Excluded Subsidiary) may make Restricted Payments to its direct parent or to the Borrower or any Wholly Owned Guarantor;

(c) any JV Subsidiary may make Restricted Payments required or permitted to be made pursuant to the terms of the joint venture arrangements in effect on the Closing Date (or otherwise as approved by the Required Lenders) of holders of its Capital Stock, <u>provided</u> that, the Borrower and its Subsidiaries have received their *pro rata* portion of such Restricted Payments; and

(d) any Subsidiary that is not a North American Group Member may make Restricted Payments to any other Subsidiary or Subsidiaries that are not North American Group Members.

6.6. Amendments to Transaction Documents. (a) No North American Group Member will amend, supplement or otherwise modify (pursuant to a waiver or otherwise) the terms and conditions of the indemnities and licenses furnished to New CarCo and its successors or any of its Subsidiaries pursuant to the Transaction Documents such that after giving effect thereto such indemnities or licenses, taken as a whole, shall be materially less favorable to the interests of New CarCo or the Lenders with respect thereto or (b) otherwise amend, supplement or otherwise modify the terms and conditions of the Transaction Documents.

<u>6.6.</u> <u>6.7.-Changes in Fiscal Periods</u>. No North American Group Member will permit its fiscal year to end on a day other than December 31 or change its method of determining fiscal quarters, in each case, unless otherwise agreed by the Required Lenders.

<u>6.7.</u> <u>6.8. Negative Pledge</u>. No North American Group Member will, enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any North American Group Member to create, incur, assume or permit to exist any Lien upon any of the Collateral, whether now owned or hereafter acquired, other than this Agreement, the other Loan Documents, the Existing Agreements, and Permitted Liens; provided that the agreements excepted from the restrictions of this Section shall include customary negative pledge clauses in agreements providing refinancing Indebtedness or permitted unsecured Indebtedness.

<u>6.8.</u> <u>6.9. Indebtedness</u>. No North American Group Member will, create, incur, assume or suffer to exist any Indebtedness except Permitted Indebtedness.

<u>6.9.</u> 6:10:--<u>Investments</u>. No North American Group Member will make any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting a business unit of, or make any other investment in, any Person (all of the foregoing, "<u>Investments</u>"), except Permitted Investments.

<u>6.10.</u> <u>6.11.</u> <u>Action Adverse to the Collateral</u>. Except as permitted under any provision of this Agreement, no Loan Party shall or shall permit any Pledged Entity that is a Subsidiary to take any action that would directly or indirectly materially impair or materially adversely affect such North American Group Member's title to, or the value of, the Collateral, or materially increase the duties, responsibilities or obligation of any North American Group Member.

<u>6.11.</u> <u>6.12. Limitation on Sale of Assets</u>. Subject to the Wind-Down, the Orders, the Related Section 363 <u>Sale</u> Transactions and the Cases and any other applicable

provision of any Loan Document, each North American Group Member shall have the right to Dispose freely of any of its Property (including, without limitation, receivables and leasehold interests) whether now owned or hereafter acquired; <u>provided</u> that, to the extent required, the Net Cash Proceeds thereof are applied in accordance with Section 2.5.

### 6.12. 6.13. [Intentionally Omitted].

<u>6.13.</u> <u>6.14. JV Agreements</u>. No North American Group Member or Pledged Entity shall allow any modification or amendment to any JV Agreement, except that any such party that is not a Debtor may modify or amend any JV Agreement; <u>provided</u> that such amendment or modification could not reasonably be expected to have a Material Adverse Effect.

<u>6.14.</u> <u>6.15.</u> <u>Swap Agreements</u>. The North American Group Members will not itself, and will not permit any of their respective Subsidiaries to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which the Borrower or any Subsidiary has actual or anticipated exposure (other than those in respect of Capital Stock) and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates with respect to any interest-bearing liability or investment of the Borrower or any Subsidiary.

<u>6.15.</u> <u>6.16.-Clauses Restricting Subsidiary Distributions</u>. The Borrower will not, and will not permit any Guarantor to, enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any such Guarantor to (a) make Restricted Payments in respect of any Capital Stock of such Guarantor held by, or pay any Indebtedness owed to, the Borrower or any other Guarantor, (b) make loans or advances to, or other Investments in, the Borrower or any other Guarantor or (c) transfer any of its assets to the Borrower or any other Guarantor, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions with respect to a Guarantor imposed pursuant to an agreement that has been entered into in connection with the Disposition of all or substantially all of the Capital Stock or assets of such Guarantor, (iii) any agreement or instrument governing Indebtedness assumed in connection with the acquisition of assets by the Borrower or any Guarantor permitted hereunder or secured by a Lien encumbering assets acquired in connection therewith, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired, (iv) restrictions on the transfer of assets subject to any Lien permitted by Section 6.4 imposed by the holder of such Lien or on the transfer of assets subject to a Disposition permitted by Section 6.12 imposed by the acquirer of such assets, (v) provisions in joint venture agreements and other similar agreements (in each case relating solely to the respective joint venture or similar entity or the Capital Stock therein) entered into in the ordinary course of business, (vi) restrictions contained in the terms of any agreements governing purchase money obligations, Capital Lease Obligations or attributable obligations not incurred in violation of this Agreement; provided that, such restrictions relate only to the property financed with such Indebtedness, (vii) restrictions on cash or other deposits imposed by customers under contracts or other arrangements entered into or agreed to in the ordinary course of business, or (viii) customary non-assignment provisions in leases, contracts, licenses and other agreements entered into in the ordinary course of business and consistent with past practices.

<u>6.16.</u> <u>6.17.</u> <u>Sale/Leaseback Transactions</u>. No North American Group Member will enter into any arrangement with any Person providing for the leasing by any such North American Group Member of real or personal property that has been or is to be sold or transferred by any such North American Group Member to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of any such North American Group Member (a "<u>Sale/Leaseback Transaction</u>") other than any Sale/Leaseback Transaction in effect on the Closing Date.

### 6.17. 6-18- [Intentionally Omitted].

<u>6.18.</u> 6-19.--<u>Modification of Organizational Documents</u>. No North American Group Member will modify any organizational documents, except (i) as required by the Bankruptcy Code or (ii) in connection with a Disposition permitted by Section 6.12.

### **SECTION 7**

### **EVENTS OF DEFAULT**

7.1. <u>Events of Default</u>. Notwithstanding the provisions of section 362(c) of the Bankruptcy Code, and without notice, application or motion to, hearing before, or order of the Bankruptcy Court, or any notice to any of the North American Group Members, and subject to the provisions of this Section 7, each of the following events shall constitute an "<u>Event of Default</u>", <u>provided</u> that any requirement for the giving of notice, the lapse of time, or both, has been satisfied:

(a) the Borrower shall default in the payment of any principal of or interest on any Loan when due (whether at stated maturity, upon acceleration or upon any mandatory prepayment pursuant to Section 2.5), <u>provided however</u>, that the Borrower shall have two (2) Business Days' grace period for the payment of interest hereunder; or

- (b) any Guarantor shall default in its payment obligations under the Guaranty;
- or
- (c) any Loan Party shall default in the payment of any other amount payable by it hereunder or under any other Loan Document after notification by the Lenders of such default, and such default shall have continued unremedied for three (3) Business Days; or

(d) any North American Group Member shall breach any covenant contained in Section 5.16 (Executive Privileges and Compensation), Section 5.17 (Aircraft), Section 5.18 (Restrictions on Expenses), Section 5.19 (Employ American Workers Act), Section 5.20 (Internal Controls; Recordkeeping; Additional Reporting), Section 5.21 (Waivers) or Section 6 hereof; or

(e) any North American Group Member shall default in performance of or otherwise breach non-payment obligations or covenants under any of the Loan Documents not covered by another clause in this Section 7, and such default has not been remedied within the applicable grace period provided therein, or if no grace period, within ten (10) Business Days; or (f) any representation, warranty or certification made or deemed made herein or in any other Loan Document by any North American Group Member or any certificate furnished to the Lenders pursuant to the provisions hereof or thereof, shall prove to have been false or misleading in any material respect as of the time made or furnished; or

- (g) [intentionally omitted]; or
- (h) [intentionally omitted]; or
- (i) [intentionally omitted]; or
- (j) [intentionally omitted]; or

(k) any of the Cases shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code; a trustee or interim trustee under chapter 7 or chapter 11 of the Bankruptcy Code, a receiver and manager, or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases; or an application shall be filed by the Borrower or any of its Subsidiaries for the approval of any other Superpriority Claim (other than the Carve-Out) in any of the Cases which is *pari passu* with or senior to the claims of the Lenders against any Borrower or any other Loan Party hereunder or under any of the other Loan Documents, or there shall arise or be granted any such *pari passu* or senior Superpriority Claim; or

(1) except as agreed by the Required Lenders, any Debtor shall make any Prepetition Payment other than (i) Prepetition Payments authorized by the Bankruptcy Court in accordance with "first day" motions and related orders or other orders of the Bankruptcy Court, or (ii) Prepetition Payments required by the Bankruptcy Code; or

(m) the Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code to the holder or holders of any security interest to (i) permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any of the Debtors which have a value in excess of \$25,000,000 in the aggregate or (ii) permit other actions that would have a material adverse effect on the Loan Parties and in the case of the Debtors, their estates[intentionally omitted]; or

(n) [intentionally omitted]; or

(o) any North American Group Member shall default under, or fail to perform as required under, or shall otherwise materially breach the terms of any instrument, agreement or contract for Indebtedness without the consent of the Lenders (which in the case of the Debtors only, arose Postpetition) between any North American Group Member, on the one hand, and a Lender or any Affiliate of a Lender on the other; or any North American Group Member shall default under, or fail to perform as requested under, the terms of any instrument, agreement or contract for Indebtedness (which in the case of the Debtors only, arose Postpetition) entered into by such North American Group Member and any third party, if, in either case, the effect of any such default or failure is to cause, or to permit the holder or holders of such Indebtedness or a trustee or other representative on its or their behalf (with or without the giving of notice, the lapse of time or both) to cause, such Indebtedness to become due prior to its stated maturity; provided that, it shall not constitute an Event of Default pursuant to this paragraph (o) unless the aggregate amount of all such Indebtedness then outstanding exceeds \$25,000,000[intentionally omitted]; or

(p) any Loan Document shall for whatever reason be terminated, any default or event of default shall have occurred under any Loan Document, the Loan Documents shall for any reason cease to create a valid, security interest in any of the Collateral purported to be covered hereby or thereby, or any North American Group Member's material obligations (including the Borrower's Obligations hereunder) shall cease to be in full force and effect, or the enforceability thereof shall be contested by any North American Group Member; or

(q) the filing of a motion, pleading or proceeding by any of the other Loan Parties which could reasonably be expected to result in a material impairment of the rights or interests of any Lender under any Loan Document, or a determination by a court with respect to a motion, pleading or proceeding brought by another party which results in a material impairment of the rights or interests of any Lender under any Loan Document; or

(r) (i) any order shall be entered reversing, amending, supplementing, staying for a period in excess of five days, vacating or otherwise modifying in any material respect the Final Order without the prior written consent of the Lenders, (ii) the Final Order shall cease to create a valid and perfected Lien or to be otherwise in full force and effect or (iii) any Debtor shall fail to, or fail to cause any North American Group Member to, comply with the Orders; or

(s) the North American Group Members or any other material Subsidiaries of the Borrower shall take any action in support of any of the events set forth in clauses (k), (l), (m), (q) or (s) or any person other than the North American Group Members or any other material Subsidiaries of the Borrower shall do so, and such application is not contested in good faith by the North American Group Members or any other material Subsidiaries of the Borrower and the relief requested is granted in an order that is not stayed pending appeal; or

(t) [intentionally omitted]; or

(u) any Change of Control shall have occurred without the prior consent of the Lenders other than pursuant to the Related Section 363 Transaction; or

(v) any North American Group Member shall grant, or suffer to exist, any Lien on any Collateral other than Permitted Liens; or the Liens contemplated under the Loan Documents shall cease to be perfected Liens on the Collateral in favor of the Lenders of the requisite priority hereunder with respect to such Collateral (subject to the Permitted Liens); or

- (w) [intentionally omitted]; or
- (x) [intentionally omitted]; or
- (y) [intentionally omitted]; or
- (z) [intentionally omitted]; or

(aa) [intentionally omitted]; or

(bb) any North American Group Member (other than a Debtor) shall admit its inability to, or intention not to, perform any of such party's material Obligations hereunder; or

(cc) a plan shall be confirmed in any of the Cases that does not, or any order shall be entered which dismisses any of the Cases and which order does not, comply with the repayment provisions of this Agreement; or any of the Debtors shall seek support, or fail to contest in good faith the filing or confirmation of such a plan or the entry of such an order.

7.2. <u>Remedies upon Event of Default</u>. If any Event of Default occurs and is continuing, without limiting the rights and remedies available to any Lender under applicable law, the Required Lenders shall, by written notice to the Borrower, take any or all of the following actions, at the same or different times, in each case without further order of or application to the Bankruptcy Court (<u>provided</u> that (x) with respect to clause (iii) below and the enforcement of Liens or other remedies with respect to the Collateral under clause (v) below, the Lenders shall provide the Borrower (with a copy to counsel for each Committee and to the United States Trustee for the Southern District of New York) with five Business Days' written notice prior to taking the action contemplated thereby, (y) upon receipt of any such notice, the Borrower may only make disbursements in the ordinary course of business and with respect to the Carve-Out, but may not disburse any other amounts, and (z) in any hearing after the giving of the aforementioned notice, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing:

(i) declare the principal of and accrued interest on the outstanding Loans to be immediately due and payable;

(ii) [intentionally omitted];

(iii) set-off any amounts held in any accounts maintained by any Loan Party with respect to which any Lender is a party to a control agreement;

(iv) compel any Debtor to or to cause any North American Group Member to sell any or all of its assets pursuant to Section 363(b) of the Bankruptcy Code or any other applicable law, and credit bid the Loans in any such sale pursuant to Section 363(k) of the Bankruptcy Code or other applicable law; or

(v) take any other action or exercise any other right or remedy (including, without limitation, with respect to the Liens in favor of the Lenders) permitted under the Loan Documents or by applicable law.

### **SECTION 8**

#### **MISCELLANEOUS**

8.1. <u>Amendments and Waivers</u>. Neither this Agreement, any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except

in accordance with the provisions of this Section 8.1 or as otherwise expressly provided herein. The Required Lenders and the Borrower (on its own behalf and as agent on behalf of any other Loan Party party to the relevant Loan Document) may, from time to time, (a) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights or obligations of the Lenders or of the Loan Parties hereunder or thereunder or (b) waive, on such terms and conditions as the Lenders may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; except that (x) the consent of each Lender directly affected thereby shall be required with respect to (i) reductions in the amount or extensions of the Maturity Date of any Loan or any change to the definition of "Maturity Date", (ii) reductions in the rate of interest or any fee or extensions of any due date thereof, (iii) [intentionally omitted], (iv) imposition of any additional restrictions on assignments and participations, (v) [intentionally omitted] and (vi) modifications to the pro rata treatment and sharing provisions of the Loan Documents, and (y) the consent of 100% of the Lenders shall be required with respect to (i) modifications to this Section of any of the voting percentages, the definition of "Required Lenders", or the minimum requirement necessary for all Lenders or Required Lenders to take action hereunder, (ii) prior to the consummation of the Related Section 363 Sale Transactions, the release or subordination of any of the Guarantors or a material portion of the Collateral other than in connection with the Related Section 363_Sale Transactions, (iii) after the consummation of the Related Section 363 Sale Transactions, the release or subordination of all or substantially all of the Guarantors or all or substantially all of the Collateral, (iv) the assignment, delegation or other transfer by any Loan Party of any of its rights and obligations under this Agreement and (v) amendments, supplements, modifications or waivers of Sections 2.12 (or the rights and obligations contained therein), 4.1(a), 4.1(c)(ii) or 7.1(r), the definition of "ABR", any proviso to the definition of "Net Cash Proceeds" or the minimum notice requirements contained in Section 2.4.

Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders and all future holders of the Loans. In the case of any waiver, the Loan Parties and the Lenders shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Any such waiver, amendment, supplement or modification shall be effected by a written instrument signed by the parties required to sign pursuant to the foregoing provisions of this Section 8.1; <u>provided</u> that, delivery of an executed signature page of any such instrument by facsimile transmission shall be effective as delivery of a manually executed counterpart thereof.

8.2. <u>Notices</u>. (a) All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy or electronic transmission), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three Business Days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice or electronic transmission or overnight or hand delivery, when received, addressed as follows in the case of the Borrower and the Lenders, or to such other address as may be hereafter notified by the respective parties hereto:

#### Borrower:

General Motors Corporation 300 Renaissance Center Detroit, MI 48265-3000 Attention: Chief Financial Officer Telecopy: 313-667-4605

#### with a copy to:

General Motors Corporation 767 Fifth Avenue, 14th Floor New York, NY 10153 Attention: Treasurer Telecopy: 212-418-3630

#### and

General Motors Corporation 300 Renaissance Center Detroit, MI 48265-3000 Attention: General Counsel Telecopy: 248-267-4584

#### and:

Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, NY 10153-0119 Attention: Stephen Karotkin Richard Ginsburg Soo-Jin Shim Telecopy: 212-310-8007

#### Treasury:

The United States Department of the Treasury 1500 Pennsylvania Avenue, NW Washington, D.C. 20220 Attention: Chief Counsel Office of Financial Stability Telecopy: 202-927-9225 Email: OFSChiefCounselNotices@do.treas.gov with a copy to:

Cadwalader, Wickersham & Taft LLP One World Financial Center New York, NY 10281 Attention: John J. Rapisardi Telecopy: 212-504-6666 Telephone: 212-504-6000

Canadian Lender:

Export Development Canada 151 O'Connor Street Ottawa, Ontario Canada K1A 1K3 Attention: Loans Services Telecopy: 613-598-2514

with a copy to:

Export Development Canada 151 O'Connor Street Ottawa, Ontario Canada K1A 1K3 Attention: Asset Management/Covenants Officer Telecopy: 613-598-3186

provided that any notice, request or demand to or upon the Lenders shall not be effective until received.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by each Lender in its sole discretion. The Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; <u>provided</u> that approval of such procedures may be limited to particular notices or communications.

8.3. <u>No Waiver; Cumulative Remedies</u>. No failure to exercise and no delay in exercising, on the part of any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

8.4. <u>Survival of Representations and Warranties</u>. All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or

statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

8.5. <u>Payment of Expenses</u>. The Borrower agrees (a) to pay or reimburse the Lenders and any other Canadian Lender Consortium Member for all their (i) reasonable out-ofpocket costs and expenses incurred in connection with the development, preparation and execution of, and any amendment, supplement or modification to, this Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby (including the reasonable out-of-pocket costs and expenses of the advisors and counsel to each Lender and each other Canadian Lender Consortium Member, but excluding the professional fees of such advisors and counsel to each Lender and each other Canadian Lender Consortium Member), and (ii) costs and expenses incurred in connection with the enforcement or preservation of any rights or exercise of remedies under this Agreement, the other Loan Documents and any other documents prepared in connection herewith or therewith in respect of any Event of Default or otherwise, including the fees and disbursements of counsel (including the allocated fees and disbursements and other charges of in-house counsel) to each Lender and each other Canadian Lender Consortium Member, (b) to pay, indemnify, or reimburse each Lender and each other Canadian Lender Consortium Member for, and hold each Lender and each other Canadian Lender Consortium Member harmless from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying such fees, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Loan Documents and any such other documents, and (c) to pay, indemnify or reimburse each Lender and each other Canadian Lender Consortium Member, their respective affiliates, and their respective officers, directors, partners, employees, advisors, agents, controlling persons and trustees (each, an "Indemnitee") for, and hold each Indemnitee harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever incurred by an Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of, the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, including any of the foregoing relating to the use or proposed use of proceeds of the Loans or the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations or assets of any Group Member, including any of the Mortgaged Properties, and the reasonable fees and expenses of legal counsel in connection with claims, actions or proceedings by any Indemnitee against any Loan Party under any Loan Document or any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by any third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto (all the foregoing in this clause (c), collectively, the "Indemnified Liabilities"), provided that the Borrower shall have no obligation hereunder to any Indemnitee (x) for Taxes (it being understood that the Borrower's obligations with respect to Taxes are set forth in Section 2.12) or (y) with respect to Indemnified Liabilities to the extent such Indemnified Liabilities resulted from the gross negligence or willful misconduct of, in each case as determined by a final and nonappealable decision of a court of competent jurisdiction, such Indemnitee, any of its affiliates or its or their respective officers, directors, partners, employees, agents or controlling persons. No Indemnitee shall be liable for any damages arising from the use by unauthorized persons of information or other materials sent through electronic, telecommunications or other information transmission systems that are intercepted by such persons or for any special, indirect, consequential or punitive damages in connection with the Loans. Without limiting the foregoing, and to the extent permitted by applicable law, the Borrower agrees not to assert and to cause its Subsidiaries not to assert, and hereby waives and agrees to cause its Subsidiaries to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnitee. All amounts due under this Section 8.5 shall be payable not later than 30 days after written demand therefor. Statements payable by the Borrower pursuant to this Section 8.5 shall be submitted to the Treasurer of the Borrower as set forth in Section 8.2, or to such other Person or address as may be hereafter designated by the Borrower in a written notice to the Lenders. The agreements in this Section 8.5 shall survive repayment of the Loans and all other amounts payable hereunder.

8.6. <u>Successors and Assigns; Participations and Assignments</u>. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, all future holders of the Loans and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 8.6.

(b) Any Lender may, without the consent of the Borrower, assign to one or more assignees (each, an "Assignee") all or a portion of its rights and obligations under this Agreement (including all or a portion of its Loans at the time owing to it) pursuant to an Assignment and Assumption, executed by such Assignee and such Lender and delivered to the Borrower for its records, to any other branch, division or agency of the United States or Canadian governments or any government of any state, province, commonwealth or territory of the United States or Canada or to New CarCo, together with any related rights and obligations thereunder, without the consent of the Borrower. The Borrower or its agent will maintain a register ("Register") of each Lender and Assignee. The Register shall contain the names and addresses of the Lenders and Assignees and the principal amount of the loans (and stated interest thereon) held by each such Lender and Assignee from time to time. The entries in the Register shall be conclusive and binding, absent manifest error.

(c) Any Lender may, without the consent of the Borrower, sell participations to any other branch, division or agency of the United States or Canadian governments or any government of any state, province, commonwealth or territory of the United States or Canada (a "<u>Participant</u>") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Loans owing to it); <u>provided</u> that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible

to the other parties hereto for the performance of such obligations, (C) the Borrower and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to the proviso to the second sentence of Section 8.1 and (2) directly affects such Participant. Subject to paragraph (c) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Section 2.10 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 8.6. To the extent permitted by law, and subject to paragraph (c) of this Section, each Participant also shall be entitled to the benefits of Section 8.7 as though it were a Lender. Notwithstanding anything to the contrary in this Section 8.6, each Lender shall have the right to sell one or more participations in all or any part of its Loans or other Obligations to one or more lenders or other Persons that provide financing to such Lender in the form of sales and repurchases of participations without having to satisfy the foregoing requirements. In the event that a Lender sells a participation in such Lender's rights and obligations under this Agreement, the Lender, on behalf of Borrower, shall maintain a register on which it enters the name, address and interest in this Agreement of all Participants.

8.7. Adjustments; Set-off. (a) Except to the extent that this Agreement expressly provides for payments to be allocated to a particular Lender or to the Lenders, if any Lender (a "Benefitted Lender") shall, at any time after the Loans and other amounts payable hereunder shall immediately become due and payable pursuant to Section 7, receive any payment of all or part of the Obligations owing to it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefitted Lender shall purchase for cash in Dollars from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such collateral or the proceeds thereof, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) In addition to any rights and remedies of the Lenders provided by law, subject to any notice or other requirement contained in the Orders, each Lender shall have the right, without (i) further order of or application to the Bankruptcy Court, or (ii) prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, upon all amounts owing hereunder becoming due and payable (whether at the stated maturity, by acceleration or otherwise) to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the Borrower.

Each Lender agrees promptly to notify the Borrower and the other Lenders after any such set-off and application made by such Lender; <u>provided</u> that, the failure to give such notice shall not affect the validity of such set off and application.

8.8. <u>Counterparts</u>. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Lenders.

8.9. <u>Severability</u>. Any provision of this Agreement that is held to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.10. <u>Integration</u>. This Agreement and the other Loan Documents represent the entire agreement of the Borrower and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents. Subject to Section 8.18, in the event of any conflict between this Agreement or any other Loan Document and the Orders, the Orders shall control.

#### 8.11. <u>Governing Law</u>. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

8.12. <u>Submission to Jurisdiction; Waivers</u>. All judicial proceedings brought against any Loan Party hereto arising out of or relating to this Agreement or any other Loan Document, or any Obligations hereunder and thereunder, may be brought in the Bankruptcy Court and, if the Bankruptcy Court does not have (or abstains from) jurisdiction, the courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof. Each Loan Party hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any such legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non exclusive general jurisdiction of the courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or

proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such party at its address set forth in Section 8.2 or at such other address of which the Lenders shall have been notified pursuant thereto; and

(d) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

8.13. <u>Acknowledgments</u>. The Loan Party hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) no Lender has any fiduciary relationship with or duty to any Group Member arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Lenders, on one hand, and any Group Member, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower or any Subsidiary and the Lenders.

8.14. <u>Release of Guaranties</u>. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Lenders hereby agree to take promptly, any action requested by the Borrower having the effect of releasing, or evidencing the release of, any guarantee by any Loan Party of the Obligations to the extent necessary to permit consummation of any transaction not prohibited by any Loan Document or that has been consented to in accordance with Section 8.1.

8.15. <u>Confidentiality</u>. Each of the Lenders agrees to keep confidential all non-public information provided to it by any Loan Party or any other Lender pursuant to this Agreement that is designated by such Loan Party as confidential; <u>provided</u> that nothing herein shall prevent any Lender from disclosing any such information (a) to any other Lender or any affiliate of any thereof, (b) subject to an agreement to comply with the provisions of this Section 8.15 (or other provisions at least as restrictive as this Section), to any actual or prospective Transferee or any pledgee of Loans or any direct or indirect contractual counterparty (or the professional advisors thereto) to any swap or derivative transaction relating to the Loan Party and its obligations, (c) to its affiliates, employees, directors, trustees, agents, attorneys, accountants and other professional advisors, or those of any of its affiliates for performing the purposes of a Loan Document, subject to such Lender, as the case may be, advising such Person of the confidentiality provisions contained herein, (d) upon the request or demand of any Governmental Authority or regulatory agency (including self-regulated agencies) having jurisdiction (or purporting to have jurisdiction) over it upon notice (other than in connection with routine examinations or inspections by regulators) to the Borrower thereof unless such notice is

prohibited or the Governmental Authority or regulatory agency shall require otherwise, (e) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law, after notice to the Borrower if reasonably feasible, and, if applicable, after exhaustion of the Group Members' rights and remedies under Section 1.6 of the Department of the Treasury Regulations, 31 C.F.R. Part 1, Subpart A; Sections 27-29 inclusive and 44 of the Access to Information Act, R.S.C., ch A-1 (1985) and Section 28 and Part IV (Sections 50-56 inclusive) of the Freedom of Information and Protection of Privacy Act, R.S.O., ch. F.31 (1990), after notice to the Borrower if reasonably feasible, (f) if requested or required to do so in connection with any litigation or similar proceeding, after notice to the Borrower if reasonably feasible, (g) that has been publicly disclosed, other than in breach of this Section, (h) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender or (i) in connection with the exercise of any remedy hereunder or under any other Loan Document.

#### 8.16. <u>Waivers of Jury Trial</u>. THE BORROWER AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

8.17. <u>USA PATRIOT Act</u>. Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the USA PATRIOT Act.

8.18. <u>Orders.</u> The terms and conditions hereunder shall be subject to the terms and conditions of the Final Order. In the event of any inconsistency between the terms or conditions of this Agreement and the terms and conditions of the Orders, the terms and conditions of the Orders shall control. Notwithstanding the foregoing, in the event of any inconsistency between the terms or conditions of Section 8.1 and the terms and conditions of the Orders, the terms and conditions of the Orders, the terms or conditions of Section 8.1 and the terms and conditions of the Orders, the terms and conditions of Section 8.1 shall control.

