

Hearing Date: March 1, 2011 at 9:45 a.m.

HANGLEY ARONCHICK SEGAL & PUDLIN

By: Matthew A. Hamermesh (admitted *pro hac vice*)

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*Attorneys for NCR Corporation*

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

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<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>MOTORS LIQUIDATION COMPANY <i>et al.</i>,</b>	:	<b>(Jointly Administered)</b>
	:	
<b>Debtors.</b>	:	<b>Case No. 09-50026 (REG)</b>

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**RESPONSE OF NCR CORPORATON IN OPPOSITION TO  
DEBTORS' 208TH OMNIBUS OBJECTION TO CLAIMS  
(CONTINGENT CO-LIABILITY CLAIMS)**

NCR Corporation ("NCR") hereby responds to the Debtors' 208th Omnibus Objection to Claims (Contingent Co-Liability Claims) (the "208th Objection") and respectfully requests that this Court enter an appropriate order denying the 208th Objection as to NCR. In support thereof, NCR states as follows:

**BACKGROUND**

1. On June 1, 2009, Motors Liquidation Company (f/k/a General Motors Corporation) and its affiliated debtors (collectively, "MLC" or the "Debtors") filed voluntary petitions under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 101 et seq.

**NCR's Claims**

2. NCR and MLC have each previously been identified as potentially responsible parties ("PRPs"), along with numerous other parties, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") and similar federal and state

laws at several sites in, *inter alia*, Ohio and Kentucky. At each of these sites, to the extent MLC has failed or in the future fails to comply with its obligations to undertake or contribute financially to cleanup efforts or government cost reimbursement, or to pay natural resource damages, MLC is or will become liable to NCR for cost recovery and contribution under statutory and/or common law.

3. NCR filed four proofs of claim concerning these liabilities, three of which (described in further detail below) are the subject of the 208<sup>th</sup> Objection.

4. **Valleycrest Claim:** On or about November 25, 2009, NCR filed Proof of Claim #59913 (the “Valleycrest Claim,” a copy of which is attached hereto as Exhibit A). The Valleycrest Claim arises out of the fact that both NCR and MLC are alleged to have shipped wastes, including hazardous substances, to a National Priorities List site named the North Sanitary Landfill, also known as the Valleycrest landfill, in Dayton, Ohio (“Valleycrest”). At least fifteen years ago, federal and state authorities asserted that NCR and MLC, along with others, are PRPs for the cleanup of Valleycrest. Since that time, both NCR and MLC have participated in and contributed financially to the investigation, removal and remediation of hazardous substances at Valleycrest.

5. The members of the Valleycrest Landfill Site Group (“VLSG”) are among the PRPs at Valleycrest. The members of VLSG at the time, including MLC, executed and agreed to the terms of the Director’s Final Findings and Order (“FFOs”) with the Ohio Environmental Protection Agency (“OEPA”) to perform a Remedial Investigation/Feasibility Study (“RI/FS”) at Valleycrest. Certain members of the VLSG, also including MLC, also entered into an Administrative Order on Consent (“AOC”) with U.S. EPA pursuant to which VLSG has incurred costs. The costs associated with these agreements include, but are not limited to, investigative

costs, removal costs, administrative costs, U.S. EPA past and future costs, and OEPA past and future costs.

6. In the Valleycrest Claim, NCR asserted individual claims under Section 107 and 113 of CERCLA against MLC, which was formerly a member of VLSG. NCR's claim includes contribution and cost recovery claims against MLC.

7. Specifically, the Valleycrest Claim included a claim for \$29,738,036.25, representing MLC's share of investigation, removal, remediation, response, OEPA, U.S. EPA and other governmental administrative and oversight costs and any other costs relating to Valleycrest, as determined pursuant to the formula set forth in the Judgment, Order and Decree entered on November 21, 2007, in *Cargill, Inc. v. ABCO Construction*, Case No. 3:98-cv-3601 (S.D. Ohio), and a related settlement agreement.

8. Additionally and separately, the Valleycrest Claim includes a claim stated therein in the amount of \$1,942,642.26 (the "Total Overage"), owed exclusively to NCR pursuant to a judgment and settlement agreement in which MLC agreed to repay NCR certain amounts that NCR previously paid in excess of its agreed share of costs relating to Valleycrest. The Total Overage is net of previous payments of MLC thereon and includes interest.<sup>1</sup>

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<sup>1</sup> In fact, MLC holds the Total Overage in trust for NCR. On January 19, 2011, NCR commenced an adversary proceeding against MLC by filing a Complaint (the "Complaint") in MLC's bankruptcy cases, which was docketed as Adversary Proceeding No. 11-09400-reg. In the Complaint, NCR seeks an order directing that the Total Overage may not be distributed to Motors' creditors as part of the bankruptcy plan and must be turned over to NCR. In addition, NCR filed an Administrative Proof of Claim for the Total Overage on or about February 14, 2011.