8.19. Effect of Amendment and Restatement of the Existing Credit Agreement. On the Effective Date, the Existing Credit Agreement shall be amended, restated and superseded in its entirety. The parties hereto acknowledge and agree that (a) this Agreement and the other Loan Documents, whether executed and delivered in connection herewith or otherwise, do not constitute a novation, payment and reborrowing, or termination of the "Obligations" (as defined in the Existing Credit Agreement) under the Existing Credit Agreement as in effect prior to the Effective Date and (b) such "Obligations" are in all respects continuing (as amended and restated hereby) with only the terms thereof being modified as provided in this Agreement. IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

#### GENERAL MOTORS CORPORATION

By:_____

Name: Title:

### [GUARANTOR]

By:_____ Name: Title:

### UNITED STATES DEPARTMENT OF THE TREASURY, as a Lender

By: Title: Interim Assistant Secretary of the Treasury for Financial Stability

### EXPORT DEVELOPMENT CANADA, as a Lender

By: ______Name: Title:

Document comparison by Workshare Professional on Tuesday, June 30, 2009 5:43:39

Input:	
Document 1 ID	PowerDocs://KL2/2611303/1
Description	KL2-#2611303-v1-GM:_Wind- Down_Credit_Facility_Draft_6/29
Document 2 ID	PowerDocs://KL2/2611303/2
Description	KL2-#2611303-v2-GM:_Wind- Down_Credit_Facility_Draft_6/29
Rendering set	standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	57
Deletions	44
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	105

# Exhibit 11

PREET BHARARA	
United States Attorney for the	
Southern District of New York	
By: DAVID S. JONES and	
NATALIE N. KUEHLER	
Assistant United States Attorneys	
86 Chambers Street, 3rd Floor	
New York, New York 10007	
Tel: (212) 637-2739.2741	
Fax: (212) 637-2730	
E-mail: <u>david.jones6@usdoj.gov</u>	
Natalie.kuehler@usdoj.gov	
UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK	
In re:	Chapter 11 Case
MOTORS LIQUIDATION COMPANY, et al.,	: Case No. 09-50026 (REG)
Debtors,	: (Jointly Administered)
OFFICIAL COMMITTEE OF UNSECURED	: Adversary Proceeding
CREDITORS OF MOTORS LIQUIDATION COMPANY f/k/a GENERAL MOTORS CORPORATION,	: Case No. 09-00504 (REG)
Plaintiff,	:
vs.	:
JPMORGAN CHASE BANK, N.A., et al.,	
Defendants.	• • •
	Χ

### STATEMENT OF THE UNITED STATES OF AMERICA WITH RESPECT TO CROSS-MOTIONS FOR SUMMARY JUDGMENT

1. The United States of America, by its attorney Preet Bharara, United States Attorney

for the Southern District of New York, respectfully submits this statement with respect to the

parties' cross-motions for summary judgment in the above-captioned adversary proceeding.

2. This submission expresses no position with respect to the parties' contentions on the merits of this matter, in which plaintiff seeks relief in the form of avoidance of a lien and/or of certain transfers, as well as the "recover[y] for the Debtors' estates [of] the proceeds or value of" the transfers at issue. Complaint, July 31, 2009, at ¶ 452, see generally id. ¶¶ 438-464 (claims for relief seeking avoidance and/or return of funds to the estates); see also id. at 55-56 ("pray[ers] for judgment" seeking relief in form of avoidance and restoration of funds "for the benefit of the estates pursuant to 11 U.S.C. § 551").

3. The United States nevertheless makes this brief submission to ensure that the resolution of these motions does not prematurely determine any person or entity's entitlements with respect to the ultimate distribution of any funds that are recovered in the event that plaintiff prevails. As the Complaint properly recognizes, section 551 of the Bankrutpcy Code provides, "Any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or any lien void under section 506(d) of this title, is preserved for the benefit of the estate but only with respect to property of the estate." 11 U.S.C. § 551. Accordingly, the proper relief, should plaintiff prevail, must be entered "for the benefit of the estate," <u>id.</u>, and not for any particular creditor(s) or class of creditors. The Court therefore need not, and should not, adjudicate any party's ultimate entitlement to any funds recovered through this adversary proceeding; rather, that question is properly reserved for determination through the plan confirmation process.

4. Plaintiff's prayers for relief in both the Complaint and their motion papers do not appear to seek relief beyond that authorized in section 551, and appear not to constitute a request for an order directing the ultimate disposition of any proceeds of this action. The United States nevertheless, in an abundance of caution, makes this filing to ensure that the ultimate distribution of any proceeds recovered through this adversary proceeding will not be decided in this

2

adversary proceeding, but instead will remain reserved for determination by the Court through

the plan confirmation process.

New York, New York August 26, 2010

> PREET BHARARA United States Attorney Southern District of New York

By: /s/ David S. Jones DAVID S. JONES NATALIE N. KUEHLER Assistant United States Attorneys 86 Chambers Street, Third Floor New York, New York 10007 Telephone: (212) 637-2739/2741 Facsimile: (212) 637-2730

# Exhibit 12

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK	
	x
In re	:
MOTORS LIQUIDATION COMPANY, et al., f/k/a General Motors Corp., et al.	:
Debtors.	::
	• x

Chapter 11 Case No.

09-50026 (REG)

(Jointly Administered)

### **DEBTORS' JOINT CHAPTER 11 PLAN**

WEIL, GOTSHAL & MANGES LLP 767 Fifth Avenue New York, New York 10153 (212) 310-8000

Attorneys for Debtors and Debtors in Possession

### **TABLE OF CONTENTS**

Article I.	Definitions and Interpretation 1
1.1	363 Transaction1
1.2	Administrative Expenses 1
1.3	ADR Procedures
1.4	Allowed
1.5	Asbestos Claimants' Committee
1.6	Asbestos Claims
1.7	Asbestos Insurance Assets
1.8	Asbestos Personal Injury Claim
1.9	Asbestos Property Damage Claim
1.10	Asbestos Trust
1.11	Asbestos Trust Administrator 4
1.12	Asbestos Trust Agreement
1.13	Asbestos Trust Assets
1.14	Asbestos Trust Claim
1.15	Asbestos Trust Distribution Procedures
1.16	Asbestos Trust Transfer Date
1.17	Avoidance Action
1.18	Avoidance Action Trust
1.19	Avoidance Action Trust Administrative Cash
1.20	Avoidance Action Trust Administrator
1.21	Avoidance Action Trust Agreement
1.22	Avoidance Action Trust Assets
1.23	Avoidance Action Trust Beneficiaries
1.24	Avoidance Action Trust Claims Reserve
1.25	Avoidance Action Trust Monitor
1.26	Avoidance Action Trust Transfer Date
1.27	Avoidance Assets
1.28	Ballot

1.29	Bankruptcy Code
1.30	Bankruptcy Court7
1.31	Bankruptcy Rules7
1.32	Budget7
1.33	Business Day7
1.34	Cash7
1.35	Causes of Action
1.36	Chapter 11 Cases
1.37	Claim7
1.38	Claim Settlement Procedures
1.39	Class
1.40	Collateral
1.41	Commencement Date
1.42	Confirmation Date
1.43	Confirmation Hearing
1.44	Confirmation Order
1.45	Creditors' Committee
1.46	Debtors
1.47	Demand
1.48	DIP Credit Agreement
1.49	DIP Credit Agreement Claims
1.50	DIP Lenders' Avoidance Actions
1.51	DIP Lenders' Avoidance Assets
1.52	Disclosure Statement
1.53	Disputed
1.54	Distribution Record Date
1.55	District Court 10
1.56	EDC
1.57	Effective Date

1.58	ENCORE
1.59	Encumbrance10
1.60	Entity
1.61	Environmental Action
1.62	Environmental Laws
1.63	Environmental Response Trust
1.64	Environmental Response Trust Administrative Funding Account 11
1.65	Environmental Response Trust Administrative Trustee 11
1.66	Environmental Response Trust Agreement
1.67	Environmental Response Trust Assets
1.68	Environmental Response Trust Consent Decree and Settlement Agreement
1.69	Environmental Response Trust Parties
1.70	Environmental Response Trust Transfer Date
1.71	Equity Interest
1.72	Eurobond Claim
1.73	Final Order 12
1.74	Future Claimants' Representative12
1.75	General Unsecured Claim 12
1.76	Governmental Authorities
1.77	GUC Trust
1.78	GUC Trust Administrator
1.79	GUC Trust Administrative Fund
1.80	GUC Trust Agreement
1.81	GUC Trust Assets
1.82	GUC Trust Monitor
1.83	GUC Trust Transfer Date
1.84	GUC Trust Units
1.85	Indentures14
1.86	Indenture Trustees

1.87	Indenture Trustee Reserve Cash 15
1.88	Indirect Asbestos Claim
1.89	Initial Debtors
1.90	MLC
1.91	MSPA
1.92	New GM
1.93	New GM Securities
1.94	New GM Stock 17
1.95	New Warrants 17
1.96	Note Claim17
1.97	Person17
1.98	Plan 17
1.99	Plan Supplement 17
1.100	Post-Effective Date MLC 17
1.101	Priority Non-Tax Claim
1.102	Priority Order Sites
1.103	Priority Order Sites Consent Decrees and Settlement Agreements 18
1.104	Priority Tax Claim
1.105	Pro Rata Share18
1.106	Property or Properties
1.107	Property Environmental Claim
1.108	Protected Party
1.109	REALM
1.110	Registered Holder 19
1.111	Residual Wind-Down Assets
1.112	Schedules
1.113	Secured Claim
1.114	Solicitation Procedures
1.115	Tax Code

1.116	Term Loan Avoidance Action	20
1.117	Unliquidated Litigation Claim	20
1.118	U.S. Treasury	20
1.119	U.S. Trustee	20
1.120	Voting Deadline	20
Article II.	Administrative Expenses and Priority Tax Claims	20
2.1	Administrative Expenses	20
2.2	Compensation and Reimbursement Claims	21
2.3	Priority Tax Claims	21
2.4	DIP Credit Agreement Claims	21
2.5	Special Provisions Regarding Indenture Trustees' Fees and Expenses	22
Article III.	Classification of Claims and Equity Interests	22
Article IV.	Treatment of Claims and Equity Interests	23
4.1	Class 1 – Secured Claims	23
4.2	Class 2 - Priority Non-Tax Claims	23
4.3	Class 3 - General Unsecured Claims	23
4.4	Class 4 – Property Environmental Claims	25
4.5	Class 5 – Asbestos Personal Injury Claims	25
4.6	Class 6 - Equity Interests in MLC	26
Article V.	Provisions Governing Distributions	27
5.1	Distribution Record Date	27
5.2	Method of Distributions Under the Plan	27
	a. Payments and Transfers on Effective Date	27
	b. Repayment of Excess Cash to the U.S. Treasury and EDC	28
	c. Payment of Cash or Certain Assets to Charitable Organizations	28
	d. Distributions of Cash	29
	e. Sale of New Warrants About to Expire	29
5.3	Delivery of Distributions and Undeliverable Distributions	29

5.4	Withholding and Reporting Requirements	
5.5	Time Bar to Cash Payments	
5.6	Minimum Distributions and Fractional Shares or Units	
5.7	Setoffs	
5.8	Transactions on Business Days	
5.9	Allocation of Plan Distribution Between Principal and In	terest
Article VI.	Means for Implementation and Execution of the Plan	
6.1	Substantive Consolidation	
6.2	The GUC Trust	
	a. Execution of GUC Trust Agreement	
	b. Purpose of GUC Trust	
	c. GUC Trust Assets	
	d. Governance of GUC Trust	
	e. The GUC Trust Administrator and the GUC Trus	t Monitor 33
	f. Role of the GUC Trust Administrator	
	g. Role of the GUC Trust Monitor	
	h. Transferability of GUC Trust Interests	
	i. Cash	
	j. Costs and Expenses of the GUC Trust Administra	ator 35
	k. Compensation of the GUC Trust Administrator	
	l. Distribution of GUC Trust Assets	
	m. Retention of Professionals by the GUC Trust Adr and the GUC Trust Monitor	
	n. U.S. Federal Income Tax Treatment of GUC Trus	st
	o. Dissolution	
	p. Indemnification of the GUC Trust Administrator GUC Trust Monitor	
	q. Closing of Chapter 11 Cases	
6.3	The Asbestos Trust	
	a. Execution of Asbestos Trust Agreement	

b.	Purpose of Asbestos Trust	37
c.	Assumption of Certain Liabilities by Asbestos Trust	37
d.	Asbestos Trust Assets	38
e.	Governance of Asbestos Trust	38
f.	The Asbestos Trust Administrator(s)	38
g.	Role of the Asbestos Trust Administrator(s)	38
h.	Nontransferability of Asbestos Trust Interests	38
i.	Cash	38
j.	Costs and Expenses of the Asbestos Trust Administrator(s)	39
k.	Allowance of Asbestos Personal Injury Claims	39
1.	Distribution of Asbestos Trust Assets	39
m.	Retention of Professionals by the Asbestos Trust Administrator(s)	39
n.	U.S. Federal Income Tax Treatment of Asbestos Trust	39
0.	Dissolution	40
p.	Indemnification of the Asbestos Trust Administrator(s)	40
The Er	vironmental Response Trust	40
a.	Environmental Response Trust Agreement and Environmental Response Trust Consent Decree and Settlement Agreement	40
b.	Purpose of Environmental Response Trust	41
c.	Environmental Response Trust Assets	41
d.	Governance of Environmental Response Trust	42
e.	Role of Environmental Response Trust Administrator	42
f.	Nontransferability of Environmental Response Trust Interests	42
g.	Cash	42
h.	Indemnification of the Environmental Response Trust Administrator(s)	43
i.	U.S. Federal Income Tax Treatment of Environmental Response	43

6.4

6.5	The Avoidance Action Trust		
	a.	Execution of Avoidance Action Trust Agreement	43
	b.	Purpose of Avoidance Action Trust	44
	c.	Avoidance Action Trust Assets	44
	d.	Governance of Avoidance Action Trust	44
	e.	The Avoidance Action Trust Administrator and the Avoidance Action Trust Monitor	44
	f.	Role of the Avoidance Action Trust Administrator	45
	g.	Role of the Avoidance Action Trust Monitor	45
	h.	Nontransferability of Avoidance Action Trust Interests	46
	i.	Cash	46
	j.	Distribution of Avoidance Action Trust Assets	46
	k.	Costs and Expenses of Avoidance Action Trust Administrator	46
	1.	Compensation of the Avoidance Action Trust Administrator	46
	m.	Retention of Professionals by the Avoidance Action Trust Administrator and the Avoidance Action Trust Monitor	46
	n.	U.S. Federal Income Tax Treatment of Avoidance Action Trust	47
	0.	Dissolution	50
	р.	Indemnification of the Avoidance Action Trust Administrator and the Avoidance Action Trust Monitor	51
	q.	Cooperation Regarding Insurance Matters	51
6.6	Securi	ties Law Matters	52
6.7	Cancellation of Existing Securities and Agreements		
6.8	Equity Interests in MLC Subsidiaries Held by the Debtors		
6.9	Administration of Taxes		
6.10	Dissol	ution of the Debtors	53
6.11	Determination of Tax Filings and Taxes		
6.12	Books and Records		

(	6.13	Corporate Action	. 55
	6.14	Effectuating Documents and Further Transactions	. 56
Article	VII.	Procedures for Disputed Claims	. 56
,	7.1	Objections to Claims and Resolution of Disputed Claims	. 56
,	7.2	No Distribution Pending Allowance	. 57
,	7.3	Estimation	. 58
,	7.4	Allowance of Disputed Claims	. 58
,	7.5	Dividends	. 58
Article	VIII.	Executory Contracts and Unexpired Leases	. 58
:	8.1	Executory Contracts and Unexpired Leases	. 58
:	8.2	Approval of Rejection of Executory Contracts and Unexpired Leases	. 59
:	8.3	Rejection Claims	
Article	IX.	Effectiveness of the Plan	. 59
	9.1	Condition Precedent to Confirmation of Plan	. 59
	9.2	Conditions Precedent to Effective Date	. 59
	9.3	Satisfaction and Waiver of Conditions	. 60
	9.4	Effect of Nonoccurrence of Conditions to Consummation	. 60
Article	X.	Effect of Confirmation	. 61
	10.1	Vesting of Assets	. 61
	10.2	Release of Assets	. 61
	10.3	Binding Effect	. 61
	10.4	Term of Injunctions or Stays	. 61
	10.5	Term Loan Avoidance Action; Offsets	. 62
	10.6	Injunction	. 62
	10.7	Injunction Against Interference with Plan	. 62
	10.8	Special Provisions for the United States	. 62
Article	XI.	Retention of Jurisdiction	. 63
	11.1	Jurisdiction of Bankruptcy Court	. 63
Article	XII.	Miscellaneous Provisions	. 65

12.1	Dissolution of Committees				
12.2	Substantial Consummation				
12.3	Effectuating Documents and Further Transactions				
12.4	Exemption from Transfer Taxes				
12.5	Release				
12.6	Exculpation				
12.7	Post-Confirmation Date Fees and Expenses				
	a. Fees and Expenses of Professionals				
	<ul> <li>b. Fees and Expenses of GUC Trust Administrator, Asbestos Trust Administrator, Environmental Response Trust Administrative Trustee, and Avoidance Action Trust Administrator</li></ul>				
12.8	Payment of Statutory Fees				
12.9	Modification of Plan				
12.10	Revocation or Withdrawal of Plan				
12.11	Courts of Competent Jurisdiction				
12.12	Severability				
12.13	Governing Law				
12.14	Exhibits				
12.15	Successors and Assigns				
12.16	Time				
12.17	Notices				

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK		
	x :	
In re	:	Chapter 11 Case No.
	:	
MOTORS LIQUIDATION COMPANY, et al.,	:	09-50026 (REG)
f/k/a General Motors Corp., <i>et al</i> .	:	
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

# **DEBTORS' JOINT CHAPTER 11 PLAN**

Motors Liquidation Company (f/k/a General Motors Corporation); MLC of Harlem, Inc. (f/k/a Chevrolet-Saturn of Harlem, Inc.); MLCS, LLC (f/k/a Saturn, LLC); MLCS Distribution Corporation (f/k/a Saturn Distribution Corporation); Remediation and Liability Management Company, Inc.; and Environmental Corporate Remediation Company, Inc., the above-captioned debtors, propose the following chapter 11 plan pursuant to section 1121(a) of title 11 of the United States Code:

#### ARTICLE I.

#### **DEFINITIONS AND INTERPRETATION**

**DEFINITIONS.** The following terms used herein shall have the respective meanings defined below (such meanings to be equally applicable to both the singular and plural):

**1.1** <u>**363 Transaction**</u> means the sale of substantially all the assets of General Motors Corporation and certain of its Debtor subsidiaries, and the assumption of certain executory contracts and unexpired leases of personal property and nonresidential real property, to a U.S. Treasury-sponsored purchaser pursuant to section 363 of the Bankruptcy Code, as embodied in the MSPA.

**1.2** <u>Administrative Expenses</u> means costs or expenses of administration of any of the Chapter 11 Cases allowed under sections 503(b), 507(a)(1), and 1114(e) of the Bankruptcy Code that have not already been paid by the Debtors, including, without limitation, any actual and necessary costs and expenses of preserving the Debtors' estates, any actual and necessary costs and expenses of operating the Debtors' businesses, any indebtedness or obligations incurred or assumed by the Debtors, as debtors in possession, during the Chapter 11 Cases, including, without limitation, for the acquisition or lease of property or an interest in property or the rendition of services, any compensation and reimbursement of expenses to the extent allowed by Final Order under sections 330 or 503 of the Bankruptcy Code, and any fees or charges assessed against the estates of the Debtors under section 1930 of chapter 123 of title 28 of the United States Code; *provided, however*, that Administrative Expenses does not mean the Debtors' obligations and liabilities that were assumed by New GM under the MSPA, as approved by the order of the Bankruptcy Court entered July 5, 2009.

ADR Procedures means the alternative dispute resolution procedures, 1.3 including mandatory mediation, approved by orders of the Bankruptcy Court, pursuant to section 105(a) of the Bankruptcy Code and General Order M-390 authorizing implementation of alternative dispute procedures, including mandatory mediation, entered February 23, 2010 and April 29, 2010 [Docket Nos. 5037, 5673], with respect to the following types of unliquidated and/or litigation Claims: (i) personal injury Claims, (ii) wrongful death Claims, (iii) tort Claims, (iv) products liability Claims, (v) Claims for damages arising from the rejection of executory contracts or unexpired leases of nonresidential real property (excluding Claims for damages arising from the rejection of executory contracts as they related primarily to environmental matters), (vi) indemnity Claims (excluding tax indemnity Claims relating to leveraged fixed equipment lease transactions and excluding indemnity Claims relating to asbestos liability), (vii) lemon law Claims, to the extent applicable under section 6.15 of the MSPA, (viii) warranty Claims, to the extent applicable under section 6.15 of the MSPA, and (ix) class action Claims.

1.4 Allowed means, (i) with reference to any Claim (other than an Asbestos Personal Injury Claim), (a) any Claim against any Debtor that has been listed by such Debtor in the Schedules, as such Schedules may be amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and for which no contrary proof of Claim has been filed, (b) any (I) timely filed Claim that is no longer subject to the ADR Procedures in the case of Unliquidated Litigation Claims or (II) Claim listed on the Schedules or timely filed proof of Claim, as to which no objection to allowance has been interposed in accordance with Section 7.1 hereof or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective holder, or (c) any Claim expressly allowed by a Final Order, pursuant to the Claim Settlement Procedures, or hereunder, and (ii) with reference to any Asbestos Personal Injury Claim, any Asbestos Personal Injury Claim to the extent that it is Allowed in accordance with the procedures established pursuant to the Asbestos Trust Agreement and the Asbestos Trust Distribution Procedures, which shall establish the amount of legal liability against the Asbestos Trust in the amount of the liquidated value of such Asbestos Personal Injury Claim, as determined in accordance with the Asbestos Trust Distribution Procedures. The Asbestos Trust Claim shall be deemed "Allowed" when fixed by Final Order or settlement.

**1.5** <u>Asbestos Claimants' Committee</u> means the official committee of unsecured creditors holding Asbestos Personal Injury Claims appointed by the U.S. Trustee in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.

**1.6** <u>Asbestos Claims</u> means Asbestos Personal Injury Claims and Asbestos Property Damage Claims.

1.7 Asbestos Insurance Assets means all rights arising under liability insurance policies issued to the Debtors with inception dates prior to 1986 with respect to liability for Asbestos Claims, including, but not limited to (i) rights (a) under insurance policies, (b) under settlement agreements made with respect to such insurance policies, (c) against the estates of insolvent insurers that issued such policies or entered into such settlements, and (d) against state insurance guaranty associations arising out of any such insurance policies issued by insolvent insurers, and (ii) the right, on behalf of MLC and its subsidiaries as of the Effective Date, to give a full release of the insurance rights of MLC and its subsidiaries as of the Effective Date under any such policy or settlement agreement with the exception of rights to coverage with respect to workers' compensation claims. The Asbestos Insurance Assets that shall be transferred to the Avoidance Action Trust shall not include the transfer of any insurance policies themselves nor any rights or claims that the Debtors have or may have against any insurers with respect to amounts the Debtors have already paid on account of Asbestos Claims.

1.8 Asbestos Personal Injury Claim means any Claim, remedy, liability, or Demand against the Debtors, now existing or hereafter arising, whether or not such Claim, remedy, liability, or Demand is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, whether or not the facts of or legal bases therefor are known or unknown, under any theory of law, equity, admiralty, or otherwise, for death, bodily injury, sickness, disease, medical monitoring, or other personal injuries (whether physical, emotional, or otherwise) to the extent caused or allegedly caused, directly or indirectly, by the presence of or exposure (whether prior to or after the Commencement Date) to asbestos or asbestos-containing products or things that are or were installed, engineered, designed, manufactured, fabricated, constructed, sold, supplied, produced, specified, selected, distributed, released, marketed, serviced, maintained, repaired, purchased, owned, occupied, used, removed, replaced, or disposed by any of the Debtors or an Entity for whose products or operations the Debtors allegedly have liability or for which any of the Debtors are otherwise allegedly liable, including, without express or implied limitation, any Claim, remedy, liability, or Demand for compensatory damages (such as loss of consortium, wrongful death, medical monitoring, survivorship, proximate, consequential, general, and special damages) and punitive damages, and any Claim, remedy, liability, or Demand for reimbursement, indemnification, subrogation, and contribution (including, without limitation, any Indirect Asbestos Claim with respect to an Asbestos Personal Injury Claim), and any claim under any settlement entered into by or on behalf of the Debtors prior to the Commencement Date relating to an Asbestos Personal Injury Claim.

**1.9** <u>Asbestos Property Damage Claim</u> means any Claim, remedy, liability, or Demand against the Debtors, now existing or hereafter arising, whether or not such Claim, remedy, liability, or Demand is reduced to judgment, liquidated, unliquidated,

fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, whether or not the facts of or legal bases therefor are known or unknown, under any theory of law, equity, admiralty, or otherwise, for property damage, including but not limited to, the cost of inspecting, maintaining, encapsulating, repairing, decontaminating, removing, or disposing of asbestos or asbestos-containing products in buildings, other structures, or other property to the extent caused or allegedly caused, directly or indirectly, by the presence of or exposure (whether prior to or after the Commencement Date) to asbestos or asbestos-containing products or things that are or were installed, engineered, designed, manufactured, fabricated, constructed, sold, supplied, produced, specified, selected, distributed, released, marketed, serviced, maintained, repaired, purchased, owned, occupied, used, removed, replaced, or disposed by any of the Debtors or an Entity for whose products or operations the Debtors allegedly have liability or for which any of the Debtors are otherwise allegedly liable, including, without express or implied limitation, any Claim, remedy, liability, or Demand for compensatory damages (such as loss of proximate, consequential, general, and special damages) and punitive damages, and any Claim, remedy, liability, or Demand for reimbursement, indemnification, subrogation, and contribution (including, without limitation, any Indirect Asbestos Claim with respect to an Asbestos Property Damage Claim), and any claim under any settlement entered into by or on behalf of the Debtors prior to the Commencement Date relating to an Asbestos Property Damage Claim. Asbestos Property Damage Claims do not include any Claims or Causes of Action of governmental units under Environmental Laws.

**1.10** <u>Asbestos Trust</u> means the trust established under the Plan in accordance with the Asbestos Trust Agreement.

**1.11** <u>Asbestos Trust Administrator(s)</u> means the Person or Persons confirmed by the Bankruptcy Court to serve as administrator(s) of the Asbestos Trust, pursuant to the terms of the Asbestos Trust Agreement, or as subsequently may be appointed pursuant to the terms of the Asbestos Trust Agreement.

**1.12** <u>Asbestos Trust Agreement</u> means that certain Asbestos Trust Agreement executed by the Debtors and the Asbestos Trust Administrator(s), substantially in the form included in the Plan Supplement.

**1.13** <u>Asbestos Trust Assets</u> means the Debtors' assets transferred to the Asbestos Trust in accordance with the Plan and the Asbestos Trust Agreement. The Asbestos Trust Assets shall be comprised of (i) Cash in the amount of  $[_]$  million and (ii) the Asbestos Trust Claim (or, if fixed by Final Order or settlement prior to the Effective Date, the distribution to which such Claim is entitled as an Allowed General Unsecured Claim).

**1.14** <u>Asbestos Trust Claim</u> means the amount of the Debtors' aggregate asbestos liability for Asbestos Personal Injury Claims that either will be in an amount (i) mutually agreed upon by the Debtors, the Creditors' Committee, the Asbestos Claimants' Committee, and the Future Claimants' Representative or (ii) ordered by the Bankruptcy Court, which, when fixed by Final Order or settlement, shall be treated as an Allowed General Unsecured Claim in Class 3 for purposes of distribution from the GUC Trust and the Avoidance Action Trust, as applicable. For the avoidance of doubt, prior to the determination of the Allowed amount of the Asbestos Trust Claim, the Asbestos Trust Claim is not and shall not be treated as a Disputed General Unsecured Claim.

**1.15** <u>Asbestos Trust Distribution Procedures</u> means the distribution procedures to be implemented by the Asbestos Trust Administrator(s) pursuant to the Plan and the Asbestos Trust Agreement to process, liquidate, and pay Asbestos Personal Injury Claims, substantially in the form included in the Plan Supplement.

**1.16** <u>Asbestos Trust Transfer Date</u> means the date on which the Asbestos Trust Assets are transferred to the Asbestos Trust, which transfer shall occur on the Effective Date, or as soon thereafter as is reasonably practicable, but shall be no later than December 15, 2011.

**1.17** <u>Avoidance Action</u> means any action commenced, or that may be commenced, before or after the Effective Date pursuant to sections 544, 545, 547, 548, 549, 550, or 551 of the Bankruptcy Code, except to the extent purchased by New GM under the MSPA or prohibited under the DIP Credit Agreement.

**1.18** <u>Avoidance Action Trust</u> means the trust established under the Plan in accordance with the Avoidance Action Trust Agreement.

**1.19** <u>Avoidance Action Trust Administrative Cash</u> means the Cash held and maintained by the Avoidance Action Trust Administrator for the purpose of paying the expenses incurred by the Avoidance Action Trust Administrator (including fees and expenses for professionals retained by the Avoidance Action Trust) in connection with the Avoidance Action Trust and any obligations imposed on the Avoidance Action Trust Administrator or the Avoidance Action Trust, including expenses relating to the performance of the Avoidance Action Trust Administrator's obligations under the Avoidance Action Trust Agreement and Section 6.5 hereof. The Debtors shall reserve \$_____ million for the Avoidance Action Trust on the Avoidance Action Trust Transfer Date.</u>

**1.20** <u>Avoidance Action Trust Administrator</u> means the entity appointed by the Debtors, with the consent of the U.S. Treasury and the Creditors' Committee, to serve as administrator of the Avoidance Action Trust, pursuant to the terms of the Avoidance Action Trust Agreement, or as subsequently may be appointed pursuant to the terms of the Avoidance Action Trust Agreement; *provided, however*, that if it is determined that either the holders of the DIP Credit Agreement Claims or the holders of General Unsecured Claims are not entitled to any proceeds of the Term Loan Avoidance Action and the Asbestos Insurance Assets either by (i) mutual agreement between the U.S. Treasury and the Creditors' Committee or (ii) Final Order, then the Debtors shall neither seek nor obtain the consent of the U.S. Treasury or the Creditors' Committee, as

applicable. The identity of the Avoidance Action Trust Administrator shall be disclosed in the Plan Supplement.

**1.21** <u>Avoidance Action Trust Agreement</u> means that certain Avoidance Action Trust Agreement executed by the Debtors and the Avoidance Action Trust Administrator, substantially in the form included in the Plan Supplement.

**1.22** <u>Avoidance Action Trust Assets</u> means the (i) Term Loan Avoidance Action transferred to the Avoidance Action Trust and any proceeds thereof, (ii) the Asbestos Insurance Assets transferred to the Avoidance Action Trust and any proceeds thereof, and (iii) the Avoidance Action Trust Administrative Cash transferred to the Avoidance Action Trust.

**1.23** <u>Avoidance Action Trust Beneficiaries</u> means the holders of the DIP Credit Agreement Claims and/or the holders of Allowed General Unsecured Claims, as determined either by (i) mutual agreement between the U.S. Treasury and the Creditors' Committee prior to the Effective Date, (ii) mutual agreement between the U.S. Treasury and the GUC Trust Administrator on or after the Effective Date, or (iii) a Final Order.

**1.24** <u>Avoidance Action Trust Claims Reserve</u> means the Avoidance Action Trust Assets allocable to, or retained on account of, Disputed General Unsecured Claims.

**1.25** <u>Avoidance Action Trust Monitor</u> means the entity appointed by the Debtors, with the consent of the U.S. Treasury and the Creditors' Committee, to oversee the Avoidance Action Trust, pursuant to the terms of the Avoidance Action Trust Agreement, or as subsequently may be appointed pursuant to the terms of the Avoidance Action Trust Agreement; *provided, however*, that if it is determined that either the holders of the DIP Credit Agreement Claims or the holders of General Unsecured Claims are not entitled to any proceeds of the Term Loan Avoidance Action and the Asbestos Insurance Assets either by (i) mutual agreement between the U.S. Treasury and the Creditors' Committee or (ii) Final Order, then the Debtors shall neither seek nor obtain the consent of the U.S. Treasury or the Creditors' Committee, as applicable. The identity of the Avoidance Action Trust Monitor shall be disclosed in the Plan Supplement.

**1.26** <u>Avoidance Action Trust Transfer Date</u> means the date selected by the Debtors, with the consent of the U.S. Treasury and (a) the Creditors' Committee prior to the Effective Date or (b) the GUC Trust Administrator on or after the Effective Date, as applicable, on which the Avoidance Action Trust Assets are transferred to the Avoidance Action Trust, which transfer shall occur on or before December 15, 2011.

**1.27** <u>Avoidance Assets</u> means the collections realized on the settlement or resolution of the Avoidance Actions.

**1.28** <u>**Ballot**</u> means the form(s) distributed to holders of impaired Claims on which is to be indicated the acceptance or rejection of the Plan.

**1.29** <u>**Bankruptcy Code**</u> means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

**1.30** <u>Bankruptcy Court</u> means the United States District Court for the Southern District of New York, having jurisdiction over the Chapter 11 Cases and, to the extent of any reference made under section 157 of title 28 of the United States Code, the unit of such District Court having jurisdiction over the Chapter 11 Cases under section 151 of title 28 of the United States Code.

**1.31** <u>Bankruptcy Rules</u> means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time, applicable to the Chapter 11 Cases, and any Local Rules of the Bankruptcy Court.

**1.32** <u>Budget</u> means that certain budget for the post-Effective Date period agreed to by the U.S. Treasury, as lender under the DIP Credit Agreement, and the Debtors detailing the funding of, among other things, the GUC Trust, the Asbestos Trust, the Environmental Response Trust, the Avoidance Action Trust, and any other post-Effective Date obligations detailed in the Plan or in the GUC Trust Agreement, the Asbestos Trust Agreement, the Environmental Response Trust Agreement.

**1.33** <u>Business Day</u> means any day other than a Saturday, a Sunday, or any other day on which banking institutions in New York, New York are required or authorized to close by law or executive order.

**1.34** <u>**Cash**</u> means legal tender of the United States of America.

**1.35** <u>Causes of Action</u> means the Avoidance Actions and any and all actions, causes of action, liabilities, obligations, rights, suits, damages, judgments, claims, and demands whatsoever, whether known or unknown, existing or hereafter arising, in law, equity, or otherwise, based in whole or in part on any act or omission or other event occurring prior to the Commencement Date or during the course of the Chapter 11 Cases, including through the Effective Date, except to the extent the prosecution of any Causes of Action are prohibited by the DIP Credit Agreement.

**1.36** <u>Chapter 11 Cases</u> means the jointly administered cases under chapter 11 of the Bankruptcy Code commenced by the Debtors on the Commencement Date in the Bankruptcy Court and currently styled *In re Motors Liquidation Company, et al. f/k/a General Motors Corp. et al,* Ch. 11 Case No. 09-50026 (REG) (Jointly Administered).

**1.37** <u>**Claim**</u> has the meaning set forth in section 101 of the Bankruptcy Code.

**1.38** <u>Claim Settlement Procedures</u> means the procedures for settling Claims approved by order of the Bankruptcy Court, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rules 3007 and 9019(b) authorizing the Debtors to (i) file omnibus

Claims objections and (ii) establish procedures for settling certain Claims, entered October 6, 2009 [Docket No. 4180].

**1.39** <u>Class</u> means any group of Claims or Equity Interests classified by the Plan pursuant to section 1122(a)(1) of the Bankruptcy Code.

**1.40** <u>Collateral</u> means any property or interest in property of the estate of any Debtor subject to a lien, charge, or other encumbrance to secure the payment or performance of a Claim, which lien, charge, or other encumbrance is not subject to avoidance under the Bankruptcy Code.

**1.41** <u>Commencement Date</u> means (i) June 1, 2009 with respect to Motors Liquidation Company; MLC of Harlem, Inc.; MLCS, LLC; and MLCS Distribution Corporation and (ii) October 9, 2009 with respect to Remediation and Liability Management Company, Inc. and Environmental Corporate Remediation Company, Inc.

**1.42** <u>Confirmation Date</u> means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order.

**1.43** <u>Confirmation Hearing</u> means the hearing to be held by the Bankruptcy Court regarding confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

**1.44** <u>**Confirmation Order**</u> means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

**1.45** <u>Creditors' Committee</u> means the statutory committee of unsecured creditors appointed by the U.S. Trustee in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.

**1.46** <u>**Debtors**</u> means Motors Liquidation Company; MLC of Harlem, Inc.; MLCS, LLC; MLCS Distribution Corporation; Remediation and Liability Management Company, Inc.; and Environmental Corporate Remediation Company, Inc., whether prior to or on and after the Effective Date.

**1.47 Demand** means a demand for payment that (i) was not a Claim during the Chapter 11 Cases, (ii) arises out of the same or similar conduct or events that gave rise to Asbestos Personal Injury Claims addressed by the Asbestos Trust, and (iii) is to be paid or otherwise addressed by the Asbestos Trust pursuant to the Plan.

**1.48** <u>**DIP Credit Agreement**</u> means that certain Amended and Restated Superpriority Debtor-in-Possession Credit Agreement, dated as of July 10, 2009, as amended, among Motors Liquidation Company (f/k/a General Motors Corporation), as borrower, the Guarantors (as defined therein), and the United States Department of the Treasury and Export Development Canada, as lenders, and any of the documents and instruments relating thereto or referred to therein. **1.49 <u>DIP Credit Agreement Claims</u> means all Claims arising under the DIP Credit Agreement.** 

**1.50** <u>**DIP Lenders' Avoidance Actions**</u> means any actions commenced, or that may be commenced, before or after the Effective Date pursuant to sections 544, 545, 547, 548, 549, 550, or 551 of the Bankruptcy Code, except (i) to the extent purchased by New GM under the MSPA or prohibited under the DIP Credit Agreement and (ii) for the Term Loan Avoidance Action.

**1.51** <u>**DIP Lenders' Avoidance Assets**</u> means the collections, if any, realized on the settlement or resolution of any Avoidance Actions other than the Term Loan Avoidance Actions.

**1.52** <u>**Disclosure Statement**</u> means the disclosure statement relating to the Plan, including, without limitation, all exhibits thereto, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

**1.53 Disputed** means, with respect to any Claim (other than an Asbestos Personal Injury Claim) that has not been Allowed pursuant to the Plan or a Final Order,

(a) if no proof of Claim has been filed by the applicable deadline: a Claim (other than an Asbestos Personal Injury Claim) that has been or hereafter is listed on the Schedules as other than disputed, contingent, or unliquidated, but as to which the Debtors or any other party in interest has interposed an objection or request for estimation which has not been withdrawn or determined by a Final Order; or

(b) if a proof of Claim or request for payment of an Administrative Expense has been filed by the applicable deadline: (i) a Claim for which no corresponding Claim has been or hereafter is listed on the Schedules, (ii) a Claim for which a corresponding Claim has been or hereafter is listed on the Schedules as other than disputed, contingent, or unliquidated, but the nature or amount of the Claim as asserted in the proof of Claim varies from the nature and amount of such Claim as listed on the Schedules, (iii) a Claim for which a corresponding Claim has been or hereafter is listed on the Schedules as disputed, contingent, or unliquidated, or (iv) a Claim for which a timely objection or request for estimation is interposed by the Debtors or other authorized Entity which has not been withdrawn or determined by a Final Order. Any Claim expressly allowed by a Final Order, pursuant to the Claim Settlement Procedures or hereunder, shall be an Allowed Claim, not a Disputed Claim.

For the avoidance of doubt, if no proof of Claim has been filed by the applicable deadline and the Claim (other than an Asbestos Personal Injury Claim) has been or hereafter is listed on the Schedules as disputed, contingent, or unliquidated, such Claim shall not be valid and shall be disregarded.

**1.54** <u>Distribution Record Date</u> means five (5) Business Days after the Effective Date.

**1.55** <u>District Court</u> means the United States District Court for the Southern District of New York having jurisdiction over the Chapter 11 Cases.

**1.56** <u>EDC</u> means the Government of Canada and the Government of Ontario, through Export Development Canada, Canada's export trading agency.

**1.57** <u>Effective Date</u> means a Business Day on or after the Confirmation Date specified by the Debtors on which the conditions to the effectiveness of the Plan specified in Section 9.2 hereof have been satisfied or otherwise effectively waived. The Debtors shall file a notice of the Effective Date with the Bankruptcy Court and with the Securities and Exchange Commission. The Debtors and/or the Creditors' Committee shall issue a press release regarding the Effective Date.

**1.58** <u>ENCORE</u> means Environmental Corporate Remediation Company, Inc., a Delaware corporation, as debtor or debtor in possession, as the context requires.

**1.59** <u>Encumbrance</u> means, with respect to any asset, any mortgage, lien, pledge, charge, security interest, assignment, or encumbrance of any kind or nature in respect of such asset (including, without limitation, any conditional sale or other title retention agreement, any security agreement, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

**1.60** <u>Entity</u> means an individual, corporation, partnership, limited liability company, association, joint stock company, joint venture, estate, trust, unincorporated organization, or government or any political subdivision thereof, or other Person or entity.

**1.61** <u>Environmental Action</u> means any response, removal, investigation, sampling, remediation, reclamation, closure, post-closure, corrective action, engineering controls, institutional controls, deed restrictions, oversight costs and operation, monitoring, and maintenance activities authorized or required under law with respect to a Property.

**1.62** <u>Environmental Laws</u> means any federal, state, or local laws, including ordinances, statutes, common law, codes, rules, regulations, orders, or decrees, now or hereinafter in effect, relating to (i) pollution, (ii) the protection or regulation of human health, natural resources, or the environment, (iii) the management of hazardous materials, or (iv) the release of hazardous materials into the environment.

**1.63** <u>Environmental Response Trust</u> means the Environmental Response Trust established under the Plan in accordance with the Environmental Response Trust Agreement and the Environmental Response Trust Consent Decree and Settlement Agreement. **1.64** Environmental Response Trust Administrative Funding Account means the funding held by the Environmental Response Trust for the administration of the Environmental Response Trust, including property taxes, liability insurance, security, demolition costs, other plant wind-down costs, and any obligations imposed on the Environmental Response Trust or the Environmental Response Trust Administrative Trustee pursuant to the Plan, including expenses relating to the performance of the Environmental Response Trust Administrative Trustee's obligations under the Environmental Response Trust Agreement and Section 6.4 hereof. The funding of the Environmental Response Trust Administrative Funding Account and the management of such funding shall be as provided in the Environmental Response Trust Consent Decree and Settlement Agreement.

**1.65** <u>Environmental Response Trust Administrative Trustee</u> means the trustee or trustees designated to serve in a fiduciary capacity consistent with, and in furtherance of, the Environmental Response Trust, pursuant to the terms of the Environmental Response Trust Agreement or as subsequently may be appointed pursuant to the terms of the Environmental Response Trust Agreement.

**1.66** <u>Environmental Response Trust Agreement</u> means that certain Environmental Response Trust Agreement executed by MLC, the Governmental Authorities, the United States, and the Environmental Response Trust Administrative Trustee, substantially in the form included in the Plan Supplement.

**1.67** Environmental Response Trust Assets means the Environmental Response Trust Administrative Funding Account and the assets transferred to the Environmental Response Trust in accordance with the Plan, the Environmental Response Trust Agreement, and the Environmental Response Trust Consent Decree and Settlement Agreement, but shall not include any New GM Securities. The Environmental Response Trust Assets shall be comprised of (i) Cash in the amount of \$____ million, (ii) the Properties, (iii) personal property, including equipment, related to certain of the Properties set forth on Attachment A to the Environmental Response Trust Consent Decree and Settlement Agreement, (iv) all leases of manufacturing facilities with New GM, and (v) all property management contracts and contracts related to the Environmental Actions relating to the Properties that the Debtors and the Environmental Response Trust Administrative Trustee agree should be assumed by the Environmental Response Trust.

1.68 <u>Environmental Response Trust Consent Decree and Settlement</u> <u>Agreement</u> means that certain Consent Decree and Settlement Agreement among the Debtors, the Environmental Response Trust Administrative Trustee, the United States, certain States, and the St. Regis Mohawk Tribe establishing an Environmental Response Trust for certain Property in Delaware, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Virginia, and Wisconsin, executed by MLC and the Governmental Authorities, in the form included in the Plan Supplement. **1.69** <u>Environmental Response Trust Parties</u> means the Environmental Response Trust, the Environmental Response Trust Administrative Trustee, and the Environmental Response Trust's officers, directors, employees, consultants, agents, or other professionals or representatives employed by the Environmental Response Trust or the Environmental Response Trust Administrative Trustee.

**1.70** <u>Environmental Response Trust Transfer Date</u> means the date on which the Environmental Response Trust Assets are transferred to the Environmental Response Trust, which transfer shall occur on the Effective Date.

**1.71** <u>Equity Interest</u> means the interest of any holder of an equity security of any of the Debtors, or any direct or indirect subsidiaries of the Debtors, represented by any issued and outstanding shares of common or preferred stock or other instrument evidencing a present ownership interest in any of the Debtors, or any direct or indirect subsidiaries of the Debtors, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest.

**1.72** <u>Eurobond Claim</u> means a Claim against any of the Debtors arising under or in connection with any of the respective notes, bonds, or debentures issued under (i) that certain Fiscal and Paying Agency Agreement, dated as of July 3, 2003, among MLC, Deutsche Bank AG London, and Banque Générale du Luxembourg S.A., (ii) that certain Fiscal and Paying Agency Agreement, dated as of July 10, 2003, among General Motors Nova Scotia Finance Company, MLC, Deutsche Bank Luxembourg S.A., and Banque Générale du Luxembourg S.A., and (iii) that certain Bond Purchase and Paying Agency Agreement, dated May 28, 1986, between General Motors Corporation and Credit Suisse.

**1.73** <u>Final Order</u> means an order or judgment of the Bankruptcy Court entered by the Clerk of the Bankruptcy Court on the docket in the Chapter 11 Cases which has not been reversed, vacated, or stayed and as to which (i) the time to appeal, petition for *certiorari*, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceeding for a new trial, reargument, or rehearing shall then be pending, or (ii) if an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court shall have been affirmed by the highest court to which such order was appealed, or *certiorari* shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument, or rehearing shall have expired. The susceptibility of a Claim to a challenge under section 502(j) of the Bankruptcy Code shall not render a Final Order not a Final Order.

**1.74** <u>Future Claimants' Representative</u> means Dean M. Trafalet, the Legal Representative for Future Claimants appointed pursuant to the order dated and entered by the Bankruptcy Court on April 8, 2010.

**1.75** <u>General Unsecured Claim</u> means any Claim against any of the Debtors that is (i) not an Administrative Expense, Priority Tax Claim, Secured Claim, Priority

Non-Tax Claim, Asbestos Personal Injury Claim, or Property Environmental Claim or (ii) otherwise determined by the Bankruptcy Court to be a General Unsecured Claim. Upon settlement or determination by Final Order of the Asbestos Trust Claim, the Asbestos Trust Claim shall be treated as an Allowed General Unsecured Claim in Class 3 for purposes of distribution from the GUC Trust and the Avoidance Action Trust, as applicable; *provided, however*, that any General Unsecured Claims reserved in the Environmental Response Trust Consent Decree and Settlement Agreement are General Unsecured Claims.

**1.76** <u>Governmental Authorities</u> means the United States of America, on behalf of the Environmental Protection Agency; the States of Delaware, Illinois, Kansas, Louisiana, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Virginia, Wisconsin; and the Saint Regis Mohawk Tribe, each as parties to the Environmental Response Trust Consent Decree and Settlement Agreement.

**1.77** <u>**GUC Trust**</u> means the trust established under the Plan in accordance with the GUC Trust Agreement.

**1.78** <u>GUC Trust Administrator</u> means the entity appointed by the Creditors' Committee with the consent of the Debtors to serve as administrator of the GUC Trust, pursuant to the terms of the GUC Trust Agreement, or as subsequently may be appointed pursuant to the terms of the GUC Trust Agreement. The identity of the GUC Trust Administrator shall be disclosed in the Plan Supplement.

**1.79** <u>**GUC Trust Administrative Fund</u>** means the fund established, held, and maintained by the GUC Trust Administrator for the purpose of paying the expenses incurred by the GUC Trust Administrator (including fees and expenses for professionals retained by the GUC Trust) in connection with the GUC Trust and any obligations imposed on the GUC Trust Administrator or the GUC Trust, including expenses relating to the performance of the GUC Trust Administrator's obligations under the GUC Trust Agreement and Section 6.2 hereof. The Debtors shall deposit \$______ million into the GUC Trust Administrative Fund on the GUC Trust Transfer Date.</u>

**1.80** <u>**GUC Trust Agreement**</u> means that certain GUC Trust Agreement executed by the Debtors and the GUC Trust Administrator, substantially in the form included in the Plan Supplement.

**1.81** <u>GUC Trust Assets</u> means the (i) GUC Trust Administrative Fund (comprised of Cash in the amount of \$____) and (ii) New GM Securities.

**1.82** <u>**GUC Trust Monitor**</u> means the entity appointed by the Creditors' Committee with the consent of the Debtors to oversee the GUC Trust, pursuant to the terms of the GUC Trust Agreement, or as subsequently may be appointed pursuant to the terms of the GUC Trust Agreement. The identity of the GUC Trust Monitor shall be disclosed in the Plan Supplement. **1.83** <u>**GUC Trust Transfer Date**</u> means the date on which the GUC Trust Assets are transferred to the GUC Trust, which transfer shall occur on the Effective Date, or as soon thereafter as is reasonably practicable, but shall be no later than December 15, 2011.

**1.84** <u>**GUC Trust Units**</u> means the units of beneficial interests in the GUC Trust.

1.85 Indentures means (i) the Indenture, dated as of November 15, 1990, between General Motors Corporation, as issuer, and Wilmington Trust Company, as successor-in-interest Indenture Trustee to Citibank, N.A., as such Indenture may have been amended, supplemented, or modified, pursuant to which (a) \$299,795,000 of 9.40% Debentures due July 15, 2021 were issued on July 22, 1991, (b) \$600,000,000 of 8.80% Notes due March 1, 2021 were issued on March 12, 1991, (c) \$500,000,000 of 7.40% Debentures due September 1, 2025 were issued on September 11, 1995, (d) \$15,000,000 of 9.40% Medium Term Notes due July 15, 2021 were issued on July 22, 1991, and (e) \$48,175,000 of 9.45% Medium Term Notes due November 1, 2011 were issued on December 21, 1990, (ii) the Indenture, dated as of December 7, 1995, between General Motors Corporation, as issuer, and Wilmington Trust Company, as successor-in-interest Indenture Trustee to Citibank, N.A., as such Indenture may have been amended, supplemented, or modified, pursuant to which (a) \$377,377,000 of 7.75% Discount Debentures due March 15, 2036 were issued on March 20, 1996, (b) \$500,000,000 of 7.70% Debentures due April 15, 2016 were issued on April 15, 1996, (c) \$400,000,000 of 8.10% Debentures due June 15, 2024 were issued on June 10, 1996, (d) \$600,000,000 of 6.75% Debentures due May 1, 2028 were issued on April 29, 1998, (e) \$1,500,000,000 of 7.20% Notes due January 15, 2011 were issued on January 11, 2001, (f) \$575,000,000 of 7.25% Quarterly Interest Bonds due April 15, 2041 were issued on April 30, 2001, (g) \$718,750,000 of 7.25% Senior Notes due July 15, 2041 were issued on July 9, 2001, (h) \$690,000,000 of 7.375% Senior Notes due October 1, 2051 were issued on October 3, 2001, (i) \$875,000,000 of 7.25% Senior Notes due February 15, 2052 were issued on February 14, 2002, (j) \$1,150,000,000 of 4.50% Series A Convertible Senior Debentures due March 6, 2032 were issued on March 6, 2002, (k) \$2,600,000,000 of 5.25% Series B Convertible Senior Debentures due March 6, 2032 were issued on March 6, 2002, (1) \$1,115,000,000 of 7.375% Senior Notes due May 15, 2048 were issued on May 19, 2003, (m) \$425,000,000 of 7.375% Senior Notes due May 23, 2048 were issued on May 23, 2003, (n) \$3,000,000,000 of 8.375% Senior Debentures due July 15, 2033 were issued on July 3, 2003, (o) \$4,300,000,000 of 6.25% Series C Convertible Senior Debentures due July 15, 2033 were issued on July 2, 2003, (p) \$1,250,000,000 of 8.250% Senior Debentures due July 15, 2023 were issued on July 3, 2003, (g) \$1,000,000,000 of 7.125% Senior Notes due July 15, 2013 were issued on July 3, 2003, (r) \$ 720,000,000 of 7.50% Senior Notes due July 1, 2044 were issued on June 30, 2004, and (s) \$1,500,000,000 of 1.50% Series D Convertible Senior Debentures due June 1, 2009 were issued on May 31, 2007, (iii) the Trust Indenture, dated as of July 1, 1995, between Michigan Strategic Fund and Law Debenture, as successor-in-interest Trustee to Dai-Ichi Kangyo Trust Company of New York, as such Indenture may have been amended, supplemented, or modified,

related to \$58,800,000 Michigan Strategic Fund Multi-Modal Interchangeable Rate Pollution Control Refunding Revenue Bonds Series 1995, (iv) the Indenture of Trust, dated as of July 1, 1994, between City of Moraine, Ohio and Law Debenture, as successor-in-interest Trustee to Dai-Ichi Kangyo Trust Company of New York, as such Indenture may have been amended, supplemented, or modified, related to \$12,500,000 Solid Waste Disposal Revenue Bonds (General Motors Corporation Project) Series 1994, (v) the Indenture, dated as of July 1, 1999, between City of Moraine, Ohio and Law Debenture, as successor-in-interest Trustee to Dai Ichi Kangyo Trust Company of New York, as such Indenture may have been amended, supplemented, or modified, related to \$10,000,000 Solid Waste Disposal Revenue Bonds (General Motors Project), Series 1999, (vi) the Trust Indenture, dated as of December 1, 2002, between City of Fort Wayne, Indiana and Law Debenture, as successor-in-interest Trustee to JPMorgan Chase Bank, and Bank One Trust Company, N.A., as Co-Trustee, as such Indenture may have been amended, supplemented, or modified, related to \$31,000,000 City of Fort Wayne, Indiana Pollution Control Revenue Bonds (General Motors Corporation Project), Series 2002, (vii) the Trust Indenture, dated as of March 1, 2002, between Ohio Water Development Authority and Law Debenture, as successor-in-interest Trustee to JPMorgan Chase Bank, as such Indenture may have been amended, supplemented, or modified, related to \$20,040,000 State of Ohio Pollution Control Refunding Revenue Bonds (General Motors Corporation Project), Series 2002, (viii) the Indenture of Trust, dated as of December 1, 2002, between Ohio Water Development Authority and Law Debenture, as successor-in-interest Trustee to JPMorgan Chase Bank, as such Indenture may have been amended, supplemented, or modified, related to \$46,000,000 State of Ohio Solid Waste Revenue Bonds, Series 2002 (General Motors Corporation Project), and (ix) the Trust Indenture, dated as of April 1, 1984, among City of Indianapolis, Indiana and Law Debenture, as successor-in-interest Trustee to Bankers Trust Company, and the Indiana National Bank, as Co-Trustee, as such Indenture may have been amended, supplemented, or modified, relating to \$1,400,000 City of Indianapolis, Indiana Pollution Control Revenue Bonds (General Motors Corporation Project), Series 1984.

**1.86** <u>Indenture Trustees</u> means the trustees, co-trustees, agents, paying agents, distribution agents, authenticating agents, registrars, and bond registrars under the respective Indentures, and any and all successors or predecessors thereto.

**1.87** <u>Indenture Trustee Reserve Cash</u> means sufficient Cash for the Indenture Trustees to administer distributions to Registered Holders as contemplated by the Plan, including all reasonable fees and expenses related thereto (including the reasonable fees and expenses of the respective counsel, advisors, and/or agents of the Indenture Trustees), and to compensate for any loss, liability, or reasonable expenses incurred without negligence or bad faith on the part of the Indenture Trustees, arising out of or in connection with the performance of their duties under the Indentures, including the reasonable costs and expenses of defending themselves against any claim of liability, from Registered Holders or otherwise, related thereto.</u>

**1.88** <u>Indirect Asbestos Claim</u> means any Claim or remedy, liability, or Demand against the Debtors now existing or hereafter arising, whether or not such Claim,

remedy, liability, or Demand is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, whether or not the facts of or legal bases for such Claim, remedy, liability, or Demand are known or unknown, that is (i) (A) held by (I) any Entity (other than a director or officer entitled to indemnification pursuant to Section 12.5 hereof) who has been, is, or may be a defendant in an action seeking damages for (a) death, bodily injury, sickness, disease, or other personal injuries (whether physical, emotional, or otherwise) to the extent caused or allegedly caused, directly or indirectly, by exposure to asbestos or asbestos-containing products or (b) property damage, including but not limited to, the cost of inspecting, maintaining, encapsulating, repairing, decontaminating, removing, or disposing of asbestos or asbestos-containing products in buildings, other structures, or other property, to the extent caused or allegedly caused, directly or indirectly, by the presence of or exposure (whether prior to or after the Commencement Date) to asbestos or asbestos-containing products or things that are or were installed, engineered, designed, manufactured, fabricated, constructed, sold, supplied, produced, specified, selected, distributed, released, marketed, serviced, maintained, repaired, purchased, owned, occupied, used, removed, replaced, or disposed by the Debtors or an Entity for whose products or operations the Debtors allegedly have liability or for which the Debtors are otherwise allegedly liable, or (II) any assignee or transferee of such Entity, and (B) on account of alleged liability of the Debtors for reimbursement, indemnification, subrogation, or contribution of any portion of any damages such Entity has paid or may pay to the plaintiff in such action, or (ii) held by any Entity that is seeking reimbursement indemnification, subrogation, or contribution from the Debtors with respect to any surety bond, letter of credit, or other financial assurance issued by any Entity on account of, or with respect to, Asbestos Claims.