NCR asserted the Total Overage as part of the Valleycrest Claim only as a protective matter and only to the extent the claims set forth in the Complaint and the Administrative Proof of Claim are denied. NCR filed the Valleycrest Claim and is filing this Response with full reservation of, and without prejudice to, NCR's rights, including, without limitation, the right to assert that NCR has an ownership interest in the Total Overage, that MLC holds the Total

(continued...)

9. In the Valleycrest Claim, NCR also asserted claims for \$422,008., MLC's agreed share of the cost of fulfilling VLSG's obligations under the FFOs, and \$102,804.57, MLC's share of the cost of work required under the AOC.

10. **Cardington Road Claim:** On or about November 25, 2009, NCR filed Proof of Claim #59911 (the "Cardington Road Claim," a copy of which is attached hereto as Exhibit B). The Cardington Road Claim arises out of the fact that both NCR and MLC are alleged to have shipped wastes, including hazardous substances, to a National Priorities List site named the Sanitary Landfill Company (IWD) Superfund Site, also known as the Cardington Road Landfill, in Moraine, Ohio ("Cardington Road"). Federal and/or state environmental authorities asserted that NCR and MLC, along with others, are PRPs for the cleanup of Cardington Road. Since that time, both NCR and MLC have participated in and contributed financially to the investigation, removal and remediation of hazardous substances at Cardington Road.

11. The members of the Cardington Road Site Group ("CRSG") are among the PRPs at Cardington Road. The members of CRSG at the time, including MLC, entered into a consent decree ("Consent Decree") with the United States for performance of Remedial Action and payment of response costs with respect to Cardington Road. The CRSG completed the Remedial Action at Cardington Road in approximately 1999 and has been performing long term operation and maintenance (O&M) since then.

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(continued...)

Overage not in its own right but rather as an express or constructive trustee, or that NCR is entitled to administrative expense treatment pursuant to Sections 503(b) and 507(a)(2) of the Bankruptcy Code, 11 U.S.C. §§ 503(b) & 507(a)(2), with respect to the Total Overage.

12. NCR is asserting its claims under Sections 107 and 113 of CERCLA against MLC, which is a member of CRSG. NCR's claims include contribution claims and cost recovery against MLC. NCR is also asserting its claims under the "Site Participation Agreement" entered into in 1996 by the members of CRSG, including NCR and MLC. The Site Participation Agreement obligates MLC to perform the remedy and pay its share of response costs at Cardington Road, including O&M costs.

13. MLC's proportionate share of all claims is no less than \$ 1,506,403.92, related to O&M, U.S. EPA and other governmental administrative and oversight costs, fulfillment of the CRSG's obligations under the Consent Decree, and any other costs relating to Cardington Road.

14. In addition, because NCR paid costs at Cardington Road in excess of its share at the beginning of the remediation, NCR is due an additional \$127,965.00 that MLC is obligated to pay on NCR's behalf. This calculation is based on an agreement that MLC would pay NCR's share until Site costs reached \$13.9 million. Site costs so far are approximately \$12.4 million, so MLC's obligation to pay NCR's share on the remaining \$1.5 million is \$127,965.00.

15. **South Dayton Claim:** On or about November 25, 2009, NCR filed Proof of Claim #59910 (the "South Dayton Claim," a copy of which is attached hereto as Exhibit C). The South Dayton Claim arises out of the fact that both NCR and MLC are alleged to have shipped wastes, including hazardous substances, to a National Priorities List site named the South Dayton Dump and Landfill, located in Moraine, Ohio ("South Dayton"). Federal and/or state environmental authorities asserted that NCR and MLC, along with others, are PRPs for the cleanup of South Dayton. Since that time, both NCR and MLC have participated in and contributed financially to the investigation, removal and remediation of hazardous substances at South Dayton.

16. NCR is asserting its claims under Sections 107 and 113 of CERCLA against MLC. NCR's claims include contribution claims and cost recovery against MLC. It is estimated that the costs associated with South Dayton could exceed \$3.3 million.

### **The 208<sup>th</sup> Objection**

17. MLC and its affiliates filed the 208<sup>th</sup> Objection on January 28, 2011. In the 208<sup>th</sup> Objection, MLC seeks disallowance of various claims, including NCR's Valleycrest Claim, Cardington Road Claim and South Dayton Claim.