**1.89** <u>Initial Debtors</u> means MLC; MLC of Harlem, Inc. (f/k/a Chevrolet-Saturn of Harlem, Inc.); MLCS, LLC (f/k/a Saturn, LLC); and MLCS Distribution Corporation (f/k/a Saturn Distribution Corporation).

**1.90** <u>MLC</u> means Motors Liquidation Company (f/k/a General Motors Corporation), a Delaware corporation, the parent debtor or debtor in possession, as the context requires.

**1.91** <u>MSPA</u> means that certain Amended and Restated Master Sale and Purchase Agreement, by and among General Motors Corporation and its debtor subsidiaries, as Sellers, and NGMCO, Inc., as successor in interest to Vehicle Acquisition Holdings LLC, a purchaser sponsored by the U.S. Treasury, as Purchaser, dated as of June 26, 2009, together with all related documents and agreements as well as all exhibits, schedules, and addenda thereto, as amended, restated, modified, or supplemented from time to time.

**1.92** <u>New GM</u> means General Motors Company (formerly known as General Motors Holding Company), a Delaware corporation formed as part of that certain holding company reorganization that occurred on October 19, 2009, pursuant to which all of the outstanding shares of common stock and preferred stock of the prior General Motors

Company (now known as "General Motors, LLC") were exchanged on a one-for-one basis for shares of common stock and preferred stock of the newly organized holding company that now bears the name General Motors Company. General Motors Company has a 100% ownership interest in General Motors Holdings LLC, a Delaware limited liability company, and General Motors, LLC is a direct wholly-owned subsidiary of General Motors Holdings LLC.

**1.93** <u>New GM Securities</u> means the New GM Stock and the New Warrants, each of which was received as consideration pursuant to the 363 Transaction as embodied in the MSPA.

**1.94** <u>New GM Stock</u> means the stock of New GM, including any additional shares issued if the Bankruptcy Court determines that the estimated amount of (i) Allowed General Unsecured Claims against the Initial Debtors and (ii) the Allowed Asbestos Trust Claim against the Initial Debtors collectively exceeds \$35 billion.

**1.95** <u>New Warrants</u> means (i) the warrants to acquire 45,454,545 newly issued shares of New GM Stock, with an exercise price set at \$30.00 per share, and (ii) the warrants to acquire 45,454,545 newly issued shares of New GM Stock, with an exercise price set at \$55.00 per share.

**1.96** <u>Note Claim</u> means a Claim against any of the Debtors arising under or in connection with any Indenture and the respective notes, bonds, or debentures issued thereunder, excluding the fees and expenses of the Indenture Trustees, which reasonable fees and expenses shall be paid pursuant to Section 2.5 hereof.

**1.97** <u>**Person**</u> has the meaning set forth in section 101(41) of the Bankruptcy Code.

**1.98** <u>Plan</u> means this chapter 11 plan, as the same may be amended, supplemented, or modified from time to time in accordance with the provisions of the Bankruptcy Code and the terms hereof.

**1.99 <u>Plan Supplement</u>** means the forms of documents, in a form reasonably acceptable to the U.S. Treasury, the Creditors' Committee, the Asbestos Claimants' Committee, and the Future Claimants' Representative, to the extent such document affects the respective party, effectuating the transactions contemplated by this Plan, which documents shall be filed with the Clerk of the Bankruptcy Court no later than ten (10) days prior to the Confirmation Hearing. Upon its filing with the Bankruptcy Court, the Plan Supplement may be inspected at the Office of the Clerk of the Bankruptcy Court during normal court hours. Holders of Claims and Equity Interests may obtain a copy of the Plan Supplement upon written request to the undersigned counsel. Copies of the Plan Supplement also are available on the Voting Agent's website, www.motorsliquidationdocket.com.

**1.100 <u>Post-Effective Date MLC</u>** means MLC on and after the Effective Date.

**1.101 <u>Priority Non-Tax Claim</u>** means any Claim, other than an Administrative Expense or a Priority Tax Claim, entitled to priority in payment as specified in section 507(a)(3), (4), (5), (6), (7), or (9) of the Bankruptcy Code.

**1.102** <u>**Priority Order Sites**</u> means the non-owned sites, as set forth on Exhibit "A" hereto, that are subject to an order requiring performance of an Environmental Action.

**1.103** <u>Priority Order Sites Consent Decrees and Settlement Agreements</u> means the Consent Decrees and Settlement Agreements to be filed with the Bankruptcy Court in respect of the Priority Order Sites.

**1.104** <u>Priority Tax Claim</u> means any Claim of a governmental unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code other than Priority Tax Claims that New GM is liable for under the MSPA.

**1.105** <u>Pro Rata Share</u> means the ratio (expressed as a percentage) of (i) the amount of any Allowed Claim in a particular Class to (ii) the sum of (x) the aggregate amount of Allowed Claims in such Class and (y) the aggregate amount of Disputed Claims in such Class.

**1.106** <u>**Property or Properties**</u> means (i) the properties set forth on Attachment A to the Environmental Response Trust Consent Decree and Settlement Agreement and (ii) the Priority Order Sites.

**1.107** <u>Property Environmental Claim</u> means any civil Claim or Cause of Action by the Governmental Authorities against the Debtors under Environmental Laws with respect to the Properties except for any General Unsecured Claim reserved in the Environmental Response Trust Consent Decree and Settlement Agreement or the Priority Order Sites Consent Decrees and Settlement Agreements.

**1.108 Protected Party** means (i) the Debtors, (ii) any Entity that, pursuant to the Plan or after the Effective Date, becomes a direct or indirect transferee of, or successor to, any assets of the Debtors (including, without limitation, the GUC Trust, the Environmental Response Trust, the Avoidance Action Trust, the GUC Trust Administrator, the Environmental Response Trust Administrative Trustee, the Avoidance Action Trust Administrator, the GUC Trust Monitor, the Avoidance Action Trust Monitor, and their respective professionals) or the Asbestos Trust (but only to the extent that liability is asserted to exist by reason of its becoming such a transferee or successor), (iii) the holders of DIP Credit Agreement Claims, (iv) any Entity that, pursuant to the Plan or after the Effective Date, makes a loan to the Debtors, Post-Effective Date MLC, or the Asbestos Trust (but only to the extent that liability is asserted to exist by reason of successor to, or transferee of, any assets of the Debtors or the Asbestos Trust (but only to the extent that liability is asserted to exist by reason to, or transferee of, any assets of the Debtors or the Asbestos Trust (but only to the extent that liability is asserted to exist by reason of successor to, or transferee of, any assets of the Debtors or the Asbestos Trust (but only to the extent that liability is asserted to exist by reason of such Entity's becoming such a lender or to the extent any pledge of assets made in connection with such a loan is sought to be upset or impaired), or (v) any Entity to the

extent he, she, or it is alleged to be directly or indirectly liable for the conduct of, Claims against, or Demands on the Debtors or the Asbestos Trust on account of Asbestos Personal Injury Claims by reason of one or more of the following: (a) such Entity's ownership of a financial interest in the Debtors, a past or present affiliate of the Debtors, or a predecessor in interest of the Debtors, (b) such Entity's involvement in the management of the Debtors or any predecessor in interest of the Debtors, (c) such Entity's service as an officer, director, or employee of the Debtors, any past or present affiliate of the Debtors, any predecessor in interest of the Debtors, or any Entity that owns or at any time has owned a financial interest in the Debtors, any past or present affiliate of the Debtors, or any predecessor in interest of the Debtors, (d) such Entity's provision of insurance to the Debtors, any past or present affiliate of the Debtors, any predecessor in interest of the Debtors, or any Entity that owns or at any time has owned a financial interest in (I) the Debtors, (II) any past or present affiliate of the Debtors, or (III) any predecessor in interest of the Debtors, but only to the extent that the Debtors or the Asbestos Trust enters into a settlement with such Entity that is approved by the Bankruptcy Court and expressly provides that such Entity shall be a Protected Party under the Plan, or (e) such Entity's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the Debtors, any past or present affiliate of the Debtors, any predecessor in interest of the Debtors, or any Entity that owns or at any time has owned a financial interest in the Debtors, any past or present affiliate of the Debtors, or any predecessor in interest of the Debtors.

**1.109** <u>**REALM**</u> means Remediation and Liability Management Company, Inc., a Michigan corporation, as debtor or debtor in possession, as the context requires.

**1.110** <u>**Registered Holder**</u> means the registered holders (or bearers, if applicable) of the securities issued pursuant to the Indentures.

**1.111** <u>Residual Wind-Down Assets</u> means the Cash necessary to fund the resolution of Administrative Expenses, Priority Tax Claims, Priority Non-Tax Claims, and Secured Claims, and the Cash reserved to pay such Administrative Expenses and Claims. If the Debtors have not resolved and paid all of the foregoing Claims and Administrative Expenses by the date of MLC's dissolution, then the Residual Wind-Down Assets (including the power to object, settle, and or satisfy such Claims and Administrative Expenses) shall be transferred to the GUC Trust.

**1.112** <u>Schedules</u> means the schedules of assets and liabilities and the statements of financial affairs filed by the Debtors under section 521 of the Bankruptcy Code, Bankruptcy Rule 1007, and the Official Bankruptcy Forms of the Bankruptcy Rules as such schedules and statements have been or may be supplemented or amended through the Confirmation Date.

**1.113** <u>Secured Claim</u> means a Claim (i) secured by Collateral, to the extent of the value of such Collateral (A) as set forth in the Plan, (B) as agreed to by the holder of such Claim and the Debtors, or (C) as determined by a Final Order in accordance with

section 506(a) of the Bankruptcy Code, or (ii) secured by the amount of any valid rights of setoff of the holder thereof under section 553 of the Bankruptcy Code.

**1.114** <u>Solicitation Procedures</u> means the procedures relating to the solicitation and tabulation of votes with respect to the Plan.

**1.115** <u>**Tax Code**</u> means title 26 of the United States Code, as amended from time to time.

**1.116** <u>Term Loan Avoidance Action</u> means the Avoidance Action commenced by the Creditors' Committee against JPMorgan Chase Bank, N.A., individually and as Administrative Agent, and various lenders party to a term loan agreement, dated as of November 29, 2006, between General Motors Corporation, as borrower, JPMorgan Chase Bank, N.A., as agent, and various institutions as lenders and agents, styled *Official Committee of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A. et al.*, Adv. Pro. No. 09-00504 (Bankr. S.D.N.Y. July 31, 2009).

**1.117** <u>Unliquidated Litigation Claim</u> means a General Unsecured Claim that qualifies for reconciliation pursuant to the ADR Procedures, regardless of whether the Claim is filed in an unliquidated amount, until it becomes an Allowed Claim.

**1.118** <u>U.S Treasury</u> means the United States Department of the Treasury.

**1.119** <u>U.S. Trustee</u> means the United States Trustee for the Southern District of New York.

**1.120** <u>Voting Deadline</u> means the date set by the Bankruptcy Court by which all completed Ballots must be received.

### INTERPRETATION; APPLICATION OF DEFINITIONS AND RULES OF CONSTRUCTION.

The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained therein. A term used herein that is not defined herein shall have the meaning assigned to that term in the Bankruptcy Code. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the Plan. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof.

### ARTICLE II.

### ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

2.1 <u>Administrative Expenses</u>. Except to the extent that a holder of an Allowed Administrative Expense agrees to a different treatment or as provided in the subsequent sentence of this Section, on the Effective Date, or as soon thereafter as is reasonably practicable, the Debtors shall pay to each holder of an Allowed

Administrative Expense, in full satisfaction of such Allowed Administrative Expense, an amount in Cash equal to the Allowed amount of such Administrative Expense. Notwithstanding the foregoing, any and all liabilities of the Debtors to the Governmental Authorities under Environmental Laws associated with the Properties that otherwise would constitute Administrative Expenses shall be treated and satisfied by and in accordance with the terms of the Environmental Response Trust Consent Decree and Settlement Agreement and the Priority Order Sites Consent Decrees and Settlement Agreements.

**2.2** <u>Compensation and Reimbursement Claims</u>. All entities seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 327, 328, 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code (i) shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred by the date that is thirty (30) days after the Confirmation Date, and (ii) shall be paid in full in such amounts as are allowed by the Bankruptcy Court (A) on the date on which the order relating to any such Administrative Expense is entered or (B) upon such other terms as may be mutually agreed upon between the holder of such an Administrative Expense and the Debtors.</u>

2.3 <u>Priority Tax Claims</u>. Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a different treatment, on the Effective Date, or as soon thereafter as is reasonably practicable, the Debtors shall pay to each holder of an Allowed Priority Tax Claim, in full satisfaction of such Claim, an amount in Cash equal to the Allowed amount of such Claim. Priority Tax Claims that New GM is liable for under the MSPA shall be the responsibility of New GM and shall receive no distribution under the Plan.

2.4 DIP Credit Agreement Claims. The lenders under the DIP Credit Agreement shall have an Allowed Administrative Expense for the total amount due under the DIP Credit Agreement as of the Effective Date, ratably in accordance with their respective interests in the DIP Credit Agreement Claims, subject to any applicable provisions of paragraph 5 of the Final Order approving the DIP Credit Agreement. The Debtors shall pay on account of the amounts outstanding under the DIP Credit Agreement an amount equal to all Cash and Cash equivalents, if any, remaining after funding all obligations and amounts to be funded under the Plan (including the GUC Trust Administrative Fund, the Asbestos Trust, the Environmental Response Trust Administrative Account, the Avoidance Action Trust Administrative Cash, and the Indenture Trustee Reserve Cash, and such amounts necessary to satisfy payment of and funding to reconcile Administrative Expenses, Priority Tax Claims, Priority Non-Tax Claims, and Secured Claims) and shall distribute beneficial interests in the Environmental Response Trust to the lenders under the DIP Credit Agreement. To the extent it is determined that the lenders under the DIP Credit Agreement are entitled to any proceeds of the Term Loan Avoidance Action and the Asbestos Insurance Assets either by (i) mutual agreement between the U.S. Treasury and the Creditors' Committee prior to the Effective Date, (ii) mutual agreement between the U.S. Treasury and the GUC Trust

Administrator on or after the Effective Date, or (iii) Final Order, the lenders under the DIP Credit Agreement shall receive the proceeds of the Term Loan Avoidance Action and/or the Asbestos Insurance Assets in accordance with Sections 4.3 and 6.5 hereof and the Avoidance Action Trust Agreement. Notwithstanding anything to the contrary in the Plan, if any Collateral provided under the DIP Credit Agreement (including the DIP Lenders' Avoidance Assets) is not distributed pursuant to the Plan, such Collateral shall be distributed to lenders under the DIP Credit Agreement ratably in accordance with their respective interests in the DIP Credit Agreement Claims. Notwithstanding anything herein to the contrary, the lenders under the DIP Credit Agreement shall have the sole right to collect on, prosecute, designate another party to prosecute, assign, or waive the DIP Lenders' Avoidance Actions and the sole right to recover from or assign the DIP Lenders' Avoidance Assets.

# 2.5 Special Provisions Regarding Indenture Trustees' Fees and Expenses.

The reasonable prepetition and postpetition fees and expenses of each of the Indenture Trustees (which includes the reasonable fees and expenses of any counsel and/or other professionals retained by the Indenture Trustees) shall be deemed Allowed Administrative Expenses and shall be paid in Cash on the Effective Date, or as soon thereafter as is reasonably practicable, upon submission of documented invoices to the Debtors and the Creditors' Committee, subject to a review for reasonableness by the Debtors and representatives of the members of the Creditors' Committee who are not Indenture Trustees, without the necessity of making application to the Bankruptcy Court. Subject to Section 6.7 hereof, each Indenture Trustee's charging lien will be discharged solely upon payment in full of the respective fees and expenses of the Indenture Trustees and termination of the respective Indenture Trustee's duties. Nothing herein shall be deemed to impair, waive, or discharge the Indenture Trustees' respective charging liens for any fees and expenses not paid by the Debtors.

#### ARTICLE III.

### **CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS**

The following table designates the Classes of Claims against and Equity Interests in the Debtors and specifies which of those Classes are (i) impaired or unimpaired by the Plan, (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code, and (iii) deemed to reject the Plan:

Class	Designation	<u>Impairment</u>	Entitled to Vote
Class 1	Secured Claims	Unimpaired	No (deemed to accept)
Class 2	Priority Non-Tax Claims	Unimpaired	No (deemed to accept)
Class 3	General Unsecured Claims	Impaired	Yes
Class 4	Property Environmental Claims	Unimpaired	No (deemed to accept)
Class 5	Asbestos Personal Injury Claims	Impaired	Yes
Class 6	Equity Interests in MLC	Impaired	No (deemed to reject)

For convenience of identification, the Plan classifies the Allowed Claims in Class 1 as a single Class. This Class is actually a group of subclasses, depending on the underlying property securing such Allowed Claims, and each subclass is treated hereunder as a distinct Class for voting and distribution purposes.

## ARTICLE IV.

### TREATMENT OF CLAIMS AND EQUITY INTERESTS

**4.1** <u>**Class 1 – Secured Claims.</u>** Except to the extent that a holder of an Allowed Secured Claim agrees to a different treatment of such Claim, on the Effective Date, or as soon thereafter as is reasonably practicable, each holder of an Allowed Secured Claim shall receive, at the option of the Debtors, and in full satisfaction of such Claim, either (i) Cash in an amount equal to one hundred percent (100%) of the unpaid amount of such Allowed Secured Claim, (ii) the proceeds of the sale or disposition of the Collateral securing such Allowed Secured Claim, net of the costs of disposition of such Collateral, (iii) the Collateral securing such Allowed Secured Claim, (iv) such treatment that leaves unaltered the legal, equitable, and contractual rights to which the holder of such Allowed Secured Claim is entitled, or (v) such other distribution as necessary to satisfy the requirements of section 1129 of the Bankruptcy Code. In the event a Secured Claim is treated under clause (i) or (ii) of this Section, the liens securing such Secured Claim shall be deemed released.</u>

**4.2** <u>Class 2 - Priority Non-Tax Claims</u>. Except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to a different treatment of such Claim, on the Effective Date, or as soon thereafter as is reasonably practicable, each such holder shall receive, in full satisfaction of such Claim, an amount in Cash equal to the Allowed amount of such Claim.

# 4.3 <u>Class 3 - General Unsecured Claims</u>.

(a) As soon as is reasonably practicable after the Effective Date (but no earlier than the first Business Day following the Distribution Record Date), each holder of an Allowed General Unsecured Claim as of the Distribution Record Date shall receive from the GUC Trust its Pro Rata Share of (i) the New GM Securities and (ii) the GUC Trust Units, in accordance with the terms of the GUC Trust and the GUC Trust Agreement. The GUC Trust shall make subsequent distributions of New GM Securities and GUC Trust Units to holders of Disputed General Unsecured Claims as of the Distribution Record Date whose Claims are subsequently Allowed. The GUC Trust shall make additional distributions of New GM Securities to holders of GUC Trust Units in accordance with the terms of the GUC Trust and the GUC Trust Agreement.

(b) If any proceeds of the Term Loan Avoidance Action and/or the Asbestos Insurance Assets are received prior to the Avoidance Action Trust Transfer Date, then, to the extent it is determined that the holders of Allowed General Unsecured Claims are entitled to any proceeds of the Term Loan Avoidance Action and the Asbestos Insurance Assets, either by (i) mutual agreement between the U.S. Treasury and the Creditors' Committee prior to the Effective Date, (ii) mutual agreement between the U.S. Treasury and the GUC Trust Administrator on or after the Effective Date, or (iii) Final Order, (A) each holder of an Allowed General Unsecured Claim as of the Distribution Record Date shall receive its Pro Rata Share of such proceeds, net of any expenses incurred by the Debtors on or after the Effective Date, and (B) the Debtors shall make subsequent distributions of the net proceeds of the Term Loan Avoidance Action and the Asbestos Insurance Assets to holders of Disputed General Unsecured Claims and Disputed Asbestos Personal Injury Claims as of the Distribution Record Date whose Claims are subsequently Allowed. Holders of Disputed General Unsecured Claims and Disputed Asbestos Personal Injury Claims on the Distribution Record Date whose Claims are subsequently Allowed prior to the initial distribution of proceeds of the Term Loan Avoidance Action and the Asbestos Insurance Assets shall be deemed to be holders of Allowed General Unsecured Claims as of the Distribution Record Date for the purpose of this Section 4.3(b).

(c) As soon as is reasonably practicable after the Avoidance Action Trust Transfer Date, to the extent it is determined that the holders of Allowed General Unsecured Claims are entitled to any proceeds of the Term Loan Avoidance Action and the Asbestos Insurance Assets, either by (i) mutual agreement between the U.S. Treasury and the Creditors' Committee prior to the Effective Date, (ii) mutual agreement between the U.S. Treasury and the GUC Trust Administrator on or after the Effective Date, or (iii) Final Order, (A) each holder of an Allowed General Unsecured Claim as of the Distribution Record Date shall receive from the Avoidance Action Trust, to the extent not already distributed, its Pro Rata Share of such proceeds in accordance with the terms of the Avoidance Action Trust and the Avoidance Action Trust Agreement and (B) the Avoidance Action Trust shall make subsequent distributions of any proceeds of the Term Loan Avoidance Action and the Asbestos Insurance Assets to holders of Disputed General Unsecured Claims and Disputed Asbestos Personal Injury Claims as of the Distribution Record Date whose Claims are subsequently Allowed. The Avoidance Action Trust shall make additional distributions of any proceeds of the Term Loan Avoidance Action and of the Asbestos Insurance Assets to the Avoidance Action Trust Beneficiaries in accordance with the terms of the Avoidance Action Trust and the Avoidance Action Trust Agreement. Holders of Disputed General Unsecured Claims and Disputed Asbestos Personal Injury Claims on the Distribution Record Date whose Claims are subsequently Allowed prior to the Avoidance Action Trust Transfer Date shall be deemed to be holders of Allowed General Unsecured Claims as of the Distribution Record Date for the purpose of this Section 4.3(c).

(d) Holders of Unliquidated Litigation Claims, at the option of the Debtors or the GUC Trust Administrator, as applicable, shall be subject to the ADR Procedures in order to determine the Allowed amount of their respective General Unsecured Claims.

(e) The Note Claims shall be Allowed in the respective amounts listed next to each Indenture set forth in Exhibit "B" annexed hereto (the "**Fixed Allowed Note Claims**"). The Fixed Allowed Note Claims shall override and supersede any individual Claims filed by record or by beneficial holders of debt securities arising out of or relating to the Note Claims.

(f) The Eurobond Claims under (i) that certain Fiscal and Paying Agency Agreement, dated as of July 3, 2003, among MLC, Deutsche Bank AG London, and Banque Générale du Luxembourg S.A. shall be Allowed in the amount of \$_______, (ii) that certain Fiscal and Paying Agency Agreement, dated as of July 10, 2003, among General Motors Nova Scotia Finance Company, MLC, Deutsche Bank Luxembourg S.A., and Banque Générale du Luxembourg S.A. shall be Allowed in the amount of \$______, and (iii) that certain Bond Purchase and Paying Agency Agreement, dated May 28, 1986, between General Motors Corporation and Credit Suisse, shall be Allowed in the amount of \$______, (together, the "**Fixed Allowed Eurobond Claims**"). The Fixed Allowed Eurobond Claims filed by record or by beneficial holders of debt securities arising out of or relating to the Eurobond Claims.

(g) Notwithstanding anything to the contrary in this Section 4.3, all proceeds of the Term Loan Avoidance Action and/or the Asbestos Insurance Assets shall be applied first to pay the U.S. Treasury (i) all amounts expended on and after the Effective Date to fund the costs and expenses associated with realizing such proceeds and (ii) without duplication, the amount of the Avoidance Action Trust Administrative Cash.

4.4 <u>Class 4 – Property Environmental Claims</u>. On the Effective Date, all Property Environmental Claims shall be satisfied and treated in accordance with the terms of the Environmental Response Trust Agreement, the Environmental Response Trust Consent Decree and Settlement Agreement, and the Priority Order Sites Consent Decrees and Settlement Agreements. All Property Environmental Claims are fully satisfied in accordance with the terms of the Environmental Response Trust Consent Decree and Settlement Agreement and the Priority Order Sites Consent Decree and Settlement Agreement and the Priority Order Sites Consent Decrees and Settlement Agreement and the Priority Order Sites Consent Decrees and Settlement Agreements.

4.5 <u>Class 5 – Asbestos Personal Injury Claims</u>. On the Effective Date, or as soon thereafter as is reasonably practicable, all Asbestos Personal Injury Claims shall be channeled to the Asbestos Trust and all Asbestos Personal Injury Claims shall be satisfied in accordance with the terms of the Asbestos Trust, the Asbestos Trust Distribution

Procedures, and the Asbestos Trust Agreement. The sole recourse of the holders of Asbestos Personal Injury Claims shall be from the Asbestos Trust, and such holders shall have no right whatsoever at any time to assert their respective Asbestos Personal Injury Claims against any Protected Party, provided that, once Allowed, the Asbestos Trust Claim shall be entitled to the same distributions from the GUC Trust and the Avoidance Action Trust, as applicable, as an Allowed General Unsecured Claim in Class 3. Without limiting the foregoing, on the Effective Date, all Entities shall be permanently stayed, restrained, and enjoined from taking any of the following actions for the purpose of, directly or indirectly, collecting, recovering, or receiving payment of, on, or with respect to any Asbestos Personal Injury Claim (other than actions brought to enforce any right or obligation under the Plan, any Exhibits to the Plan, the Plan Supplement, or any other agreement or instrument between the Debtors and the Asbestos Trust, which actions shall be in conformity and compliance with the provisions hereof and other than the right of the Allowed Asbestos Trust Claim to receive distributions from the GUC Trust and the Avoidance Action Trust, as applicable): (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding (including, without limitation, a judicial, arbitral, administrative, or other proceeding) in any forum against any Protected Party or any property or interests in property of any Protected Party, (ii) enforcing, levying, attaching (including without limitation, any prejudgment attachment), collecting, or otherwise recovering by any means or in any manner, whether directly or indirectly, any judgment, award, decree, or other order against any Protected Party or any property or interests in property of any Protected Party, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Encumbrance against any Protected Party or any property or interests in property of any Protected Party, (iv) setting off, seeking reimbursement of, contribution from, or subrogation against, or otherwise recouping in any manner, directly or indirectly, any amount against any liability owed to any Protected Party or any property or interests in property of any Protected Party, and (v) proceeding in any manner in any place with regard to any matter that is subject to resolution pursuant to the Asbestos Trust Agreement, except in conformity and compliance therewith.

**4.6** <u>Class 6 - Equity Interests in MLC</u>. On the Effective Date, all Equity Interests issued by MLC shall be cancelled and one new share of MLC's common stock shall be issued to a custodian to be designated by MLC, who will hold such share for the benefit of the holders of such former Equity Interests consistent with their former economic entitlements. All Equity Interests of the other Debtors shall be cancelled when such Debtors are dissolved or merged out of existence in accordance with Section 6.10 hereof. Each holder of an Equity Interest shall neither receive nor retain any property or interest in property on account of such Equity Interest; *provided, however*, that in the event all Allowed Claims have been satisfied in full, holders of Equity Interests may receive a pro rata distribution of any remaining assets of the Debtors. On or promptly after the Effective Date, but in no event later than December 15, 2011, MLC shall file with the Securities and Exchange Commission a Form 15 for the purpose of terminating the registration of any of its publicly traded securities. All Equity Interests in MLC outstanding after the Effective Date shall be cancelled on the date MLC is dissolved in accordance with Section 6.10 hereof. The rights of a holder of an Equity Interest or former Equity Interest issued by MLC pursuant to this Section 4.6 shall be nontransferable.

#### ARTICLE V.

#### **PROVISIONS GOVERNING DISTRIBUTIONS**

**5.1** <u>Distribution Record Date</u>. As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Equity Interests as maintained by the Debtors, or their agents, shall be deemed closed, and there shall be no further changes in the record holders of any of the Claims or Equity Interests. The Debtors shall have no obligation to recognize any transfer of the Claims or Equity Interests occurring on or after the Distribution Record Date. The Debtors shall be entitled to recognize and deal for all purposes hereunder only with those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date, to the extent applicable. Notwithstanding the foregoing, if the GUC Trust Units are transferable as set forth in Section 6.2(h) hereof, then the GUC Trust Administrator may set additional record dates for subsequent distributions to holders of GUC Trust Units, in accordance with the GUC Trust Agreement.

#### 5.2 <u>Method of Distributions Under the Plan</u>.

Payments and Transfers on Effective Date. On the Effective **(a)** Date, or as soon thereafter as is reasonably practicable, the Debtors shall (i) remit to holders of Allowed Administrative Expenses, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, and, if applicable, Allowed Secured Claims an amount in Cash equal to the Allowed amount of such Claims, (ii) transfer the GUC Trust Assets to the GUC Trust free and clear of all liens, claims, and encumbrances, but subject to any obligations imposed by the Plan, on behalf of holders of General Unsecured Claims, (iii) transfer the Asbestos Trust Assets to the Asbestos Trust free and clear of all liens, claims, and encumbrances, but subject to any obligations imposed by the Plan, on behalf of holders of Asbestos Personal Injury Claims, (iv) transfer the Environmental Response Trust Assets to the Environmental Response Trust free and clear of all liens, claims, and encumbrances (except for any statutory liens for property and ad valorem taxes not yet due and payable), but subject to any obligations imposed by the Plan, on behalf of holders of Property Environmental Claims, (v) reserve Cash for the Indenture Trustee Reserve Cash, which Cash shall be distributed to the Indenture Trustees upon submission of documented invoices to the Debtors or the GUC Trust Administrator in accordance with Section 6.2(f) hereof without the necessity of making application to the Bankruptcy Court, and (vi) remit and transfer to the holders of Allowed DIP Credit Agreement Claims the payments and distributions provided for in Section 2.4 hereof.

(b) <u>Repayment of Excess Cash to the U.S. Treasury and EDC</u>. If the Debtors have any Cash remaining after (i) transferring the GUC Trust Assets to the GUC Trust, including the funding of the GUC Trust Administrative Fund and the transfer

of the Indenture Trustee Reserve Cash in accordance with Section 6.2 hereof, (ii) transferring the Asbestos Trust Assets to the Asbestos Trust, (iii) transferring the Environmental Response Trust Assets to the Environmental Response Trust, including the funding of the Environmental Response Trust Administrative Funding Account, (iv) transferring the Avoidance Action Trust Assets to the Avoidance Action Trust, (v) the resolution (and the payment, to the extent Allowed) of all Disputed Administrative Expenses (including compensation and reimbursement of expenses under sections 330 or 503 of the Bankruptcy Code), Disputed Priority Tax Claims, Disputed DIP Credit Agreement Claims, Disputed Priority Non-Tax Claims, and Disputed Secured Claims, (vi) the payment in full of all Allowed Administrative Expenses (including any compensation and reimbursement of expenses to the extent allowed by Final Order under sections 330 or 503 of the Bankruptcy Code), Allowed Priority Tax Claims, Allowed DIP Credit Agreement Claims, Allowed Priority Non-Tax Claims, and Allowed Secured Claims, and (vii) completing the acts described in Section 6.10 hereof, the Debtors shall pay such Cash to the U.S. Treasury and EDC by wire transfer of immediately available funds to an account designated by the U.S. Treasury and by EDC, respectively, ratably in accordance with their respective interests in the DIP Credit Agreement Claims. In the event any Cash remains in the GUC Trust Administrative Fund, the Environmental Response Trust Administrative Funding Account, the Avoidance Action Trust Administrative Cash, or the Indenture Trustee Reserve Cash after all the obligations imposed on the GUC Trust Administrator, the Environmental Response Trust Administrative Trustee, the Avoidance Action Trust Administrator, or the Indenture Trustees, respectively, and the GUC Trust, the Environmental Response Trust, and the Avoidance Action Trust, respectively, pursuant to the Plan, the GUC Trust Agreement, the Environmental Response Trust Agreement, the Environmental Response Trust Consent Decree and Settlement Agreement, and the Avoidance Action Trust Agreement, respectively, have been satisfied, the GUC Trust Administrator, the Environmental Response Trust Administrative Trustee, and the Avoidance Action Trust Administrator, respectively, shall pay such Cash to the U.S. Treasury and EDC by wire transfer of immediately available funds to an account designated by the U.S Treasury and by EDC, respectively, ratably in accordance with their respective interests in the DIP Credit Agreement Claims. If the GUC Trust Administrator determines to close the Chapter 11 Cases in accordance with Section 6.2(q) hereof, the GUC Trust Administrator shall repay the Cash from the balance of the GUC Trust Administrative Fund after reserving any amounts necessary to close the Chapter 11 Cases to the U.S. Treasury and EDC by wire transfer of immediately available funds to an account designated by the U.S. Treasury and by EDC, respectively, ratably in accordance with their respective interests in the DIP Credit Agreement Claims.

#### (c) <u>Payment of Cash or Certain Assets to Charitable</u>

<u>**Organizations.**</u> In the event any Cash or property remains in the Asbestos Trust after all the obligations imposed on the Asbestos Trust Administrator(s) and the Asbestos Trust pursuant to the Plan and the Asbestos Trust Agreement have been satisfied, the Asbestos Trust Administrator(s) shall pay such Cash amounts to a charitable organization exempt from U.S. federal income tax under section 501(c)(3) of the Tax Code to be selected by,

and unrelated to, the Asbestos Trust Administrator(s). In the event any Asbestos Trust Assets remain in the Asbestos Trust after all Allowed Asbestos Personal Injury Claims have been satisfied pursuant to the Plan and the Asbestos Trust Agreement, the Asbestos Trust Administrator(s) shall transfer such Asbestos Trust Assets to a charitable organization exempt from U.S. federal income tax under section 501(c)(3) of the Tax Code to be selected by, and unrelated to, the Asbestos Trust Administrator(s).

(d) <u>Distributions of Cash</u>. At the option of the Debtors or the GUC Trust Administrator, the Asbestos Trust Administrator(s), the Environmental Response Trust Administrative Trustee, or the Avoidance Action Trust Administrator, as applicable, any Cash payment to be made under the Plan, the GUC Trust, the Asbestos Trust, the Environmental Response Trust, or the Avoidance Action Trust, as applicable, may be made by check or wire transfer or as otherwise required or provided in applicable agreements.

(e) <u>Sale of New Warrants About to Expire</u>. During the sixty (60) days preceding the expiration of the New Warrants, the GUC Trust Administrator shall have the authority to sell any New Warrants remaining in the GUC Trust, whether held in a reserve for Disputed General Unsecured Claims or otherwise, and distribute the proceeds thereof to holders of Allowed General Unsecured Claims and/or GUC Trust Units, as applicable, consistent with, and as provided in, the Plan. For the avoidance of doubt, any holder of an Allowed General Unsecured Claim and/or GUC Trust Unit, as applicable, that is entitled to receive such New Warrants shall receive only the net cash proceeds, if any, of the sold New Warrants that the GUC Trust Administrator received upon such sale. To the extent holders of Allowed Claims and/or GUC Trust Units, as applicable, have received a portion of the New Warrants to which they are entitled pursuant to the Plan, the GUC Trust Administrator shall have the authority to sell the remaining portion of New Warrants pursuant to this Section 5.2(e).

# 5.3 <u>Delivery of Distributions and Undeliverable Distributions</u>.

(a) Subject to Bankruptcy Rule 9010, all distributions to any holder of an Allowed Claim shall be made at the address of such holder as set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Debtors or their agents or in a letter of transmittal unless the Debtors or the GUC Trust Administrator, the Asbestos Trust Administrator(s), or the Avoidance Action Trust Administrator, as applicable, have been notified in writing of a change of address, including, without limitation, by the filing of a proof of Claim by such holder that contains an address for such holder different from the address reflected on such Schedules for such holder. Any distribution to be made to a holder of an Allowed General Unsecured Claim under any of the Indentures shall be made to the respective Indenture Trustee, subject to the Indenture Trustee's right to assert its charging lien against such distributions. The distribution from the Debtors, the GUC Trust, or the Avoidance Action Trust, as applicable, to any of the Indenture Trustees shall be deemed a distribution to the Registered Holders under the respective Indentures. In the event that any distribution to any holder is returned as undeliverable, no further distributions to such

holder shall be made unless and until the Debtors or the GUC Trust Administrator, the Asbestos Trust Administrator(s), or the Avoidance Action Trust Administrator, as applicable, are notified of such holder's then-current address, at which time all missed distributions shall be made to such holder, without interest. All demands for undeliverable distributions shall be made on or before ninety (90) days after the date such undeliverable distribution was initially made. Thereafter, the amount represented by such undeliverable distribution shall irrevocably revert to the Debtors or the GUC Trust, the Asbestos Trust, or the Avoidance Action Trust, as applicable, and any Claim in respect of such undeliverable distribution shall be discharged and forever barred from assertion against the Debtors, the GUC Trust, the Asbestos Trust, the Avoidance Action Trust, the Avoidance Action Trust, and their respective property.

(b) Any distribution from the Debtors, the GUC Trust, or the Avoidance Action Trust to any of the Indenture Trustees in accordance with the Plan shall be deemed a distribution to the respective Registered Holders thereunder and shall be subject to the applicable Indenture Trustee's right to assert its charging lien against such distributions. Distributions shall be made to the Registered Holders as follows:

(i) Each Indenture Trustee shall distribute, as soon as is reasonably practicable after receipt thereof and pursuant to the terms of the applicable Indenture, the New GM Securities and the GUC Trust Units it receives from the GUC Trust in accordance with Section 4.3(a) hereof to the Registered Holders as of the Distribution Record Date. The GUC Trust shall make additional distributions of New GM Securities to holders of GUC Trust Units in accordance with the GUC Trust Agreement and Section 4.3(a) hereof.

(ii) To the extent that it is determined that the holders of Allowed General Unsecured Claims are entitled to any proceeds of the Term Loan Avoidance Action and/or the Asbestos Insurance Assets either by (i) mutual agreement between the U.S. Treasury and the Creditors' Committee or (ii) Final Order, then each Indenture Trustee shall distribute, as soon as is reasonably practicable after receipt thereof and pursuant to the terms of the applicable Indenture, the net proceeds of the Term Loan Avoidance Action and the Asbestos Insurance Assets it receives from either (i) the Debtors in accordance with Section 4.3(b) hereof or (ii) the Avoidance Action Trust in accordance with Section 4.3(c) hereof, to the Registered Holders as of the Distribution Record Date.

**5.4** <u>Withholding and Reporting Requirements</u>. In connection with the Plan and all instruments issued in connection therewith and distributed thereon, any party issuing any instrument or making any distribution under the Plan shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions under the Plan and all related agreements shall be subject to any such withholding or reporting requirements. In the case of a non-Cash distribution that is subject to withholding, the distributing party may withhold an appropriate portion of such distributed property and sell such withheld property to generate Cash necessary to pay over the withholding tax. Notwithstanding the foregoing, each holder of an Allowed Claim or Equity Interest (other than the Indenture Trustees) that receives a distribution under the Plan shall have responsibility for any taxes imposed by any governmental unit, including income, withholding, and other taxes, on account of such distribution.

**5.5** <u>Time Bar to Cash Payments</u>. Checks issued by the Debtors, the GUC Trust Administrator, the Asbestos Trust Administrator(s), or the Avoidance Action Trust Administrator, as applicable, in respect of Allowed Claims shall be null and void if not negotiated within one hundred eighty (180) days after the date of issuance thereof. Requests for re-issuance of any check shall be made to the Debtors, the GUC Trust Administrator, the Asbestos Trust Administrator(s), or the Avoidance Action Trust Administrator, as applicable, by the holder of the Allowed Claim to whom such check originally was issued. Any Claim in respect of such a voided check shall be made on or before thirty (30) days after the expiration of the one hundred eighty (180) day period following the date of issuance of such check. Thereafter, the amount represented by such voided check shall irrevocably revert to the Debtors, the GUC Trust, the Asbestos Trust, or the Avoidance Action Trust, as applicable, and any Claim in respect of such voided check shall be discharged and forever barred.

5.6 Minimum Distributions and Fractional Shares or Units. No payment of Cash less than \$25 shall be made by the Debtors, the GUC Trust Administrator, or the Avoidance Action Trust Administrator, as applicable, to any holder of an Allowed Claim. No fractional shares of New GM Securities shall be distributed. For purposes of distribution, fractional shares of New GM Securities shall be rounded down to the next whole number or zero, as applicable; provided, however, that if an Entity's fractional shares are rounded down to zero, such Entity shall receive one share of New GM Securities. If an Entity holds more than one Allowed Claim, such Entity's Allowed Claims shall be aggregated for purposes of rounding down pursuant to this Section 5.6. After all distributions under the Plan have been made, any New GM Securities that are undistributable as a result of the foregoing shall be sold by the GUC Trust Administrator, and the GUC Trust Administrator shall distribute the Cash proceeds to holders of Allowed General Unsecured Claims and/or GUC Trust Units, as applicable; provided, however, that if the Cash proceeds from the sale of the New GM Securities is less than \$150,000, such Cash shall be distributed to a charitable organization exempt from U.S. federal income tax under section 501(c)(3) of the Tax Code to be selected by, and unrelated to, the GUC Trust Administrator.

**5.7** <u>Setoffs.</u> The Debtors and/or the GUC Trust Administrator, the Asbestos Trust Administrator(s), and the Avoidance Action Trust Administrator, as applicable, may, but shall not be required to, set off against any Claim (for purposes of determining the Allowed amount of such Claim on which distribution shall be made), any claims of any nature whatsoever that the Debtors may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors and/or the GUC Trust Administrator, the Asbestos Trust Administrator(s), or the Avoidance Action Trust Administrator, as applicable, of any such claim the Debtors may have against the holder of such Claim. Nothing in the Plan

shall limit or affect any right of the United States to offset (subject to obtaining Bankruptcy Court approval to the extent required) any obligation owed by the United States to the Debtors against any obligation owed by the Debtors to the United States.

**5.8** <u>**Transactions on Business Days.**</u> If the Effective Date or any other date on which a transaction may occur under the Plan shall occur on a day that is not a Business Day, the transactions contemplated by the Plan to occur on such day shall instead occur on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

**5.9** <u>Allocation of Plan Distribution Between Principal and Interest</u>. All distributions in respect of any Allowed Claim shall be allocated first to the principal amount of such Allowed Claim, as determined for U.S. federal income tax purposes, and thereafter, to the remaining portion of such Claim, if any.

#### ARTICLE VI.

#### MEANS FOR IMPLEMENTATION AND EXECUTION OF THE PLAN

### 6.1 <u>Substantive Consolidation</u>.

Entry of the Confirmation Order shall constitute the approval, (a) pursuant to section 105(a) of the Bankruptcy Code, effective as of the Effective Date, of the substantive consolidation of MLC of Harlem, Inc.; MLCS, LLC; MLCS Distribution Corporation; Remediation and Liability Management Company, Inc.; and Environmental Corporate Remediation Company, Inc., and their respective estates, into MLC for voting, confirmation, and distribution purposes under the Plan. Solely for such purposes, on and after the Effective Date, (i) all assets and all liabilities of the Debtors shall be deemed merged into MLC, (ii) all guaranties of any Debtor of the payment, performance, or collection of obligations of another Debtor shall be eliminated and cancelled, (iii) any obligation of any Debtor and all guaranties thereof executed by one or more of the other Debtors shall be treated as a single obligation, and such guaranties shall be deemed a single Claim against the consolidated Debtors, (iv) all joint obligations of two or more Debtors and all multiple Claims against such entities on account of such joint obligations shall be treated and allowed only as a single Claim against the consolidated Debtors, (v) all Claims between or among the Debtors shall be cancelled, and (vi) each Claim filed in the Chapter 11 Case of any Debtor shall be deemed filed against the consolidated Debtors and a single obligation of the consolidated Debtors on and after the Effective Date.

(b) The substantive consolidation and deemed merger effected pursuant to Section 6.1(a) hereof shall not affect (other than for purposes related to funding distributions under the Plan and as set forth in Section 6.1(a) hereof) (i) the legal and organizational structure of the Debtors, (ii) defenses to any Causes of Action or requirements for any third party to establish mutuality to assert a right of setoff, and (iii) distributions out of any insurance policies or proceeds of such policies.

# 6.2 <u>The GUC Trust</u>.

(a) <u>Execution of GUC Trust Agreement</u>. On or before the Effective Date, the GUC Trust Agreement, in a form acceptable to the Debtors, the Creditors' Committee, the U.S. Treasury, as lender under the DIP Credit Agreement, and the GUC Trust Administrator, shall be executed, and all other necessary steps shall be taken to establish the GUC Trust and the beneficial interests therein, which shall be for the benefit of the holders of Allowed General Unsecured Claims. This Section 6.2 sets forth certain of the rights, duties, and obligations of the GUC Trust Administrator. In the event of any conflict between the terms of this Section 6.2 and the terms of the GUC Trust Agreement, the terms of the GUC Trust Agreement shall govern.

(b) <u>Purpose of GUC Trust</u>. The GUC Trust shall be established to administer certain post-Effective Date responsibilities under the Plan, including, but not limited to, distributing New GM Securities and resolving outstanding Disputed General Unsecured Claims to determine the amount of Allowed General Unsecured Claims that will be eligible for distribution of their Pro Rata Share of New GM Securities under the Plan. If the Residual Wind-Down Assets are transferred to the GUC Trust upon dissolution of MLC, then the GUC Trust shall administer the resolution of all Disputed Administrative Expenses, Disputed Priority Tax Claims, Disputed Priority Non-Tax Claims, and Disputed Secured Claims. The GUC Trust has no objective to continue or engage in the conduct of a trade or business.

(c) <u>GUC Trust Assets</u>. The GUC Trust shall consist of the GUC Trust Assets. On the GUC Trust Transfer Date, the Debtors shall transfer all the GUC Trust Assets to the GUC Trust free and clear of all liens, claims, and encumbrances, except to the extent otherwise provided herein.

(d) <u>Governance of GUC Trust</u>. The GUC Trust shall be governed by the GUC Trust Administrator and the GUC Trust Monitor.

(e) <u>The GUC Trust Administrator and the GUC Trust Monitor</u>. The GUC Trust Administrator and the GUC Trust Monitor shall be designated by the Creditors' Committee with the consent of the Debtors and the U.S. Treasury, as lender under the DIP Credit Agreement, and the identities of the GUC Trust Administrator and the GUC Trust Monitor shall be disclosed in the Plan Supplement.

(f) <u>Role of the GUC Trust Administrator</u>. In furtherance of and consistent with the purpose of the GUC Trust and the Plan, the GUC Trust Administrator shall (i) have the power and authority to hold, manage, sell, invest, and distribute to the holders of Allowed General Unsecured Claims the GUC Trust Assets, (ii) hold the GUC Trust Assets for the benefit of the holders of Allowed General Unsecured Claims, (iii) have the power and authority to hold, manage, sell, invest, and distribute the GUC Trust Assets obtained through the exercise of its power and authority, (iv) have the power and authority to prosecute and resolve objections to Disputed General Unsecured Claims, (v) have the power and authority to perform such other functions as are provided in the Plan and the GUC Trust Agreement, (vi) have the power and authority to administer the closure of the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules, and (vii) if the Residual Wind-Down Assets are transferred to the GUC Trust upon the dissolution of MLC, then the GUC Trust Administrator shall have the authority to prosecute, resolve objections, and satisfy the Disputed Administrative Expenses, Disputed Priority Tax Claims, Disputed Priority Non-Tax Claims, and Disputed Secured Claims. The GUC Trust Administrator shall be responsible for all decisions and duties with respect to the GUC Trust and the GUC Trust Assets and shall file periodic public reports on the status of claims reconciliation and distributions. In all circumstances, the GUC Trust Administrator shall act in the best interests of all beneficiaries of the GUC Trust Agreement. Upon the dissolution of MLC, the Indenture Trustee Reserve Cash shall be transferred to the GUC Trust and the GUC Trust Administrator shall distribute funds to the Indenture Trustees from the Indenture Trustee Reserve Cash as required.

(g) <u>Role of the GUC Trust Monitor</u>. In furtherance of and consistent with the purpose of the GUC Trust and the Plan, the GUC Trust Monitor shall oversee the activities of the GUC Trust Administrator as set forth in the GUC Trust Agreement. The GUC Trust Administrator shall report material matters to, and seek approval for material decisions from, the GUC Trust Monitor, as and to the extent set forth in the GUC Trust Agreement. Without limiting the foregoing, the GUC Trust Administrator shall obtain the approval of the GUC Trust Monitor with respect to settlements of Disputed General Unsecured Claims above a certain threshold and present periodic reports to the GUC Trust Monitor on the GUC Trust distributions and budget. In all circumstances, the GUC Trust Monitor shall act in the best interests of all beneficiaries of the GUC Trust, in furtherance of the purpose of the GUC Trust, and in accordance with the GUC Trust Agreement.

(h) <u>Transferability of GUC Trust Interests</u>. Beneficial interests in the GUC Trust shall be transferable to the extent that the transferability thereof would not require the GUC Trust to register the beneficial interests under Section 12(g) of the Securities Exchange Act of 1934, as amended, and otherwise shall not be transferable except as provided in the GUC Trust Agreement.

(i) <u>Cash</u>. The GUC Trust Administrator may invest Cash (including any earnings thereon or proceeds therefrom) as would be permitted by section 345 of the Bankruptcy Code were the GUC Trust a debtor under the Bankruptcy Code, or as otherwise permitted by an order of the Bankruptcy Code, which may include the Confirmation Order.

(j) <u>Costs and Expenses of the GUC Trust Administrator</u>. The costs and expenses of the GUC Trust, including the fees and expenses of the GUC Trust Administrator and its retained professionals, shall be paid out of the GUC Trust Administrative Fund, subject to the provisions of the Budget and the terms of the GUC Trust Agreement.

(k) <u>Compensation of the GUC Trust Administrator</u>. The GUC Trust Administrator shall be entitled to reasonable compensation, subject to the provisions of the Budget and the terms of the GUC Trust Agreement, in an amount consistent with that of similar functionaries in similar types of bankruptcy cases. Such compensation shall be payable solely from the GUC Trust Administrative Fund.

(I) <u>Distribution of GUC Trust Assets</u>. The GUC Trust Administrator shall distribute at least quarterly and in accordance with the GUC Trust Agreement, beginning on the first Business Day following the Distribution Record Date, or as soon thereafter as is practicable, (i) the appropriate amount of New GM Securities (and other distributions of Cash, if any) to holders of Allowed General Unsecured Claims and/or GUC Trust Units, as applicable, and (ii) Cash from the GUC Trust Administrative Fund (a) in amounts as reasonably necessary to meet contingent liabilities and otherwise address the expenses of the GUC Trust, (b) to pay reasonable expenses (including, but not limited to, any taxes imposed on the GUC Trust or in respect of the GUC Trust Assets), and (c) to satisfy other liabilities incurred by the GUC Trust in accordance with the Plan or the GUC Trust Agreement.

(m) <u>Retention of Professionals by the GUC Trust Administrator</u> <u>and the GUC Trust Monitor</u>. The GUC Trust Administrator and the GUC Trust Monitor may retain and reasonably compensate counsel and other professionals to assist in their duties as GUC Trust Administrator and GUC Trust Monitor on such terms as the GUC Trust Administrator and the GUC Trust Monitor deem appropriate without Bankruptcy Court approval, but subject to the consent of the U.S. Treasury, as lender under the DIP Credit Agreement, and to the provisions of the GUC Trust Agreement. The GUC Trust Administrator and the GUC Trust Monitor may retain any professional who represented parties in interest, including the Debtors or the Creditors' Committee, in the Chapter 11 Cases. All fees and expenses incurred in connection with the foregoing shall be payable solely from the GUC Trust Administrative Fund and shall be subject to the provisions of the Budget and the terms of the GUC Trust Agreement.

# (n) <u>U.S. Federal Income Tax Treatment of GUC Trust</u>.

(i) <u>**Tax Status of GUC Trust.</u>** For all U.S. federal and applicable state and local income tax purposes, all parties (including, without limitation, the Debtors, the GUC Trust Administrator, and the holders of General Unsecured Claims) shall treat the GUC Trust as a "disputed ownership fund" within the meaning of Treasury Regulation section 1.468B-9.</u>

(ii) <u>Delivery of Statement of Transfers</u>. Following the funding of the GUC Trust (and in no event later than February 15th of the calendar year following the funding of the GUC Trust), MLC shall provide a "§ 1.468B-9 Statement" to the GUC Trust Administrator in accordance with Treasury Regulation section 1.468B-9(g).

# (iii) <u>Tax Reporting</u>.

(1) The GUC Trust shall file (or cause to be filed) any other statements, returns, or disclosures relating to the GUC Trust that are required by any governmental unit.

(2) The GUC Trust Administrator shall be responsible for payment, out of the GUC Trust Assets, of any taxes imposed on the GUC Trust or the GUC Trust Assets.

(3) The GUC Trust Administrator may request an expedited determination of taxes of the GUC Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the GUC Trust for all taxable periods through the dissolution of the GUC Trust.

(o) <u>Dissolution</u>. The GUC Trust Administrator and the GUC Trust shall be discharged or dissolved, as applicable, at such time as (i) all Disputed General Unsecured Claims have been resolved, (ii) all GUC Trust Assets have been liquidated, (iii) all distributions required to be made by the GUC Trust Administrator under the Plan and the GUC Trust Agreement have been made, and (iv) if the Residual Wind-Down Assets are transferred to the GUC Trust upon dissolution of MLC, all Disputed Administrative Expenses, Disputed Priority Tax Claims, Disputed Priority Non-Tax Claims, and Disputed Secured Claims have been resolved, but in no event shall the GUC Trust be dissolved later than five (5) years from the Effective Date or such shorter or longer period authorized by the Bankruptcy Court in order to resolve all Disputed General Unsecured Claims.

Indemnification of the GUC Trust Administrator and the GUC **(p)** Trust Monitor. The GUC Trust Administrator and the GUC Trust Monitor (and their agents and professionals) shall not be liable for actions taken or omitted in its or their capacity as, or on behalf of, the GUC Trust Administrator, the GUC Trust Monitor, or the GUC Trust, except those acts arising out of its or their own willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or *ultra vires* acts, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its actions or inactions in its or their capacity as, or on behalf of, the GUC Trust Administrator, the GUC Trust Monitor, or the GUC Trust, except for any actions or inactions involving willful misconduct, gross negligence, bad faith, self-dealing, or ultra vires acts. Any indemnification claim of the GUC Trust Administrator, the GUC Trust Monitor, and the other parties entitled to indemnification under this subsection shall be satisfied first from the GUC Trust Administrative Fund and then from the GUC Trust Assets. The GUC Trust Administrator and the GUC Trust Monitor shall be entitled to rely, in good faith, on the advice of its retained professionals.

(q) <u>Closing of Chapter 11 Cases</u>. When all Disputed Claims (other than Asbestos Personal Injury Claims) filed against the Debtors have become Allowed Claims or have been disallowed by Final Order, and all of the GUC Trust Assets and all Avoidance Action Trust Assets, if applicable, have been distributed in accordance with the Plan, the GUC Trust Administrator shall seek authority from the Bankruptcy Court to

close the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules. If at any time the GUC Trust Administrator determines that the expense of administering the GUC Trust so as to make a final distribution to its beneficiaries is likely to exceed the value of the GUC Trust Assets remaining in the GUC Trust, the GUC Trust Administrator shall apply to the Bankruptcy Court for authority to (i) reserve any amounts necessary to close the Chapter 11 Cases, (ii) repay any Cash balance from the GUC Trust Administrative Fund to the U.S. Treasury and EDC in accordance with Section 5.2(b) of the Plan, and (iii) unless the Chapter 11 Cases have been closed, close the Chapter 11 Cases in accordance with the Bankruptcy Code and Bankruptcy Rules. Notice of such application shall be given electronically, to the extent practicable, to those parties who have filed requests for notices and whose electronic addresses remain current and operating.

# 6.3 <u>The Asbestos Trust</u>.

(a) <u>Execution of Asbestos Trust Agreement</u>. On the Effective Date, the Asbestos Trust Agreement, in a form reasonably acceptable to the Debtors, the Creditors' Committee, the Asbestos Claimants' Committee, the Future Claimants' Representative, and the U.S. Treasury, as lender under the DIP Credit Agreement, shall be executed, and all other necessary steps shall be taken to establish the Asbestos Trust and the beneficial interests therein, which shall be for the benefit of the holders of Allowed Asbestos Personal Injury Claims. In the event of any conflict between the terms of this Section 6.3 and the terms of the Asbestos Trust Agreement, the terms of the Asbestos Trust Agreement shall govern.

(b) <u>Purpose of Asbestos Trust</u>. The Asbestos Trust shall be established to, among other things, (i) direct the processing, liquidation, and payment of all Asbestos Personal Injury Claims in accordance with the Plan, the Asbestos Trust Distribution Procedures, and the Confirmation Order and (ii) preserve, hold, manage, and maximize the assets of the Asbestos Trust for use in paying and satisfying Asbestos Personal Injury Claims.

(c) <u>Assumption of Certain Liabilities by Asbestos Trust</u>. In consideration of the Asbestos Trust Assets transferred to the Asbestos Trust under the Plan and in furtherance of the purposes of the Asbestos Trust and the Plan, the Asbestos Trust shall assume all liability and responsibility for all Asbestos Personal Injury Claims and the Debtors shall have no further financial or other responsibility or liability therefor. The Asbestos Trust also shall assume all liability for premiums, deductibles, retrospective premium adjustments, security or collateral arrangements, or any other charges, costs, fees, or expenses (if any) that become due to any insurer in connection with the Asbestos Insurance Assets with respect to Asbestos Personal Injury Claims, asbestos-related claims against Entities insured under policies included in the Asbestos Insurance Assets by reason of vendor's endorsements, or under the indemnity provisions of settlement agreements that the Debtors made with various insurers prior to the Commencement Date to the extent that those indemnity provisions relate to Asbestos Personal Injury Claims, and the Debtors shall have no further financial or other responsibility for any of the foregoing.