18. Specifically, MLC asserts that these claims are contingent co-liability claims that should be disallowed in their entirety pursuant to Section 502(e)(1)(B) of the Bankruptcy Code, 11 U.S.C. § 502(e)(1)(B).

### **RESPONSE IN OPPOSITION TO 208<sup>TH</sup> OBJECTION**

19. For the following reasons, the 208<sup>th</sup> Objection should be denied as to NCR.

#### **NCR's Claims For Previously Paid Costs Should Be Allowed**

20. As this Court has previously noted, Section 502(e)(1)(B) does not apply "where remediation costs were already paid by the claimant." *In re Chemtura Corp.*, No. 09-11233, 2011 WL 109081, at \*1 (Bankr. S.D.N.Y. Jan. 11, 2011); *see also id.* at \*14 ("past response costs previously paid are non-contingent" (emphasis in original)); *In re Lyondell Chemical Co.*, - B.R. --, 2011 WL 11413, at \*1, \*12 (Bankr. S.D.N.Y. Jan. 4, 2011).

21. A significant portion of, *inter alia*, NCR's Valleycrest Claim and Cardington Road Claim consist of remediation costs that NCR has already paid. Specifically, at least the Total Overage and \$127,965.00 of the Cardington Road Claim represent remediation costs that NCR has already paid.

22. Plainly, the Valleycrest Claim and Cardington Road Claim cannot be disallowed in full pursuant to Section 502(e)(1)(B).



# **EXHIBIT A**



UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PROOF OF CLAIM

Name of Debtor (Check Only One):
Motors Liquidation Company (f/k/a General Motors Corporation)
MLCS, LLC (f/k/a Saturn, LLC)
MLCS Distribution Corporation (f/k/a Saturn Distribution Corporation)
MLC of Harlem, Inc. (f/k/a Chevrolet-Saturn of Harlem, Inc.)
Case No.
09-50026 (REG)
09-50027 (REG)
09-50028 (REG)
09-13558 (REG)

Your Claim is Scheduled As Follows:

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case, but may be used for purposes of asserting a claim under 11 U.S.C. § 503(b)(9) (see Item # 5). All other requests for payment of an administrative expense should be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property): NCR Corporation

Name and address where notices should be sent:
Matthew A. Hamermesh, Esquire
Hangley Aronchick Segal & Pudlin
One Logan Square, 27th Floor
Philadelphia, PA 19103
215-568-6200
Telephone number:
Email Address: mhamermesh@hangley.com

Check this box to indicate that this claim amends a previously filed claim.
Court Claim Number:
If known
Filed on:

Name and address where payment should be sent (if different from above):
Edward Gallagher, Law Vice President
NCR Corporation, WHQ-2E
1700 South Patterson Blvd.
Dayton OH 45479
Telephone number:

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
Check this box if you are the debtor or trustee in this case.

If an amount is identified above, you have a claim scheduled by one of the Debtors as shown. (This scheduled amount of your claim may be an amendment to a previously scheduled amount.) If you agree with the amount and priority of your claim as scheduled by the Debtor and you have no other claim against the Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is listed as DISPUTED, UNLIQUIDATED, or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Amount of Claim as of Date Case Filed, June 1, 2009: \$ See attached.
If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. If all or part of your claim is asserted pursuant to 11 U.S.C. § 503(b)(9), complete item 5.
Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

2. Basis for Claim: Valleycrest - Contract/Judgment/Environmental Laws
(See instruction #2 on reverse side.) (See attached)

- Specify the priority of the claim.
Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
Wages, salaries, or commissions (up to \$10,950\*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).
Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).
Up to \$2,425\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).
Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
Value of goods received by the Debtor within 20 days before the date of commencement of the case - 11 U.S.C. § 503(b)(9) (§ 507(a)(2))
Other - Specify applicable paragraph of 11 U.S.C. § 507(a)( ).
Amount entitled to priority:

3. Last four digits of any number by which creditor identifies debtor:
3a. Debtor may have scheduled account as:

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.
Nature of property or right of setoff: Real Estate Motor Vehicle Equipment Other
Describe:
Value of Property: \$ Annual Interest Rate %
Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$
Basis for perfection:
Amount of Secured Claim: \$ Amount Unsecured: \$

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain in an attachment.