(d) <u>Asbestos Trust Assets</u>. The Asbestos Trust shall consist of the Asbestos Trust Assets. On the Asbestos Trust Transfer Date, the Debtors shall transfer all the Asbestos Trust Assets to the Asbestos Trust free and clear of all liens, claims, and encumbrances, except to the extent otherwise provided herein.

(e) <u>Governance of Asbestos Trust</u>. The Asbestos Trust shall be governed by the Asbestos Trust Administrator(s).

(f) <u>The Asbestos Trust Administrator(s)</u>. The Asbestos Trust Administrator(s) shall be designated on or before the Effective Date by the Debtors, with the consent of the Asbestos Claimants' Committee, the Future Claimants' Representative, and the U.S. Treasury, as lender under the DIP Credit Agreement, and such designation shall be confirmed by the Bankruptcy Court.

(g) <u>Role of the Asbestos Trust Administrator(s)</u>. In furtherance of and consistent with the purpose of the Asbestos Trust and the Plan, the Asbestos Trust Administrator(s) shall (i) have the power and authority to hold, manage, sell, invest, and distribute the Asbestos Trust Assets to the holders of Allowed Asbestos Personal Injury Claims, (ii) hold the Asbestos Trust Assets for the benefit of the holders of Allowed Asbestos Personal Injury Claims, (iii) have the power and authority to hold, manage, sell, and distribute the Asbestos Trust Assets obtained through the exercise of its power and authority, (iv) have the power and authority to prosecute and resolve objections to Asbestos Personal Injury Claims, and (v) have the power and authority to perform such other functions as are provided in the Plan and the Asbestos Trust Agreement. The Asbestos Trust Administrator(s) shall be responsible for all decisions and duties with respect to the Asbestos Trust and the Asbestos Trust Assets. In all circumstances, the Asbestos Trust Administrator(s) shall act in the best interests of all beneficiaries of the Asbestos Trust and in furtherance of the purpose of the Asbestos Trust.

(h) <u>Nontransferability of Asbestos Trust Interests</u>. The beneficial interests in the Asbestos Trust shall not be certificated and are not transferable (except as otherwise provided in the Asbestos Trust Agreement).

(i) <u>Cash</u>. The Asbestos Trust Administrator(s) may invest Cash (including any earnings thereon or proceeds therefrom).

(j) <u>Costs and Expenses of the Asbestos Trust Administrator(s)</u>. The costs and expenses of the Asbestos Trust, including the fees and expenses of the Asbestos Trust Administrator(s) and its retained professionals, shall, subject to the provisions of the Budget and the terms of the Asbestos Trust Agreement, be paid first out of the \$___ million in Cash in the Asbestos Trust Assets and then out of the other Asbestos Trust Assets. (k) <u>Allowance of Asbestos Personal Injury Claims</u>. With respect to any Asbestos Personal Injury Claim that is Allowed by the Asbestos Trust in accordance with the Asbestos Trust Agreement and the Asbestos Trust Distribution Procedures, such allowance shall establish the amount of legal liability against the Asbestos Trust in the amount of the liquidated value of such Asbestos Personal Injury Claim, as determined in accordance with the Asbestos Trust Distribution Procedures.

(1) <u>Distribution of Asbestos Trust Assets</u>. In accordance with the Asbestos Trust Agreement and the Asbestos Trust Distribution Procedures, the Asbestos Trust shall operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of Asbestos Personal Injury Claims and Demands, or other comparable mechanisms, that provide reasonable assurance that the Asbestos Trust shall value, and be in a financial position to pay, Asbestos Personal Injury Claims and Demands that involve similar Claims in substantially the same manner.

(m) <u>Retention of Professionals by the Asbestos Trust</u> <u>Administrator(s)</u>. The Asbestos Trust Administrator(s) may retain and reasonably compensate counsel and other professionals to assist in its or their duties as Asbestos Trust Administrator(s) on such terms as the Asbestos Trust Administrator(s) deem(s) appropriate without Bankruptcy Court approval, but subject to the provisions of the Budget and the terms of the Asbestos Trust Agreement. The Asbestos Trust Administrator(s) may retain any professional who represented parties in interest in the Chapter 11 Cases.

### (n) U.S. Federal Income Tax Treatment of Asbestos Trust.

(i) <u>**Tax Status of Asbestos Trust.</u>** For all U.S. federal and applicable state and local income tax purposes, all parties (including, without limitation, the Debtors, the Asbestos Trust Administrator(s), and the holders of Asbestos Personal Injury Claims) shall treat the Asbestos Trust as a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-1.</u>

(ii) <u>Delivery of Statement of Transfers</u>. Following the funding of the Asbestos Trust (and in no event later than February 15th of the calendar year following the funding of the Asbestos Trust), MLC shall provide a "§ 1.468B-3 Statement" to the Asbestos Trust Administrator(s) in accordance with Treasury Regulation section 1.468B-3(e)

(iii) <u>Other Statements</u>. The Asbestos Trust shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Asbestos Trust that are required by any governmental unit.

(iv) <u>**Tax Payments.**</u> The Asbestos Trust Administrator(s) shall be responsible for payment, out of the Asbestos Trust Assets, of any taxes imposed on the Asbestos Trust or the Asbestos Trust Assets. (v) <u>Expedited Determination</u>. The Asbestos Trust Administrator(s) may request an expedited determination of taxes of the Asbestos Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Asbestos Trust for all taxable periods through the dissolution of the Asbestos Trust.

(o) <u>Dissolution</u>. The Asbestos Trust Administrator(s) and the Asbestos Trust shall be discharged or dissolved, as applicable, at such time as (i) all Asbestos Personal Injury Claims have been resolved, (ii) all Asbestos Trust Assets have been liquidated, and (iii) all distributions required to be made by the Asbestos Trust Administrator(s) under the Plan and the Asbestos Trust Agreement have been made.

**Indemnification of the Asbestos Trust Administrator(s).** The **(p)** Asbestos Trust Administrator(s) and its or their agents and professionals shall not be liable for actions taken or omitted in its or their capacity as, or on behalf of, the Asbestos Trust Administrator(s) or the Asbestos Trust, except those acts arising out of its or their own willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or *ultra vires* acts, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its actions or inactions in its or their capacity as, or on behalf of, the Asbestos Trust Administrator(s) or the Asbestos Trust, except for any actions or inactions involving willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or *ultra vires* acts. Any indemnification claim of the Asbestos Trust Administrator(s) (and the other parties entitled to indemnification under this subsection (p)) shall be satisfied first from the \$ million in Cash in the Asbestos Trust Assets and then from the Asbestos Trust Assets. The Asbestos Trust Administrator(s) shall be entitled to rely, in good faith, on the advice of its retained professionals.

# 6.4 <u>The Environmental Response Trust</u>.

**Environmental Response Trust Agreement and Environmental** (a) Response Trust Consent Decree and Settlement Agreement. On the Effective Date, the Environmental Response Trust Agreement and the Environmental Response Trust Consent Decree and Settlement Agreement shall become effective and the Environmental Response Trust shall be established and funded. Entry of the Confirmation Order shall constitute approval of the Environmental Response Trust Consent Decree and Settlement Agreement pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019. The establishment and funding of the Environmental Response Trust and the transfer of Environmental Response Trust Assets to the Environmental Response Trust shall be in full settlement and satisfaction of all present and future civil environmental liabilities or obligations of the Debtors to the Governmental Authorities, other than the General Unsecured Claims reserved in the Environmental Response Trust Consent Decree and Settlement Agreement and the Priority Order Sites Consent Decrees and Settlement Agreements, with respect to any of the Properties listed on Attachment A to the Environmental Response Trust Consent Decree and Settlement Agreement, whether prepetition or postpetition, in accordance with this Section 6.4 and the Environmental Response Trust Consent Decree and Settlement Agreement; provided, however, that

nothing in this sentence shall preclude additional payments to the Environmental Response Trust in the event that any of the Priority Order Sites Consent Decrees and Settlement Agreements are not approved as provided in the Priority Order Sites Consent Decrees and Settlement Agreements. In the event of any conflict between the terms of the Plan and the terms of the Environmental Response Trust Consent Decree and Settlement Agreement, the terms of the Environmental Response Trust Consent Decree and Settlement Agreement shall govern.

Purpose of Environmental Response Trust. The purpose of the **(b)** Environmental Response Trust shall be to conduct, manage, and/or fund Environmental Actions with respect to certain of the Properties, including the migration of hazardous substances emanating from certain of the Properties, in accordance with the provisions of the Environmental Response Trust Agreement and the Environmental Response Trust Consent Decree and Settlement Agreement; to reimburse the lead agency for Environmental Actions it conducts or has agreed to pay for with respect to the Properties; to own certain of the Properties, carry out administrative and property management functions related to the Properties, and pay associated administrative costs; and to try to sell or transfer the Properties owned by the Environmental Response Trust with the objective that the Properties be put to productive or beneficial use. After the establishment and funding of, and the conveyance of the Properties owned by the Debtors to, the Environmental Response Trust as provided in the Environmental Response Trust Consent Decree and Settlement Agreement, the Debtors shall have no further liability, role, or residual interest with respect to the Environmental Response Trust or the Properties.

**Environmental Response Trust Assets.** The Environmental (c) Response Trust shall consist of the Environmental Response Trust Assets, as described in the Environmental Response Trust Consent Decree and Settlement Agreement. On the Effective Date, the Debtors shall transfer all the Environmental Response Trust Assets to the Environmental Response Trust, as provided in and subject to the provisions of the Environmental Response Trust Consent Decree and Settlement Agreement. Such transfer shall include the transfer of Environmental Response Trust Cash in the amount of \$ million, which represents the aggregate amounts approved by the Bankruptcy Court to pay the costs that will be incurred by the Environmental Response Trust with respect to Environmental Actions and the costs of administering the Environmental Response Trust. In settlement and full satisfaction of the Property Environmental Claims, on or before the Effective Date, the Environmental Response Trust Administrative Trustee shall create, and the Debtors shall make payments to, accounts held by or within the Environmental Response Trust as specified and in the amounts provided in the Environmental Response Trust Consent Decree and Settlement Agreement, and the Debtors shall make the payments required under the Priority Order Sites Consent Decrees and Settlement Agreements. The Environmental Response Trust Administrative Trustee shall deposit, maintain, and use the funding in accordance with the terms of the Environmental Response Trust Agreement and the Environmental Response Trust Consent Decree and Settlement Agreement for the purposes described therein. Any Property may be sold or

transferred by the Environmental Response Trust Administrative Trustee in the circumstances and in light of the considerations described in the Environmental Response Trust Consent Decree and Settlement Agreement.

(d) <u>Governance of Environmental Response Trust</u>. The Environmental Response Trust shall be governed by the Environmental Response Trust Administrative Trustee according to the terms set forth in the Environmental Response Trust Agreement and the Environmental Response Trust Consent Decree and Settlement Agreement.

# (e) **Role of Environmental Response Trust Administrative**

**Trustee.** The Environmental Response Trust Administrative Trustee shall be responsible for implementing the purpose of the Environmental Response Trust, including overseeing the development of budgets, retaining and overseeing professionals to conduct Environmental Actions, entering into and overseeing the implementation of all contracts binding the Environmental Response Trust, executing agreements, preparing and filing all required plans and reports with the applicable Governmental Authorities, handling accounting and legal matters for the Environmental Response Trust, establishing funding objectives, monitoring the performance of the staff, and other administrative tasks, and shall carry out and implement the Environmental Response Trust Agreement. The Environmental Response Trust Administrative Trustee shall not be authorized to engage in any trade or business with respect to the Environmental Response Trust Assets.

(f) <u>Nontransferability of Environmental Response Trust Interests</u>. The beneficial interests in and powers under the Environmental Response Trust shall not be certificated and are not transferable (except as otherwise provided in the Environmental Response Trust Agreement or the Environmental Response Trust Consent Decree and Settlement Agreement).

(g) <u>Cash</u>. The Environmental Response Trust Administrative Trustee may invest Cash (including any earnings thereon or proceeds therefrom) as would be permitted by (i) section 345 of the Bankruptcy Code were the Environmental Response Trust a debtor under the Bankruptcy Code and (ii) the Environmental Response Trust Agreement and the Environmental Response Trust Consent Decree and Settlement Agreement.

# (h) Indemnification of Environmental Response Trust

Administrative Trustee. The potential liability of each Environmental Response Trust Party shall be limited as set forth in the Environmental Response Trust Agreement and the Environmental Response Trust Consent Decree and Settlement Agreement. Each Environmental Response Trust Party shall be indemnified and protected from litigationrelated expenses as set forth in the Environmental Response Trust Agreement and the Environmental Response Trust Consent Decree and Settlement Agreement and the Environmental Response Trust Consent Decree and Settlement Agreement.

# (i) <u>U.S. Federal Income Tax Treatment of Environmental</u> <u>Response Trust.</u>

(i) <u>Tax Status of Environmental Response Trust</u>. Except as provided in the following sentence, for all U.S. federal and applicable state and local income tax purposes, all parties (including, without limitation, the Debtors, the Environmental Response Trust Administrative Trustee, the lenders under the DIP Credit Agreement, and the holders of Property Environmental Claims) shall treat the Environmental Response Trust as a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-1. This provision shall not be binding on the Internal Revenue Service as to the application of Treasury Regulation section 1.468B-1 or any other tax issue with respect to the Environmental Response Trust.

(ii) <u>Delivery of Statement of Transfers</u>. Following the funding of the Environmental Response Trust (and in no event later than February 15th of the calendar year following the funding of the Environmental Response Trust), MLC shall provide a "§ 1.468B-3 Statement" to the Environmental Response Trust Administrative Trustee in accordance with Treasury Regulation section 1.468B-3(e).

(iii) <u>Other Statements</u>. The Environmental Response Trust shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Environmental Response Trust that are required by any governmental unit.

(iv) <u>**Tax Payments**</u>. The Environmental Response Trust Administrative Trustee shall be responsible for payment, out of the Environmental Response Trust Assets, of any taxes imposed on the Environmental Response Trust or the Environmental Response Trust Assets.

(v) **Expedited Determination.** The Environmental Response Trust Administrative Trustee may request an expedited determination of taxes of the Environmental Response Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Environmental Response Trust for all taxable periods through the dissolution of the Environmental Response Trust.

# 6.5 <u>The Avoidance Action Trust</u>.

(a) <u>Execution of Avoidance Action Trust Agreement</u>. On or before the Effective Date, the Avoidance Action Trust Agreement, in a form acceptable to the Debtors, the U.S. Treasury, and the Creditors' Committee, and the Avoidance Action Trust Administrator, shall be executed, and all other necessary steps shall be taken to establish the Avoidance Action Trust and the beneficial interests therein, which shall be for the benefit of the Avoidance Action Trust Beneficiaries; *provided, however*, that the Avoidance Action Trust Assets shall not be transferred to the Avoidance Action Trust until the Avoidance Action Trust Transfer Date; and *further provided*, that if it is determined that the U.S. Treasury or the holders of General Unsecured Claims are not entitled to any proceeds of the Term Loan Avoidance Action and the Asbestos Insurance Assets either by (i) mutual agreement between the U.S. Treasury and the Creditors' Committee or (ii) Final Order, then the Avoidance Action Trust Agreement need not be in a form acceptable to the U.S. Treasury or the Creditors' Committee, as applicable. In the event of any conflict between the terms of this Section 6.5 and the terms of the Avoidance Action Trust Agreement, the terms of the Avoidance Action Trust Agreement shall govern. The Avoidance Action Trust Agreement may provide powers, duties, and authorities in addition to those explicitly stated in the Plan, but only to the extent that such powers, duties, and authorities do not adversely affect the status of the Avoidance Action Trust (or any applicable portion thereof) as a liquidating trust for federal income tax purposes, subject only to the federal income tax treatment of amounts held by the Avoidance Action Trust in respect of Disputed Claims (which amounts may comprise all or part of the assets of the Avoidance Action Trust, depending on the nature of the dispute).

(b) <u>Purpose of Avoidance Action Trust</u>. The Avoidance Action Trust shall be established for the sole purpose of liquidating and distributing its assets, in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

(c) <u>Avoidance Action Trust Assets</u>. The Avoidance Action Trust shall consist of the Avoidance Action Trust Assets. On the Avoidance Action Trust Transfer Date, if the Term Loan Avoidance Action is still pending or if there is any remaining balance in the Asbestos Insurance Assets, the Debtors shall transfer all of the Avoidance Action Trust Assets to the Avoidance Action Trust. Upon delivery of the Avoidance Action Trust Assets to the Avoidance Action Trust, the Debtors and their successors and assigns shall be released from all liability with respect to the delivery of such assets. In connection with the administration of the Avoidance Action Trust, any and all proceeds realized from the Term Loan Avoidance Action shall at all times be segregated from any and all proceeds realized from the Asbestos Insurance Assets.

(d) <u>Governance of Avoidance Action Trust</u>. The Avoidance Action Trust shall be governed by the Avoidance Action Trust Administrator and the Avoidance Action Trust Monitor.

(e) <u>The Avoidance Action Trust Administrator and the Avoidance</u> <u>Action Trust Monitor</u>. The Avoidance Action Trust Administrator and the Avoidance Action Trust Monitor shall be designated by the Debtors with the consent of the U.S. Treasury and the Creditors' Committee, and the identities of the Avoidance Action Trust Administrator and the Avoidance Action Trust Monitor shall be disclosed in the Plan Supplement, *provided, however*, that if it is determined that the U.S. Treasury or the holders of General Unsecured Claims are not entitled to any proceeds of the Term Loan Avoidance Action and/or the Asbestos Insurance Assets either by (i) mutual agreement between the Creditors' Committee and the U.S. Treasury or (ii) Final Order, then the Debtors shall neither seek nor obtain the consent of the U.S. Treasury or the Creditors' Committee, as applicable.

(f) Role of the Avoidance Action Trust Administrator. In furtherance of and consistent with the purpose of the Avoidance Action Trust and the Plan, the Avoidance Action Trust Administrator shall (i) have the power and authority to hold and manage the Avoidance Action Trust Assets, (ii) hold the Avoidance Action Trust Assets for the benefit of the Avoidance Acton Trust Beneficiaries, (iii) have the power and authority to prosecute and resolve, in the name of the Debtors and/or the names of the Avoidance Action Trust Administrator, the Term Loan Avoidance Action, and the Asbestos Insurance Assets, (iv) have the power and authority to invest and distribute to the Avoidance Action Trust Beneficiaries any proceeds of the Term Loan Avoidance Action and the Asbestos Insurance Assets, and (v) have the power and authority to perform such other functions as are provided in the Plan and the Avoidance Action Trust Agreement. The Avoidance Action Trust Administrator shall be responsible for all decisions and duties with respect to the Avoidance Action Trust and the Avoidance Action Trust Assets. In all circumstances, the Avoidance Action Trust Administrator shall act in the best interests of the Avoidance Action Trust Beneficiaries and in furtherance of the purpose of the Avoidance Action Trust. Prior to the Avoidance Action Trust Transfer Date, the Term Loan Avoidance Action shall be prosecuted, resolved, and administered by the GUC Trust Administrator. All expenses incurred in connection with the prosecution of the Term Loan Avoidance Action (whether prior to or after the Avoidance Action Trust Transfer Date) shall be funded by the Avoidance Action Trust Administrative Cash, subject to the provisions of the Budget and the terms of the Avoidance Action Trust Agreement.

(g) <u>Role of the Avoidance Action Trust Monitor</u>. In furtherance of and consistent with the purpose of the Avoidance Action Trust and the Plan, the Avoidance Action Trust Monitor shall oversee the activities of the Avoidance Action Trust Administrator as set forth in the Avoidance Action Trust Agreement. The Avoidance Action Trust Administrator shall report material matters to, and seek approval for material decisions from, the Avoidance Action Trust Monitor, as and to the extent set forth in the Avoidance Action Trust Agreement. Without limiting the foregoing, the Avoidance Action Trust Administrator shall obtain the approval of the Avoidance Action Trust Monitor with respect to settlements of the Avoidance Action Trust Assets and present periodic reports to the Avoidance Action Trust Monitor on the Avoidance Action Trust distributions and budget. In all circumstances, the Avoidance Action Trust Monitor shall act in the best interests of the Avoidance Action Trust Beneficiaries, in furtherance of the purpose of the Avoidance Action Trust, and in accordance with the Avoidance Action Trust Agreement.

(h) <u>Nontransferability of Avoidance Action Trust Interests</u>. The beneficial interests in the Avoidance Action Trust shall not be certificated and shall not be transferable (except as otherwise provided in the Avoidance Action Trust Agreement).

(i) <u>Cash</u>. The Avoidance Action Trust Administrator may invest Cash (including any earnings thereon or proceeds therefrom) as permitted by section 345 of the Bankruptcy Code; *provided, however*, that such investments are investments permitted to be made by a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable Internal Revenue Service guidelines, rulings, or other controlling authorities.

Distribution of Avoidance Action Trust Assets. The Avoidance (j) Action Trust shall distribute at least annually and in accordance with the Avoidance Action Trust Agreement any amount of Cash proceeds from the Term Loan Avoidance Action to the Avoidance Action Trust Beneficiaries (treating as Cash for purposes of this Section 6.5(i) any permitted investments under Section 6.5(i) hereof) except such amounts, if any, as would be distributable to a holder of a Disputed General Unsecured Claim or Disputed Asbestos Personal Injury Claim if such Disputed General Unsecured Claim or Disputed Asbestos Personal Injury Claim had been Allowed prior to the time of such distribution (but only until such Claim is resolved). The Avoidance Action Trust shall distribute in accordance with the Avoidance Action Trust Agreement funds (i) as are reasonably necessary to meet contingent liabilities and maintain the value of the Avoidance Action Trust Assets during liquidation, (ii) necessary to pay reasonable incurred and anticipated expenses (including, but not limited to, any taxes imposed on the Avoidance Action Trust or in respect of the Avoidance Action Trust Assets), and (iii) necessary to satisfy other liabilities incurred and anticipated by the Avoidance Action Trust in accordance with the Plan or the Avoidance Action Trust Agreement.

(k) <u>Costs and Expenses of Avoidance Action Trust</u>. The costs and expenses of the Avoidance Action Trust, including the fees and expenses of the Avoidance Action Trust Administrator and its retained professionals, shall be paid out of the Avoidance Action Trust Assets, subject to the provisions of the Budget and the terms of the Avoidance Action Trust Agreement. Fees and expenses incurred in connection with the prosecution and settlement of any Claims shall be considered costs and expenses of the Avoidance Action Trust, subject to the provisions of the Budget and the terms of the Avoidance Action Trust, subject to the provisions of the Budget and the terms of the Avoidance Action Trust, subject to the provisions of the Budget and the terms of the Avoidance Action Trust Agreement.

(1) <u>Compensation of the Avoidance Action Trust Administrator</u>. The Entities serving as or comprising the Avoidance Action Trust Administrator shall be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar roles, subject to the provisions of the Budget and the terms of the Avoidance Action Trust Agreement.

(m) <u>Retention of Professionals by the Avoidance Action Trust</u> <u>Administrator and the Avoidance Action Trust Monitor</u>. The Avoidance Action Trust Administrator and the Avoidance Action Trust Monitor may retain and compensate attorneys and other professionals to assist in their duties as Avoidance Action Trust Administrator and Avoidance Action Trust Monitor on such terms as the Avoidance Action Trust Administrator and the Avoidance Action Trust Monitor deem appropriate without Bankruptcy Court approval, subject to the provisions of the Budget and the terms of the Avoidance Action Trust Agreement. Without limiting the foregoing, the Avoidance Action Trust Administrator and the Avoidance Action Trust Monitor may retain any professional that represented parties in interest in the Chapter 11 Cases.

#### (n) U.S. Federal Income Tax Treatment of Avoidance Action

#### Trust.

(i) <u>Treatment of Avoidance Action Trust Assets</u>. For all U.S. federal and applicable state and local income tax purposes, all parties (including, without limitation, the Debtors, the Avoidance Action Trust Administrator, the holders of the DIP Credit Agreement Claims, and the holders of Allowed General Unsecured Claims) shall treat the transfer of the Avoidance Action Trust Assets to the Avoidance Action Trust in a manner consistent with the remainder of this Section 6.5(n)(i).

> (1) If the Avoidance Action Trust Beneficiaries have not been identified on or prior to the Avoidance Action Trust Transfer Date either by (x) mutual agreement between the U.S. Treasury and the Creditors' Committee or (y) Final Order, then the Avoidance Action Trust Administrator shall treat the Avoidance Action Trust as either (A) a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9 (including, if required, timely so electing) or (B) if permitted under applicable law and at the option of the Avoidance Action Trust Administrator, a "complex trust" for U.S. federal income tax purposes.

> (2)If the Avoidance Action Trust Beneficiaries have been identified on or prior to the Avoidance Action Trust Transfer Date, or upon identification of the Avoidance Action Trust Beneficiaries after the Avoidance Action Trust Transfer Date, the Avoidance Action Trust Assets shall be treated as being transferred (A) directly to the Avoidance Action Trust Beneficiaries and, to the extent Avoidance Action Trust Assets are allocable to Disputed Claims, to the Avoidance Action Trust Claims Reserve, followed by (B) the transfer by such Avoidance Action Trust Beneficiaries of the Avoidance Action Trust Assets (other than the Avoidance Action Trust Assets allocable to the Avoidance Action Trust Claims Reserve) in exchange for beneficial interests in the Avoidance Action Trust. Accordingly, the Avoidance Action Trust Beneficiaries receiving beneficial interests in the Avoidance Action Trust shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of the Avoidance Action Trust Assets (other than any Avoidance Action Trust Assets allocable to the Avoidance Action Trust Claims Reserve). Any determination made pursuant to this Section 6.5(n)(i) shall be conclusive and binding on all parties (including the Debtors, the Avoidance Action Trust Administrator, the holders of the DIP Credit Agreement Claims, and the holders of Allowed General Unsecured Claims) for U.S. federal, state, and local income tax purposes. Accordingly, to the extent permitted by applicable law, all parties shall report consistently with the federal treatment of the Avoidance Action Trust by the Avoidance Action Trust Administrator for state and local income tax purposes. For the avoidance of doubt, the Avoidance Action Trust Administrator shall, to the fullest extent permitted by law, be

indemnified from all liability for any and all consequences resulting from its determination under this Section 6.5(n)(i).

#### (ii) <u>Tax Reporting</u>.

(1) If the Avoidance Action Trust Administrator elects to treat the Avoidance Action Trust in its entirety or, if otherwise applicable, the Avoidance Action Trust Claims Reserve as a disputed ownership fund within the meaning of Treasury Regulation section 1.468B-9, then following the Avoidance Action Trust Transfer Date (but in no event later than February 15th of the calendar year following the funding of the Avoidance Action Trust), MLC shall provide a "§ 1.468B-9 Statement" to the Avoidance Action Trust Administrator in accordance with Treasury Regulation section 1.468B-9(g).

From and after the date at which Section (2)6.5(n)(i)(2) hereof applies, the Avoidance Action Trust Administrator shall file returns for the Avoidance Action Trust treating the Avoidance Action Trust (except the Avoidance Action Trust Claims Reserve) as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with the applicable provisions of this Section 6.5(n). The Avoidance Action Trust Administrator also shall annually send to each Avoidance Action Trust Beneficiary a separate statement setting forth the holder's share of items of income, gain, loss, deduction, or credit and shall instruct all such Avoidance Action Trust Beneficiaries to report such items on their respective U.S. federal income tax returns or to forward the appropriate information to their respective beneficial holders with instructions to report such items on their U.S. federal income tax returns. The Avoidance Action Trust Administrator also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Avoidance Action Trust that are required by any governmental unit.

(A) Allocations of the Avoidance Action Trust's taxable income among the Avoidance Action Trust Beneficiaries shall be determined by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (without regard to any restrictions on distributions described herein) if, immediately prior to such deemed distribution, the Avoidance Action Trust had distributed all of its other assets (valued at their tax book value and other than assets attributable to the Avoidance Action Trust Claims Reserve) to the Avoidance Action Trust Beneficiaries, in each case up to the tax book value of the assets treated as contributed by such Avoidance Action Trust Beneficiaries, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Avoidance Action Trust. Similarly, taxable loss of the Avoidance

Action Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining Avoidance Action Trust Assets. The tax book value of the Avoidance Action Trust Assets for this purpose shall equal their fair market value on the date at which Section 6.5(n)(i)(2) hereof applies, adjusted in accordance with tax accounting principles prescribed by the Tax Code, applicable Treasury regulations, and other applicable administrative and judicial authorities and pronouncements.

If the Avoidance Action Trust previously (B) was treated as a disputed ownership fund within the meaning of Treasury Regulation section 1.468B-9 or a complex trust for U.S. federal income tax purposes pursuant to Section 6.5(n)(i) hereof, the Avoidance Action Trust Administrator shall continue to treat the Avoidance Action Trust Claims Reserve in the same manner. If Section 6.5(n)(i)(2) hereof is applicable as of the Avoidance Action Trust Transfer Date, the Avoidance Action Trust Administrator shall (x) treat the Avoidance Action Trust Claims Reserve as either (i) a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9 by timely making an election or (ii) a "complex trust" for U.S. federal income tax purposes and (y) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. Any determination made pursuant to this Section 6.5(n)(ii)(2)(B) shall be conclusive and binding on all parties (including the Debtors, the Avoidance Action Trust Administrator, the holders of the DIP Credit Agreement Claims, and the holders of Allowed General Unsecured Claims) for U.S. federal, state, and local income tax purposes. For the avoidance of doubt, the Avoidance Action Trust Administrator shall, to the fullest extent permitted by law, be indemnified from all liability for any and all consequences resulting from its making such election.

(C) As soon as practicable after the Avoidance Action Trust Transfer Date, and, if applicable, at any later date at which Section 6.5(n)(i)(2) hereof applies, the Avoidance Action Trust Administrator shall make a good-faith valuation of the Avoidance Action Trust Assets, and such valuation shall be made available from time to time, to the extent relevant, and shall be used consistently by all parties (including, without limitation, the Debtors, the Avoidance Action Trust Administrator, the holders of the DIP Credit Agreement Claims, and the holders of Allowed General Unsecured Claims) for all U.S. federal and applicable state and local income tax purposes. (3) The Avoidance Action Trust Administrator shall be responsible for payment, out of the Avoidance Action Trust Assets, of any taxes imposed on the Avoidance Action Trust or the Avoidance Action Trust Assets, including the Avoidance Action Trust Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Avoidance Action Trust Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (i) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims or (ii) to the extent such Disputed Claims subsequently have been resolved, deducted from any amounts otherwise distributable by the Avoidance Action Trust Administrator as a result of the resolution of such Disputed Claims.

(4) The Avoidance Action Trust Administrator may request an expedited determination of taxes of the Avoidance Action Trust, including the Avoidance Action Trust Claims Reserve, under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Avoidance Action Trust for all taxable periods through the dissolution of the Avoidance Action Trust.

**Dissolution.** The Avoidance Action Trust Administrator and the (0) Avoidance Action Trust shall be discharged or dissolved, as applicable, at such time as (i) all of the Avoidance Action Trust Assets have been distributed pursuant to the Plan and the Avoidance Action Trust Agreement, (ii) the Avoidance Action Trust Administrator determines, in its sole discretion, that the administration of the Avoidance Action Trust Assets is not likely to yield sufficient additional Avoidance Action Trust Assets to justify further pursuit, and (iii) all distributions required to be made by the Avoidance Action Trust Administrator under the Plan and the Avoidance Action Trust Agreement have been made, but in no event shall the Avoidance Action Trust be dissolved later than three (3) years from the Effective Date unless the Bankruptcy Court, upon motion within the six (6) month period prior to the third (3rd) anniversary (or at least six (6) months prior to the end of an extension period), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable private letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Avoidance Action Trust as a liquidating trust for U.S. federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Avoidance Action Trust Assets. If at any time the Avoidance Action Trust Administrator determines, in reliance upon such professionals as the Avoidance Action Trust Administrator may retain, that the expense of administering the Avoidance Action Trust so as to make a final distribution to the Avoidance Action Trust Beneficiaries is likely to exceed the value of the Avoidance Action Trust Assets remaining in the Avoidance Action Trust, the Avoidance Action Trust Administrator may apply to the Bankruptcy Court for authority to (i) reserve any amounts necessary to dissolve the Avoidance Action Trust, (ii) transfer the balance to the U.S. Treasury and EDC and/or

the GUC Trust as determined either by (A) mutual agreement between the U.S. Treasury and the Creditors' Committee prior to the Effective Date, (B) mutual agreement between the U.S. Treasury and the GUC Trust Administrator on or after the Effective Date, or (C) Final Order, or donate any balance to a charitable organization described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code that is unrelated to the Debtors, the Avoidance Action Trust, and any insider of the Avoidance Action Trust Administrator, and (iii) dissolve the Avoidance Action Trust.

**Indemnification of the Avoidance Action Trust Administrator (p)** and the Avoidance Action Trust Monitor. The Avoidance Action Trust Administrator and the Avoidance Action Trust Monitor (and their agents and professionals) shall not be liable for actions taken or omitted in its or their capacity as, or on behalf of, the Avoidance Action Trust Administrator, the Avoidance Action Trust Monitor, or the Avoidance Action Trust, except those acts arising out of its or their own willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or ultra vires acts, and each shall be entitled to indemnification and reimbursement for reasonable fees and expenses in defending any and all of its actions or inactions in its or their capacity as, or on behalf of, the Avoidance Action Trust Administrator, the Avoidance Action Trust Monitor, or the Avoidance Action Trust, except for any actions or inactions involving willful misconduct, gross negligence, bad faith, self-dealing, or ultra vires acts. Any indemnification claim of the Avoidance Action Trust Administrator and the Avoidance Action Trust Monitor (and the other parties entitled to indemnification under this subsection) shall be satisfied first from the Avoidance Action Trust Administrative Cash and then from the Avoidance Action Trust Assets. The Avoidance Action Trust Administrator and the Avoidance Action Trust Monitor shall be entitled to rely, in good faith, on the advice of their retained professionals.

(q) <u>Cooperation Regarding Insurance Matters</u>. The Debtors shall cooperate with the Avoidance Action Trust and the Avoidance Action Trust Administrator and use commercially reasonable efforts to take or cause to be taken all appropriate actions and do or cause to be done all things necessary or appropriate to effectuate the transfer of the Asbestos Insurance Assets to the Avoidance Action Trust. By way of enumeration and not of limitation, the Debtors shall be obligated, to the extent practicable, to (i) provide the Avoidance Action Trust with copies of insurance policies and settlement agreements included within or relating to the Asbestos Insurance Assets and (ii) execute further assignments or allow the Avoidance Action Trust to pursue claims relating to the Asbestos Insurance Assets in its name (subject to appropriate disclosure of the fact that the Avoidance Action Trust is doing so and the reasons why it is doing so), including by means of arbitration, alternative dispute resolution proceedings, or litigation, to the extent necessary or helpful to the efforts of the Avoidance Action Trust to obtain insurance coverage under the Asbestos Insurance Assets.

**6.6** <u>Securities Law Matters</u>. In reliance upon section 1145(a) of the Bankruptcy Code, the offer and/or issuance of the New GM Securities by either MLC or the GUC Trust, as a successor of MLC under the Plan, is exempt from registration under

the Securities Act of 1933, as amended (the "Securities Act"), and any equivalent securities law provisions under state law. The exemption from Securities Act registration provided by section 1145(a) of the Bankruptcy Code (as well as any equivalent securities law provisions under state law) also is available for the offer and/or issuance by the GUC Trust of (i) beneficial interests in the GUC Trust and (ii) New GM Securities in exchange for such beneficial interests as outstanding Disputed General Unsecured Claims are resolved in accordance with the Plan. The offer and/or issuance of beneficial interests by any of the following successors of the Debtors – the Asbestos Trust, the Environmental Response Trust, and the Avoidance Action Trust – is exempt from Securities Act registration (along with equivalent securities law provisions under state law) in reliance upon section 1145(a) of the Bankruptcy Code.

6.7 Cancellation of Existing Securities and Agreements. Except for purposes of evidencing a right to distributions under the Plan or otherwise provided hereunder, on the Effective Date all the agreements and other documents evidencing the Claims or rights of any holder of a Claim against the Debtors, including all Indentures and bonds, debentures, and notes issued thereunder evidencing such Claims, all Note Claims, and any options or warrants to purchase Equity Interests, or obligating the Debtors to issue, transfer, or sell Equity Interests or any other capital stock of the Debtors, shall be cancelled and discharged; provided, however, that the Indentures shall continue in effect solely for the purposes of (i) allowing the Indenture Trustees to make any distributions on account of Allowed General Unsecured Claims in Class 3 pursuant to the Plan and perform such other necessary administrative functions with respect thereto, (ii) permitting the Indenture Trustees to receive payment from the Indenture Trustee Reserve Cash, and (iii) permitting the Indenture Trustees to maintain any rights or liens they may have for fees, costs, expenses, and indemnities under the Indentures, against or recoverable from the Registered Holders.

6.8 <u>Equity Interests in MLC Subsidiaries Held by the Debtors</u>. On the Effective Date, at the option of the Debtors, each respective Equity Interest in a direct or indirect subsidiary of MLC shall be unaffected by the Plan, in which case the Debtor holding such Equity Interests shall continue to hold such Equity Interests and shall cause any such subsidiaries to be dissolved prior to December 15, 2011. An amount equal to any net proceeds realized from such dissolutions shall be distributed to the lenders under the DIP Credit Agreement on account of amounts outstanding.

**6.9** <u>Administration of Taxes</u>. Subject to the MSPA and the GUC Trust Agreement, MLC shall be responsible for all tax matters of the Debtors until a certificate of cancellation or dissolution for MLC shall have been filed in accordance with Section 6.10 hereof.

**6.10** <u>**Dissolution of the Debtors.**</u> Within thirty (30) days after its completion of the acts required by the Plan, or as soon thereafter as is practicable, but no later than December 15, 2011, each Debtor shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of each Debtor; *provided, however,* that each Debtor shall file with the office of the Secretary of State or

other appropriate office for the state of its organization a certificate of cancellation or dissolution.

# 6.11 <u>Determination of Tax Filings and Taxes</u>.

(a) Following the filing of a certificate of cancellation or dissolution for MLC, subject to Section 6.16(a) of the MSPA and the GUC Trust Agreement, the GUC Trust Administrator shall prepare and file (or cause to be prepared and filed) on behalf of the Debtors, all tax returns, reports, certificates, forms, or similar statements or documents (collectively, "**Tax Returns**") required to be filed or that the GUC Trust Administrator otherwise deems appropriate, including the filing of amended Tax Returns or requests for refunds, for all taxable periods ending on, prior to, or after the Effective Date.

(b) Each of the Debtors and the GUC Trust Administrator shall cooperate fully with each other regarding the implementation of this Section 6.11 (including the execution of appropriate powers of attorney) and shall make available to the other as reasonably requested all information, records, and documents relating to taxes governed by this Section 6.11 until the expiration of the applicable statute of limitations or extension thereof or at the conclusion of all audits, appeals, or litigation with respect to such taxes. Without limiting the generality of the foregoing, the Debtors shall execute on or prior to the filing of a certificate of cancellation or dissolution for MLC a power of attorney authorizing the GUC Trust Administrator to correspond, sign, collect, negotiate, settle, and administer tax payments and Tax Returns for the taxable periods described in Section 6.11(a) hereof.

(c) The Debtors and the GUC Trust Administrator shall have the right to request an expedited determination of the tax liability of the Debtors, if any, under section 505(b) of the Bankruptcy Code with respect to any tax returns filed, or to be filed, for any and all taxable periods ending after the Commencement Date through the filing of a certificate of cancellation or dissolution for MLC.

(d) Following the filing of a certificate of cancellation or dissolution for MLC, subject to Section 6.16(a) and (d) of the MSPA, the GUC Trust Administrator shall have the sole right, at its expense, to control, conduct, compromise, and settle any tax contest, audit, or administrative or court proceeding relating to any liability for taxes of the Debtors and shall be authorized to respond to any tax inquiries relating to the Debtors (except with respect to any property and ad valorem taxes relating to the Environmental Response Trust Assets).

(e) Following the filing of a certificate of cancellation or dissolution for MLC, subject to the MSPA, the GUC Trust Administrative Fund shall be entitled to the entire amount of any refunds and credits (including interest thereon) with respect to or otherwise relating to any taxes of any Debtors, including for any taxable period ending on, prior to, or after the Effective Date (except with respect to any property and ad valorem tax refunds and credits relating to the Environmental Response Trust Assets). (f) The Environmental Response Trust shall be responsible for the payment of any property and ad valorem taxes relating to the Environmental Response Trust Assets that become due after the Environmental Response Trust Transfer Date.

(g) Following the Environmental Response Trust Transfer Date, subject to Section 6.16(a) and (d) of the MSPA, the Environmental Response Trust Administrative Trustee shall have the sole right, at its expense, to control, conduct, compromise, and settle any tax contest, audit, or administrative or court proceeding relating to any liability for property and ad valorem taxes attributable to the Environmental Response Trust Assets and shall be authorized to respond to any such tax inquiries relating to the Environmental Response Trust Assets.

(h) Following the Environmental Response Trust Transfer Date, subject to the MSPA, the Environmental Response Trust Administrative Trustee shall be entitled to the entire amount of any refunds and credits (including interest thereon) with respect to or otherwise relating to any property and ad valorem taxes attributable to the Environmental Response Trust Assets, including for any taxable period ending on, prior to, or after the Effective Date.

(i) Each of the Debtors and the Environmental Response Trust Administrative Trustee shall cooperate fully with each other regarding the implementation of this Section 6.11 (including the execution of appropriate powers of attorney) and shall make available to the other as reasonably requested all information, records, and documents relating to property and ad valorem taxes governed by this Section 6.11 until the expiration of the applicable statute of limitations or extension thereof or at the conclusion of all audits, appeals, or litigation with respect to such taxes. Without limiting the generality of the foregoing, the Debtors shall execute on or prior to the Environmental Response Trust Transfer Date a power of attorney authorizing the Environmental Response Trust Administrative Trustee to correspond, sign, collect, negotiate, settle, and administer tax payments and Tax Returns for the taxes described in Section 6.11(f) hereof.

**6.12 Books and Records.** MLC shall comply with its obligations under the Environmental Response Trust Consent Decree and Settlement Agreement to provide documents, other records, and/or information to the Environmental Response Trust Administrative Trustee. Upon the Effective Date, MLC shall transfer and assign to the GUC Trust full title to, and the GUC Trust shall be authorized to take possession of, all of the books and records of the Debtors, with the exception of those books and records that are necessary for the implementation of the Asbestos Trust, the Environmental Response Trust, or the Avoidance Action Trust, as applicable, which books and records MLC shall transfer and assign to the Asbestos Trust, the Environmental Response Trust, or the Avoidance Action Trust, respectively. Upon the Effective Date, the Creditors' Committee shall transfer and assign to the GUC Trust and any relevant information prepared by the Creditors' Committee during the Chapter 11 Cases. Upon the Avoidance Action Trust full

title to, and the Avoidance Action Trust shall be authorized to take possession of, all of the books and records of the Debtors relating to the Avoidance Action Trust Assets and (ii) the Creditors' Committee shall transfer and assign to the Avoidance Action Trust Monitor the books and records related to the administration of the Avoidance Action Trust and any relevant information prepared by the Creditors' Committee during the Chapter 11 Cases. Any such books and records transferred by either the Debtors or the Creditors' Committee shall be protected by the attorney client privilege. The GUC Trust, the Asbestos Trust, the Environmental Response Trust, or the Avoidance Action Trust, as applicable, shall have the responsibility of storing and maintaining the books and records transferred hereunder until one year after the date MLC is dissolved in accordance with Section 6.10 hereof, after which time such books and records may be abandoned or destroyed without further Bankruptcy Court order; provided, however, that any taxrelated books and records transferred hereunder shall be stored and maintained until the expiration of the applicable statute of limitations. The Debtors shall cooperate with the GUC Trust Administrator, the Asbestos Trust Administrator(s), the Environmental Response Trust Administrative Trustee, or the Avoidance Action Trust Administrator, as applicable, to facilitate the delivery and storage of their books and records in accordance herewith. The Debtors (as well as their current and former officers and directors) shall be entitled to reasonable access to any books and records transferred in accordance with this Section 6.12 for all necessary corporate purposes, including, without limitation, defending or prosecuting litigation, determining insurance coverage, filing tax returns, and addressing personnel matters. For purposes of this Section, books and records include computer-generated or computer-maintained books and records and computer data, as well as electronically-generated or maintained books and records or data, along with books and records of the Debtors maintained by or in possession of third parties and all the claims and rights of the Debtors in and to their books and records, wherever located.

**Corporate Action.** Upon the Effective Date, the Debtors shall perform 6.13 each of the actions and effect each of the transfers required by the terms of the Plan, in the time period allocated therefor, and all matters provided for under the Plan that would otherwise require approval of the stockholders, partners, members, directors, or comparable governing bodies of the Debtors shall be deemed to have occurred and shall be in effect from and after the Effective Date pursuant to the applicable general corporation law (or other applicable governing law) of the states in which the Debtors are incorporated or organized, without any requirement of further action by the stockholders, members, or directors (or other governing body) of the Debtors. Each of the Debtors shall be authorized and directed, following the completion of all disbursements, other transfers, and other actions required of the Debtors by the Plan, to file its certificate of cancellation or dissolution as contemplated by Section 6.10 hereof. The filing of such certificates of cancellation or dissolution shall be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including, without express or implied limitation, any action by the stockholders, members, or directors (or other governing body) of the Debtors.

**6.14** <u>Effectuating Documents and Further Transactions</u>. Each of the officers of each of the Debtors is authorized and directed to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

#### ARTICLE VII.

#### PROCEDURES FOR DISPUTED CLAIMS

#### 7.1 <u>Objections to Claims and Resolution of Disputed Claims</u>.

(a) Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, on and after the Effective Date and through the dissolution of MLC, the Debtors shall have the right to the exclusion of all others (except as to applications for allowances of compensation and reimbursement of expenses under sections 330 and 503 of the Bankruptcy Code) to object to Administrative Expenses, Priority Tax Claims, DIP Credit Agreement Claims, Priority Non-Tax Claims, and Secured Claims.

(b) On and after the Effective Date, the GUC Trust Administrator shall have the exclusive right to object, and/or continue prosecution of objections, to General Unsecured Claims (other than the Asbestos Trust Claim). If the Residual Wind-Down Assets are transferred to the GUC Trust upon the dissolution of MLC, after such transfer, the GUC Trust Administrator shall have the exclusive right to object to any remaining Administrative Expenses, Priority Tax Claims, DIP Credit Agreement Claims, Priority Non-Tax Claims, and Secured Claims.

(c) The Debtors or the GUC Trust Administrator, as applicable, shall serve a copy of each objection upon the holder of the Claim to which the objection is made as soon as practicable, but in no event later than one hundred eighty (180) days after (i) the Effective Date for all Claims (with the exception of Unliquidated Litigation Claims as set forth in this Section 7.1, and (ii) such date as may be fixed by the Bankruptcy Court, whether fixed before or after the dates specified in clause (i) above. The Bankruptcy Court shall have the authority on request of the Debtors or the GUC Trust Administrator, as applicable, to extend the foregoing dates ex parte. On and after the Effective Date, the Debtors shall continue to have the power and authority to prosecute and resolve objections to Disputed Administrative Expenses, Disputed Priority Tax Claims, Disputed DIP Credit Agreement Claims, Disputed Priority Non-Tax Claims, and Disputed Secured Claims. All objections shall be litigated to a Final Order except to the extent the Debtors or the GUC Trust Administrator, as applicable, elects to withdraw any such objection or the Debtors or the GUC Trust Administrator, as applicable, and the holder of a Claim elect to compromise, settle, or otherwise resolve any such objection, in which event they may compromise, settle, or otherwise resolve any Disputed Claim without approval of the Bankruptcy Court.

(d) Notwithstanding the foregoing, holders of Unliquidated Litigation Claims (other than the United States, including its agencies and instrumentalities) shall be subject to the ADR Procedures and Unliquidated Litigation Claims shall be channeled to the GUC Trust and resolved in accordance with the ADR Procedures. If the Debtors or the GUC Trust Administrator, as applicable, terminate the ADR Procedures with respect to an Unliquidated Litigation Claim, the Debtors or the GUC Trust Administrator, as applicable, shall have one hundred eighty (180) days from the date of termination of the ADR Procedures to file and serve an objection to such Unliquidated Litigation Claim. If the Debtors or the GUC Trust Administrator terminate the ADR Procedures with respect to an Unliquidated Litigation Claim and such Unliquidated Litigation Claim is litigated in a court other than the Bankruptcy Court, the Debtors or the GUC Trust Administrator, as applicable, shall have ninety (90) days from the date of entry of a Final Order adjudicating such Claim to file and serve an objection to such Claim for purposes of determining the treatment of such Claim under the Plan.

(e) The resolution of Asbestos Personal Injury Claims shall be dealt with by the Asbestos Trust in accordance with the Asbestos Trust Distribution Procedures.

7.2 No Distribution Pending Allowance. Notwithstanding any other provision hereof, if any portion of a Claim is a Disputed Claim, no payment or distribution provided hereunder to the holder thereof shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim. Until such time, with respect to General Unsecured Claims, the GUC Trust Administrator or the Avoidance Action Trust Administrator, as applicable, shall withhold from the property to be distributed to holders of beneficial interests in the GUC Trust or the Avoidance Action Trust, as applicable, the portion of such property allocable to Disputed General Unsecured Claims and Disputed Asbestos Claims and shall hold such property in the GUC Trust or the Avoidance Action Trust Claims Reserve, as applicable. If any Disputed General Unsecured Claims are disallowed, the GUC Trust Assets held in the GUC Trust or the Avoidance Action Trust Assets held in the Avoidance Action Trust Claims Reserve, as applicable, shall be released as and to the extent the GUC Trust Administrator or the Avoidance Action Trust Administrator, as applicable, determines such property is no longer necessary to fund unresolved Disputed General Unsecured Claims, and such GUC Trust Assets or Avoidance Action Trust Assets, as applicable, shall be distributed in accordance with Sections 6.2 and 6.5 hereof, respectively. All Unliquidated Litigation Claims shall be deemed Disputed Claims unless and until they are Allowed after resolution by settlement or Final Order. This Section 7.2 shall not apply to Property Environmental Claims.

**7.3** <u>Estimation</u>. The Debtors or the GUC Trust Administrator, as applicable, may at any time request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtors or the GUC Trust Administrator previously objected to such Claim, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation,

during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent, unliquidated, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtors or the GUC Trust Administrator, as applicable, may pursue supplementary proceedings to object to the allowance of such Claim. All the aforementioned objection, estimation, and resolution procedures are intended to be cumulative and not exclusive of one another. On and after the Confirmation Date, Claims that have been estimated may be compromised, settled, withdrawn, or otherwise resolved subsequently, without further order of the Bankruptcy Court. This Section 7.3 shall not apply to Property Environmental Claims.

7.4 <u>Allowance of Disputed Claims</u>. If, on or after the Effective Date, any Disputed Claim becomes, in whole or in part, an Allowed Claim, the Debtors, the GUC Trust Administrator, or the Avoidance Action Trust Administrator, as applicable, shall, on the next applicable distribution date following when the Disputed Claim becomes an Allowed Claim, distribute to the holder thereof the distributions, if any, that such holder would have received had its Claim been Allowed on the Effective Date, except as otherwise provided herein.

7.5 <u>Dividends</u>. In the event that dividend distributions have been made with respect to the New GM Securities that are in the GUC Trust, such dividends shall be distributed to holders of Allowed Claims in the same manner and at the same time as the New GM Securities to which such dividends relate are distributed.

# ARTICLE VIII.

# EXECUTORY CONTRACTS AND UNEXPIRED LEASES

**8.1** Executory Contracts and Unexpired Leases. On the Effective Date, all executory contracts and unexpired leases to which any of the Debtors are parties shall be deemed rejected as of the Effective Date, except for an executory contract or unexpired lease that (i) has been assumed or rejected pursuant to Final Order of the Bankruptcy Court entered prior to the Effective Date, (ii) is the subject of a separate motion to assume or reject filed under section 365 of the Bankruptcy Code by the Debtors prior to the Effective Date, or (iii) constitute Environmental Trust Assets.

**8.2** Approval of Rejection of Executory Contracts and Unexpired Leases. Entry of the Confirmation Order shall constitute the approval, pursuant to section 365(a) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected as of the Effective Date pursuant to the Plan.

**8.3** <u>Rejection Claims</u>. In the event that the rejection of an executory contract or unexpired lease by any of the Debtors pursuant to the Plan results in damages to the other party or parties to such contract or lease, a Claim for such damages, if not heretofore evidenced by a filed proof of Claim, shall be forever barred and shall not be

enforceable against the Debtors, the GUC Trust Administrator, the Asbestos Trust Administrator(s), the Environmental Response Trust Administrative Trustee, and the Avoidance Action Trust Administrator, or any property to be distributed under the Plan, the GUC Trust, the Asbestos Trust, the Environmental Response Trust, and the Avoidance Action Trust unless a proof of Claim is filed with the Bankruptcy Court and served upon the Debtors, the GUC Trust Administrator, the Asbestos Trust Administrator(s), the Environmental Response Trust Administrative Trustee, and the Avoidance Action Trust Administrator on or before the date that is thirty (30) days after the Confirmation Date.

#### ARTICLE IX.

#### **EFFECTIVENESS OF THE PLAN**

9.1 <u>Condition Precedent to Confirmation of Plan</u>. The following is a condition precedent to the confirmation of the Plan:

(a) The Bankruptcy Court shall have entered the Confirmation Order in form and substance satisfactory to the Debtors.

**9.2** <u>Conditions Precedent to Effective Date</u>. The following are conditions precedent to the Effective Date of the Plan:

(a) The Confirmation Order shall be in full force and effect, and no stay thereof shall be in effect;

(b) The GUC Trust Agreement, the Asbestos Trust Agreement, the Environmental Response Trust Agreement, and the Avoidance Action Trust Agreement shall have been executed;

Trust;

(c) The GUC Trust Assets shall have been transferred to the GUC

(d) The Environmental Response Trust Consent Decree and Settlement Agreement shall have been approved by order of the Bankruptcy Court, such order shall be in full force and effect, and no stay thereof shall be in effect, and the Environmental Response Trust Assets shall have been transferred to the Environmental Response Trust; and

(e) The Debtors shall have sufficient Cash to pay the sum of (i) Allowed Administrative Expenses, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, and, if applicable, Allowed Secured Claims, and the professional fees of the Debtors, the Creditors' Committee, the Asbestos Claimants' Committee, and the Future Claimants' Representative that have not been paid, (ii) an amount that would be required to distribute to the holders of Disputed Administrative Expenses, Disputed Priority Tax Claims, Disputed Priority Non-Tax Claims, and, if applicable, Disputed Secured Claims if all such Claims are subsequently Allowed, as set forth more fully in Article VII hereof, and (iii) the amounts required to fund the GUC Trust Administrative Fund, the Asbestos Trust, the Environmental Response Trust Administrative Funding Account, the Avoidance Action Trust, and the Indenture Trustee Reserve Cash.

**9.3** <u>Satisfaction and Waiver of Conditions</u>. Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. If the Debtors decide that any of the conditions precedent set forth in Section 9.2 hereof cannot be satisfied and the occurrence of such conditions is not waived or cannot be waived, then the Debtors shall file a notice of the failure of the Effective Date with the Bankruptcy Court. Notwithstanding the foregoing, the Debtors reserve, in their sole discretion, the right, with the written consent of the Creditors' Committee, the Asbestos Claimants' Committee, and the Future Claimants' Representative, to waive the occurrence of any of the conditions precedent set forth in Section 9.2(b) or (c) hereof or to modify any of such conditions precedent. Any such written waiver of such condition precedents may be effected at any time, without notice or leave or order of the Bankruptcy Court, and without any formal action other than proceeding to consummate the Plan.</u>

**9.4** Effect of Nonoccurrence of Conditions to Consummation. If each of the conditions to the occurrence of the Effective Date has not been satisfied or duly waived on or before the first Business Day that is one hundred eighty (180) days after the Confirmation Date, or such later date as shall be agreed by the Debtors and the Creditors' Committee, the Asbestos Claimants' Committee, the Future Claimants' Representative, and the U.S. Treasury, the Confirmation Order may be vacated by the Bankruptcy Court. If the Confirmation Order is vacated pursuant to this Section, the Plan shall be null and void in all respects, and nothing contained in the Plan shall constitute a waiver or release of any Claims against any of the Debtors.

#### ARTICLE X.

#### **EFFECT OF CONFIRMATION**

**10.1** <u>Vesting of Assets</u>. As of the Effective Date, the property of the Debtors' estates shall vest in the Debtors and, in accordance with Article VI hereof and subject to the exceptions contained therein, (i) the GUC Trust Assets shall be transferred to the GUC Trust, (ii) the Asbestos Trust Assets shall be transferred to the Asbestos Trust, (iii) the Environmental Response Trust Assets shall be transferred to the Environmental Response Trust Assets shall be transferred to the Environmental Response Trust Assets shall be transferred to the Environmental Response Trust Assets shall be transferred to the Environmental Response Trust Assets shall be transferred to the Environmental Response Trust Transfer Date, the Avoidance Action Trust Assets shall be transferred to the Avoidance Action Trust Transfer Date, the Avoidance Action Trust Assets shall be transferred to the Avoidance Action Trust. From and after the Effective Date, (i) the GUC Trust Administrator may dispose of the GUC Trust Assts free of any restrictions of the Bankruptcy Code, but in accordance with the provisions of the Plan and the GUC Trust Assets free of any restrictions of the Bankruptcy Code, but in accordance with the provisions of the Asbestos Trust Assets free of any restrictions of the Bankruptcy Code, but in accordance with the provisions of the Asbestos Trust Assets free of any restrictions of the Bankruptcy Code, but in accordance with the provisions of the Asbestos Trust Assets free of any restrictions of the Bankruptcy Code, but in accordance with the Bankruptcy Code, but in accordance Bankruptcy Cod

provisions of the Plan and the Asbestos Trust Agreement, (iii) the Environmental Response Trust Administrative Trustee may dispose of the Environmental Response Trust Assets free of any restrictions of the Bankruptcy Code, but in accordance with the provisions of the Plan, the Environmental Response Trust Agreement, and the Environmental Response Trust Consent Decree and Settlement Agreement, and (iv) if the Term Loan Avoidance Action is still pending on the Asbestos Trust Transfer Date, the Avoidance Action Trust Administrator may dispose of the Avoidance Action Trust Assets free of any restrictions of the Bankruptcy Code, but in accordance with the provisions of the Plan and the Avoidance Action Trust Agreement. As of the Effective Date, all assets of the Debtors, the GUC Trust, the Asbestos Trust, the Environmental Response Trust, and the Avoidance Action Trust shall be free and clear of all Claims and Encumbrances, except as provided in the Plan or the Confirmation Order.

**10.2** <u>Release of Assets</u>. Until the Effective Date, the Bankruptcy Court shall retain jurisdiction of the Debtors and their assets and properties. Thereafter, jurisdiction of the Bankruptcy Court shall be limited to the subject matters set forth in Article XI hereof.

**10.3** <u>Binding Effect</u>. Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against, or Equity Interest in, the Debtors and their respective successors and assigns, whether or not the Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan.

**10.4** <u>Term of Injunctions or Stays</u>. Unless otherwise expressly provided herein, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the closing of the Chapter 11 Cases.

**10.5** <u>Term Loan Avoidance Action; Offsets</u>. If the Term Loan Avoidance Action is still pending on the Avoidance Action Trust Transfer Date, the Avoidance Action Trust Administrator may pursue, abandon, settle, or release the Term Loan Avoidance Action transferred to the Avoidance Action Trust as it deems appropriate, without the need to obtain approval or any other or further relief from the Bankruptcy Court. The Debtors, the GUC Trust Administrator, or the Avoidance Action Trust Administrator, as applicable, may, in their sole discretion, offset any claim held against a person against any payment due such person under the Plan; *provided, however*, that any claims of the Debtors arising before the Commencement Date shall first be offset against Claims against the Debtors arising before the Commencement Date.

**10.6** <u>Injunction</u>. On and after the Confirmation Date, all persons are permanently enjoined from commencing or continuing in any manner any action or proceeding (whether directly, indirectly, derivatively, or otherwise) on account of or respecting any claim, debt, right, or cause of action of the Debtors for which the Debtors

or the GUC Trust Administrator retains sole and exclusive authority to pursue in accordance with the Plan.

**10.7** <u>Injunction Against Interference with Plan</u>. Upon the entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

10.8 Special Provisions for the United States. Except as provided in the Environmental Response Trust Consent Decree and Settlement Agreement and the Priority Order Sites Consent Decrees and Settlement Agreements, as to the United States, the States of Delaware, Illinois, Kansas, Louisiana, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Virginia, Wisconsin, the Saint Regis Mohawk Tribe, Canada, and their respective agencies, departments, or agents (collectively for purposes of this Section 10.8, the "United States"), nothing in the Plan, including Sections 12.5 and 12.6 hereof, shall discharge, release, enjoin, or otherwise bar (i) any liability of the Debtors, their Estates, any successors thereto, the GUC Trust, the Asbestos Trust, the Environmental Response Trust, or the Avoidance Action Trust, arising on or after the Confirmation Date, (ii) any liability that is not a "claim" within the meaning of section 101(5) of the Bankruptcy Code, (iii) any valid right of setoff or recoupment, (iv) any police or regulatory action, (v) any environmental liability that the Debtors, their Estates, any successors thereto, the GUC Trust, the Asbestos Trust, the Environmental Response Trust, the Avoidance Action Trust, or any other Person or Entity may have as an owner or operator of real property after the Effective Date, and (vi) any liability to the United States on the part of any Persons or Entities other than the Debtors, their Estates, the GUC Trust, the Asbestos Trust, the Environmental Response Trust, the Avoidance Action Trust, the GUC Trust Administrator, the Asbestos Trust Administrator(s), the Environmental Response Trust Administrative Trustee, or the Avoidance Action Trust Administrator, except with respect to the parties as specifically provided for in Sections 12.5 and 12.6 hereof.

#### ARTICLE XI.

#### **RETENTION OF JURISDICTION**

**11.1** Jurisdiction of Bankruptcy Court. The Bankruptcy Court shall retain jurisdiction of all matters arising under, arising out of, or related to the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

(a) To hear and determine motions for the assumption, assumption and assignment, or rejection of executory contracts or unexpired leases and the allowance of Claims resulting therefrom;

(b) To determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on or commenced after the Confirmation Date, including, without limitation, any proceeding with respect to a Cause of Action or Avoidance Action (including the Term Loan Avoidance Action);

(c) To ensure that distributions to holders of Allowed Claims are accomplished as provided herein;

(d) To consider Claims or the allowance, classification, priority, compromise, estimation, or payment of any Claim;

(e) To enter, implement, or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;

(f) To issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any person with the consummation, implementation, or enforcement of the Plan, the Confirmation Order, or any other order of the Bankruptcy Court;

(g) To hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(h) To hear and determine all applications under sections 330, 331, and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Confirmation Date;

(i) To hear and determine disputes arising in connection with or related to the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, the GUC Trust, the Asbestos Trust, the Environmental Response Trust, the Avoidance Action Trust, the GUC Trust Agreement, the Asbestos Trust Agreement, the Environmental Response Trust Agreement, the Environmental Response Trust Consent Decree and Settlement Agreement, and the Avoidance Action Trust Agreement, any transactions or payments contemplated hereby, or any agreement, instrument, or other document governing or relating to any of the foregoing, including to formulate and enforce alternative dispute resolution procedures with respect to the Environmental Response Trust Agreement or the Environmental Response Trust Consent Decree and Settlement Agreement;

(j) To take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan or to maintain the integrity of the Plan following consummation;

(k) To recover all assets of the Debtors, property of the Debtors' estates, the GUC Trust Assets, the Asbestos Trust Assets, and the Avoidance Action Trust Assets, wherever located;

(l) To hear and determine all objections to the termination of the Asbestos Trust;

(m) To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(n) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including, without limitation, matters with respect to any taxes payable by a trust or reserve established in furtherance of the Plan);

(o) To resolve all matters related to the 363 Transaction;

(p) To enforce all orders previously entered by the Bankruptcy Court;

(q) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code; and

(r) To enter a final decree closing the Chapter 11 Cases.

To the extent that the Bankruptcy Court is not permitted under applicable law to preside over any of the forgoing matters, the reference to the "Bankruptcy Court" in this Article XI shall be deemed to be replaced by the "District Court." Notwithstanding anything in this Article XI to the contrary, (i) the allowance of Asbestos Personal Injury Claims and the forum in which such allowance will be determined shall be governed by and in accordance with the Asbestos Trust Distribution Procedures and the Asbestos Trust Agreement and (ii) the Bankruptcy Court and/or the District Court shall have concurrent, rather than exclusive, jurisdiction with respect to disputes relating to (a) rights under insurance policies issued to the Debtors that are included in the Asbestos Insurance Assets, and (b) the Debtors' rights to insurance with respect to workers' compensation claims.

#### ARTICLE XII.

#### **MISCELLANEOUS PROVISIONS**

**12.1** <u>Dissolution of Committees</u>. Except in connection with the Term Loan Avoidance Action prior to the Avoidance Action Trust Transfer Date, on the Effective Date, the Creditors' Committee shall dissolve; *provided, however*, that, following the Effective Date, the Creditors' Committee shall continue to have standing and a right to be heard with respect to (i) Claims and/or applications for compensation by professionals and requests for allowance of Administrative Expenses for substantial contribution

pursuant to section 503(b)(3)(D) of the Bankruptcy Code, (ii) any appeals of the Confirmation Order that remain pending as of the Effective Date to which the Creditors' Committee is a party, (iii) responding to creditor inquiries for one hundred twenty (120) days following the Effective Date, and (iv) the settlement or determination by Final Order of the Asbestos Trust Claim (including through any appeals). On the Effective Date, the Asbestos Claimants' Committee shall dissolve. Upon the dissolution of the Creditors' Committee and the Asbestos Claimants' Committee, the current and former members of the Creditors' Committee, the members of the Asbestos Claimants' Committee, and the Future Claimants' Representative, and their respective officers, employees, counsel, advisors, and agents, shall be released and discharged of and from all further authority, duties, responsibilities, and obligations related to and arising from and in connection with the Chapter 11 Cases, and the retention or employment of the Creditors' Committee's, the Asbestos Claimants' Committee's, and the Future Claimant's Representative's respective attorneys, accountants, and other agents shall terminate, except that the Creditors' Committee, the Asbestos Claimants' Committee, the Future Claimants' Representative, and their respective professionals shall have the right to pursue, review, and object to any applications for compensation and reimbursement of expenses filed in accordance with Section 2.2 hereof. The Creditors' Committee shall continue to serve through the Avoidance Action Trust Transfer Date to prosecute the Term Loan Avoidance Action. The Future Claimants' Representative shall continue to serve through the termination of the Asbestos Trust in order to perform the functions required under the Asbestos Trust Agreement. The fees and expenses of the Future Claimants' Representative from and after the Effective Date relating to the role of the Future Claimants' Representative in the Asbestos Trust, pursuant to the Asbestos Trust Agreement and the Asbestos Trust Distribution Procedures (including, without limitation, the fees and expenses of any professionals retained by the Future Claimants' Representative), shall be the sole responsibility of the Asbestos Trust.

**12.2** <u>Substantial Consummation</u>. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

**12.3** <u>Effectuating Documents and Further Transactions</u>. An officer of each of the Debtors is authorized and directed to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be reasonably necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and any securities issued pursuant to the Plan.

**12.4** <u>Exemption from Transfer Taxes</u>. Pursuant to section 1146(a) of the Bankruptcy Code, the assignment or surrender of any lease or sublease, or the delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition of assets contemplated by the Plan (including transfers of assets to and by the GUC Trust, the Asbestos Trust, the Environmental Response Trust, and the

Avoidance Action Trust) shall not be subject to any stamp, real estate transfer, mortgage recording, sales, use, or other similar tax.

12.5 **Release.** As of the Effective Date, the Debtors release (i) all present and former directors and officers of the Debtors who were directors and/or officers. respectively, on or after the Commencement Date, and any other Persons who serve or served as members of management of the Debtors on or after the Commencement Date, (ii) all post-Commencement Date advisors, consultants, or professionals of or to the Debtors, the lenders under the DIP Credit Agreement, the Creditors' Committee, the Asbestos Claimants' Committee, the Future Claimants' Representative, and the Indenture Trustees, and (iii) all members (current and former) of the Creditors' Committee and of the Asbestos Claimants' Committee, in their capacity as members of such Committees, the Future Claimants' Representative, and the Indenture Trustees from any and all Causes of Action held by, assertable on behalf of, or derivative from the Debtors, in any way relating to the Debtors, the Chapter 11 Cases, the Plan, negotiations regarding or concerning the Plan, and the ownership, management, and operation of the Debtors, except for willful misconduct (including, but not limited to, conduct that results in a personal profit at the expense of the Debtors' estates) or gross negligence; provided, however, that the foregoing shall not operate as a waiver of or release from any Causes of Action arising out of any express contractual obligation owing by any former director, officer, or employee of the Debtors or any reimbursement obligation of any former director, officer, or employee with respect to a loan or advance made by the Debtors to such former director, officer, or employee.

**Exculpation.** Neither the Debtors, the GUC Trust Administrator, the 12.6 Asbestos Trust Administrator(s), the Environmental Response Trust Administrative Trustee, the Avoidance Action Trust Administrator, the lenders under the DIP Credit Agreement, the Creditors' Committee, the Asbestos Claimants' Committee, the Future Claimants' Representative, and the Indenture Trustees, nor any of their respective members (current and former), officers, directors, employees, counsel, advisors, professionals, or agents, shall have or incur any liability to any holder of a Claim or Equity Interest for any act or omission in connection with, related to, or arising out of the Chapter 11 Cases, negotiations regarding or concerning the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence, and, in all respects, the Debtors, the GUC Trust Administrator, the Asbestos Trust Administrator(s), the Environmental Response Trust Administrative Trustee, the Avoidance Action Trust Administrator, the Creditors' Committee, the Asbestos Claimants' Committee, the Future Claimants' Representative, the Indenture Trustees, and each of their respective members (current or former), officers, directors, employees, counsel, advisors, professionals, and agents shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

### 12.7 **Post-Confirmation Date Fees and Expenses.**

(a) <u>Fees and Expenses of Professionals</u>. The Debtors shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court (but subject to the review by and approval of the lenders under the DIP Credit Agreement), pay the reasonable fees and expenses, incurred after the Confirmation Date, of the professional persons employed by the Debtors, the Creditors' Committee, the Asbestos Claimants' Committee, and the Future Claimants' Committee in connection with the implementation and consummation of the Plan, the claims reconciliation process, and any other matters as to which such professionals may be engaged.

(b) <u>Fees and Expenses of GUC Trust Administrator, Asbestos</u> <u>Trust Administrator(s), Environmental Response Trust Administrative Trustee,</u> <u>and Avoidance Action Trust Administrator</u>. The fees and expenses of the GUC Trust Administrator, the Asbestos Trust Administrator(s), the Environmental Response Trust Administrative Trustee, and the Avoidance Action Trust Administrator shall be paid in accordance with the terms of the GUC Trust Agreement, the Asbestos Trust Agreement, the Environmental Response Trust Agreement, and the Avoidance Action Trust Agreement, respectively, and shall be subject to the provisions of the Budget.

**12.8** <u>**Payment of Statutory Fees.</u>** On the Effective Date, and thereafter as may be required, the Debtors, and after the Effective Date, the GUC Trust Administrator, the Asbestos Trust Administrator(s), the Environmental Response Trust Administrative Trustee, and the Avoidance Action Trust Administrator shall each (i) pay all the respective fees payable pursuant to section 1930 of chapter 123 of title 28 of the United States Code and (ii) be responsible for the filing of postconfirmation quarterly status reports with the Bankruptcy Court in accordance with Rule 3021-1 of the Southern District of New York Local Bankruptcy Rules.</u>

Modification of Plan. Upon reasonable notice to the Creditors' 12.9 Committee, the Asbestos Claimants' Committee, and the Future Claimants' Representative, the Plan may be amended, modified, or supplemented by the Debtors in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law without additional disclosure pursuant to section 1125 of the Bankruptcy Code, except as the Bankruptcy Court may otherwise direct. In addition, after the Confirmation Date, so long as such action does not materially adversely affect the treatment of holders of Claims or Equity Interests under the Plan, the Debtors (and as of the Effective Date, the GUC Trust Administrator) may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of the Plan. Prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court; provided, however, that such technical adjustments and modifications do not adversely affect in a material way the treatment of holders of Claims or Equity Interests.

**12.10** <u>Revocation or Withdrawal of Plan</u>. The Debtors reserve the right to revoke or withdraw the Plan at any time prior to the Confirmation Date. If the Debtors

take such action, the Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any Claim by or against the Debtors or any other person or to prejudice in any manner the rights of the Debtors or any other person in any further proceedings involving the Debtors.

**12.11** <u>Courts of Competent Jurisdiction</u>. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising out of the Plan, such abstention, refusal, or failure of jurisdiction shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

**12.12** Severability. If, prior to the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**12.13** <u>Governing Law</u>. Except to the extent the Bankruptcy Code or other U.S. federal law is applicable, or to the extent an Exhibit to the Plan or a schedule in the Plan Supplement provides otherwise, the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflicts of law thereof.

**12.14** <u>Exhibits</u>. The Exhibits to the Plan and the Plan Supplement are incorporated into and as part of the Plan as if set forth herein.

**12.15** <u>Successors and Assigns</u>. All the rights, benefits, and obligations of any person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, the heirs, executors, administrators, successors, and/or assigns of such person.

**12.16** <u>Time</u>. In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

**12.17** <u>Notices</u>. To be effective, all notices, requests, and demands to or upon the Debtors, the Creditors' Committee, the U.S. Treasury, the GUC Trust Administrator, the Asbestos Trust Administrator(s), the Environmental Response Trust Administrative Trustee, or the Avoidance Action Trust Administrator shall be in writing (including by facsimile or electronic transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to the Debtors, to:

Motors Liquidation Company 500 Renaissance Center, Suite 1400 Detroit, Michigan 48243 Attn: Ted Stenger Telephone: (313) 486-4044 Telecopier: (313) 486-4259 E-mail: <u>tstenger@alixpartners.com</u>

AlixPartners LLP 40 West 57th Street New York, New York 10019 Attn: Ted Stenger Telephone: (212) 490-2500 Telecopier: (212) 490-1344 E-mail: tstenger@alixpartners.com

-and-

Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, New York 10153 Attn: Stephen Karotkin, Esq. Joseph H. Smolinsky, Esq. Telephone: (212) 310-8000 Telecopier: (212) 310-8007 E-mail: <u>stephen.karotkin@weil.com</u> joseph.smolinsky@weil.com

If to the Creditors' Committee, to:

Kramer Levin Naftalis & Frankel LLP 1177 Avenue of the Americas New York, New York 10036 Attn: Thomas Moers Mayer, Esq. Robert Schmidt, Esq. Telephone: (212) 715-9100 Telecopier: (212) 715-8000 E-mail: <u>tmayer@kramerlevin.com</u> <u>rschmidt@kramerlevin.com</u>

If to the Asbestos Claimants' Committee, to:

Caplin & Drysdale, Chartered 375 Park Avenue, 35th Floor New York, New York 10152-3500 Attn: Elihu Inselbuch, Esq. Rita C. Tobin, Esq. Telephone: (212) 319-7125 Telecopier: (212) 644-6755 E-mail: <u>ei@capdale.com</u> <u>rct@capdale.com</u>

-and-

Caplin & Drysdale, Chartered One Thomas Circle, N.W., Suite 1100 Washington, DC 20005 Attn: Trevor W. Swett III, Esq. Kevin C. Maclay, Esq. Telephone: (202) 862-5000 Telecopier: (202) 429-3301 E-mail: <u>tws@capdale.com</u> <u>kcm@capdale.com</u> If to the Future Claimants' Representative, to:

Stutzman, Bromberg, Esserman & Plifka, A Professional Corporation 2323 Bryan Street, Suite 2200 Dallas, Texas 75201 Attn: Sander L. Esserman, Esq. Robert T. Brousseau, Esq. Telephone: (214) 969-4900 Telecopier: (214) 969-4999 E-mail: <u>esserman@sbep-law.com</u> <u>brousseau@sbep-law.com</u>

If to the U.S. Treasury, to:

United States Department of the Treasury 1500 Pennsylvania Avenue, NW Washington, D.C. 20220 Attn: Chief Counsel, Office of Financial Stability Telecopier: (202) 927-9225 E-mail: OFSChiefCounselNotices@do.treas.gov

If to the GUC Trust Administrator, the Asbestos Trust Administrator(s), the Environmental Response Trust Administrative Trustee, or the Avoidance Action Trust Administrator, to the address(es) designated in the Confirmation Order

Dated: New York, New York August 31, 2010

Respectfully submitted,

MOTORS LIQUIDATION COMPANY

By: <u>/s/ Ted Stenger</u>

Name: Ted Stenger Title: Executive Vice President MLC OF HARLEM, INC. MLCS, LLC MLCS DISTRIBUTION CORPORATION REMEDIATION AND LIABILITY MANAGEMENT COMPANY, INC. ENVIRONMENTAL CORPORATE REMEDIATION COMPANY, INC.

BY: MOTORS LIQUIDATION COMPANY, as agent for each of the foregoing entities

By: <u>/s/ Ted Stenger</u> Name: Ted Stenger Title: Executive Vice President

# EXHIBIT A

# **PRIORITY ORDER SITES**

Wheeler Pit, Intersection of County Highway O and County Highway J, LaPrairie Township, WI

Scatterfield Road/Columbus Avenue, 2900 South Scatterfield Road, 2401 Columbus Avenue, Anderson, IN

Harvey & Knott, Old County Road, Kirkwood, DE

Sioux City, 1805 Zenith Drive, Sioux City, IA

Delphi Dayton, 300 Taylor Street, Dayton, OH

Garland Road, Frederick Garland Road, West Milton, OH

# EXHIBIT B

# FIXED ALLOWED NOTE CLAIMS

# [TO BE PROVIDED]

# EXHIBIT C

KRAMER LEVIN NAFTALIS & FRANKEL LLP 1177 Avenue of the Americas New York, New York 10036 Telephone: (212) 715-9100 Facsimile: (212) 715-8000 Thomas Moers Mayer Timothy P. Harkness

Counsel for the Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK				
	Х			
	:			
In re:	:	Chapter 11 Case No.:		
	:			
MOTORS LIQUIDATION COMPANY., et al.,		09-50026 (REG)		
f/k/a General Motors Corp., et al.	:			
	COMPANY., et al., : 09-50026 (REG) et al. :			
Debtors.	:	(Jointly Administered)		
	:			
	Х			

# DECLARATION OF ANNA PHILLIPS IN SUPPORT OF THE MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MOTORS LIQUIDATION COMPANY TO ENFORCE (A) THE FINAL DIP ORDER, (B) THE WIND-DOWN ORDER, <u>AND (C) THE AMENDED DIP FACILITY</u>

STATE OF NEW YORK ) ) ss.: COUNTY OF NEW YORK )

ANNA PHILLIPS, under the penalty of perjury, deposes and says that:

1. I am a Senior Managing Director with FTI Consulting, Inc. (together with its wholly owned subsidiaries, agents, independent contractors and employees "<u>FTI</u>"), a financial advisory services firm with numerous offices throughout the country. I submit this Declaration on behalf of FTI (the "<u>Phillips Declaration</u>") in support of the motion (the

KL2 2668596.1

"<u>Motion</u>") of the Official Committee of Unsecured Creditors (the "<u>Committee</u>") appointed in the chapter 11 cases of Motors Liquidation Company, *et al.*, (f/k/a General Motors Corp., *et al.*,) the debtors and debtors-in-possession herein (collectively, the "<u>Debtors</u>"), for the entry of an order enforcing the Final DIP Order, the Wind-Down Order and the DIP Credit Agreement, as such documents are defined in the Motion.¹ Unless otherwise stated in this Declaration, I have personal knowledge of the facts hereinafter set forth.

2. At the request of counsel to the Committee, I prepared the chart (the "**<u>Dilution Chart</u>**") attached hereto as <u>Schedule 1</u>, which demonstrates the dilution of the general unsecured creditors' total recovery value that would occur should the Committee prevail in the Term Loan Litigation – thereby leaving the Prepetition Term Lenders with an unsecured claim of \$1.5 billion – without the unsecured creditors receiving the benefit of the proceeds of the litigation. This Chart demonstrates why the Committee would not initiate the Term Loan Litigation unless its constituents were to receive the potential proceeds thereof.

3. As reflected on the Dilution Chart, should the unsecured creditors receive the potential proceeds of the Term Loan Litigation, unsecured creditors stand to increase their overall percentage recovery by anywhere from 2.2% to 2.9%. Conversely, initiating the Term Loan Litigation without receiving the potential proceeds would result in as much as a 0.4% reduction to the general unsecured creditors' recovery.

¹ Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Motion.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing

is true and correct.

Executed: New York, New York October 4, 2010

/s/ Anna Phillips

Anna Phillips

# Schedule 1

#### Motors Liquidation Company

Unsecured Creditors Recovery Calculations from Term Loan Lenders

	Scenario A. Term Loan Cash Proceeds go to Unsecured Creditors				Scenario B. Treasury Takes Priority Over Term Loan Cash Proceeds				
	Base Claim Amount \$35B		Base Claim Amount \$42B		Base Claim Amount \$35B		Base Claim Amount \$42B		
In \$ millions	Zero Recovery	Full Recovery	Zero Recovery	Full Recovery	Zero Recovery	Full Recovery	Zero Recovery	Full Recovery	
Calculation of Cash to Unsecured Creditors from Term Loan Recovery									
Amount recovered from Term Loan Lenders (1)	-	\$1.500	-	\$1,500		\$1,500	-	\$1,500	
less: Treasury Loan amount due as of 2/28/11 (2)					(\$1,140)	(\$1,140)	(\$1,140)	(\$1,140)	
Net Cash Proceeds to Unsecured Creditors from Term Loan Recovery	-	\$1,500	-	\$1.500	-	\$360	-	\$360	
		÷.,		<b>•</b> ••••••					
Calculation of the Total Claim Amount									
Unsecured Claim Amount (pre Term Loan claim) (3)	\$35,000	\$35,000	\$42,000	\$42,000	\$35,000	\$35,000	\$42,000	\$42,000	
Plus: Amount recovered from Term Loan Lenders (4)	-	\$1,500	-	\$1,500	-	\$1,500	-	\$1,500	
Total Claim Amount	\$35,000	\$36,500	\$42,000	\$43,500	\$35,000	\$36,500	\$42,000	\$43,500	
Calculation of Unsecured Creditors Ownership Stake									
Unsecured Creditors Shares	50,000,000	50,000,000	50,000,000	50,000,000	50,000,000	50,000,000	50,000,000	50,000,000	
Unsecured Creditors Warrants	90,909,090	90,909,090	90,909,090	90,909,090	90,909,090	90,909,090	90,909,090	90,909,090	
Unsecured Creditors Adjustment Shares (5)	-	2,142,857	10,000,000	10,000,000	-	2,142,857	10,000,000	10,000,000	
Total Unsecured Creditors Shares	140,909,090	143,051,947	150,909,090	150,909,090	140,909,090	143,051,947	150,909,090	150,909,090	
Other Shares (Treasury, EDC, Unions)	450,000,000	450,000,000	450,000,000	450,000,000	450,000,000	450,000,000	450,000,000	450,000,000	
Total Shares	590,909,090	593,051,947	600,909,090	600,909,090	590,909,090	593,051,947	600,909,090	600,909,090	
% Unsecured Creditors Ownership Stake (6)	23.8%	24.1%	25.1%	25.1%	23.8%	24.1%	25.1%	25.1%	
Calculation of Total Unsecured Creditors Recovery Value									
Assumed New GM Equity Value (7)	\$55,500	\$55,500	\$55,500	\$55,500	\$55,500	\$55,500	\$55,500	\$55,500	
Plus: Cash from Warrants Exercised (8)	\$3,864	\$3,864	\$3,864	\$3,864	\$3,864	\$3,864	\$3,864	\$3,864	
Adjusted New GM Equity Value	\$59,364	\$59,364	\$59,364	\$59,364	\$59,364	\$59,364	\$59,364	\$59,364	
% Unsecured Creditors Ownership Stake	23.8%	24.1%	25.1%	25.1%	23.8%	24.1%	25.1%	25.1%	
Total Value to Unsecured Creditors before cash from Term Loan Lenders	\$14,156	\$14,319	\$14,908	\$14,908	\$14,156	\$14,319	\$14,908	\$14,908	
Plus: Net Cash Proceeds to Unsecured Creditors from Term Loan Recovery	-	\$1,500	-	\$1,500	-	\$360	-	\$360	
Total Unsecured Creditors Recovery Value	\$14,156	\$15,819	\$14,908	\$16,408	\$14,156	\$14,679	\$14,908	\$15,268	
								-	
% Unsecured Creditors Recovery	40.4%	43.3%	35.5%	37.7%	40.4%	40.2%	35.5%	35.1%	
Change in Unsecured Creditors Recovery (vs. no Term Loan recovery)		2.9%		2.2%		-0.2%		-0.4%	

Notes: (1) Assumes two hypothetical recovery amounts from Term Loan lenders: (i) zero and (ii) full (\$1,500 million) (2) Based on \$1,175 million of original DIP loan, plus 5% quarterly PIK interest from 7/10/2009 through 2/28/2011 (assumed Effective Date for these calculations), less \$135 million of repayment to Treasury per the Budget discussed with MLC on August 3, 2010.

(3) Assumes two scenarios for total allowed unsecured claims (before any claims from Term Loan lenders), one at \$35 billion and the other at \$42 billion.

(4) For purposes of this analysis, any amount recovered from Term Loan lenders would be added to the \$35 billion and \$42 billion of claims.

(5) Up to additional 10,000,000 shares issued by New GM if claims exceed \$35 billion up to \$42 billion, per MSPA

(6) Assumes full dilution for Warrants A and B

(7) Assumes \$55.5 billion based on the mid point for equity values based on recent bond pricing, as discussed in the report to Kramer Levin dated August 13, 2010.

(8) Includes cash received by New GM from exercise of Warrants A and B