\$
\*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

Date: 1/25/09
Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

FOR COURT USE ONLY

HANGLEY ARONCHICK SEGAL & PUDLIN  
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Philadelphia, PA 19103  
(215) 568-6200

*Attorneys for NCR Corporation*

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

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<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>GENERAL MOTORS CORPORATION., <u>et al.</u></b>	:	<b>(Jointly Administered)</b>
	:	
<b>Debtors.</b>	:	<b>Case No. 09-50026 (REG)</b>

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**SUPPLEMENT TO VALLEYCREST PROOF OF CLAIM**

This proof of claim is filed on behalf of NCR Corporation ("NCR"), a creditor and party-in-interest in the above-captioned cases. In support thereof, NCR states as follows:

1. NCR and the Debtor have each previously been identified as potentially responsible parties ("PRPs"), along with numerous other parties, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") and similar federal and state laws at several sites in, *inter alia*, Ohio and Kentucky. At each of these sites, to the extent the Debtor has failed or in the future fails to comply with its obligations to undertake or contribute financially to cleanup efforts, government cost reimbursement or to pay natural resource damages, the Debtor is or will become liable to NCR for cost recovery and contribution under statutory and/or common law.

2. In particular, both NCR and the Debtor are alleged to have shipped wastes, including hazardous substances, to a National Priorities List site named the North Sanitary Landfill and also known as the "Valleycrest" landfill in Dayton, Ohio (the "Site"). At least fifteen years ago, federal and/or state environmental authorities asserted that NCR and the Debtor, along with others, are PRPs for the cleanup of the Site. Since that time, both NCR and the Debtor have participated in and contributed financially to the investigation, removal and remediation of hazardous substances at the Site.

3. The members of the Valleycrest Landfill Site Group (“VLSG”) are among the PRPs at the Site. The members of VLSG at the time, including Debtor, executed and/or agreed to the terms of the Director’s Final Findings and Orders (“FFOs”) with Ohio Environmental Protection Agency (“OEPA”) to perform a Remedial Investigation/Feasibility Study (“RI/FS”) at the Site. Certain members of the VLSG, also including Debtor, also entered into an Administrative Order on Consent (“AOC”) with U.S. EPA pursuant to which VLSG has incurred costs. The costs associated with these agreements include, but are not limited to, investigative costs, removal costs, administrative costs, U.S. EPA past and future costs, and OEPA past and future costs.

4. NCR is asserting its individual claims under Sections 107 and 113 of CERCLA against the Debtor, which was formerly a member of VLSG. NCR’s claims include contribution claims and cost recovery against the Debtor.

5. NCR asserts claims against the Debtor for Debtor’s share of no less than \$ 29,738,036.25 related to investigation, removal, remediation (including but not limited to remedial design and remedial action), response, OEPA, U.S. EPA and other governmental administrative and oversight costs, and any other costs relating to Site. Debtor’s share of no less than \$ 29,738,036.25 is based on the formula set forth in the “Judgment, Order and Decree” entered November 21, 2007 in *Cargill, Inc., et al. v. ABCO Construction, et al.*, Case No. 3:98-cv-3601 (S.D. Ohio) (the “Judgment”), and a related settlement agreement.

6. Additionally and separately, NCR asserts claims against Debtor for Debtor’s obligations under the Judgment and related settlement agreement to repay to NCR certain amounts designated in the Judgment as “overage” that NCR paid in excess of specified percentages of costs relating to the Site. Debtor’s overage obligation of no less than \$1,942,642.26, which is owed in its entirety exclusively to NCR, is based on the formula set forth in the Judgment and the related settlement agreement, plus accrued interest and net of previous payments from the Debtor.

7. NCR also asserts contract claims against Debtor for Debtor's remaining obligations under the agreement establishing the VLSG and its various amendments (the "PRP Agreement"). As amended, the PRP Agreement obligates Debtor to pay 21.9375% of costs the VLSG incurs to fulfill its obligations under a Director's Final Findings and Orders with OEPA ("FFOs"). NCR asserts claims against the Debtor for Debtor's share of no less than \$ 422,008.35 related to Debtor's remaining obligations under the PRP Agreement. This amount is based on currently outstanding assessments and estimated future assessments to complete work currently required under the FFOs.

8. NCR also asserts claims against Debtor for Debtor's obligations under the Judgment and related settlement agreement with respect to work required under an Administrative Order on Consent with U.S. EPA ("AOC"). NCR asserts claims against the Debtor for Debtor's share of no less than \$ 102,804.57 related to Debtor's remaining obligations under the AOC. This amount is based on estimated future assessments to complete work currently required under the AOC.

9. These claims are made by the NCR, based on actual and estimated costs that Debtor is or may be responsible for as to the Site. The actual amount of claims of the NCR shall be amended once the actual and future costs have been fully determined.

10. The Debtor's proportionate share of all claims is no less than \$ 32,204,771.43 related to investigation, removal, remediation (including but not limited to remedial design and remedial action), response, OEPA, U.S. EPA and other governmental administrative and oversight costs, fulfillment of the VLSG's obligations under the FFOs, and any other costs relating to the Site.

11. The documents supporting this Proof of Claim are too voluminous to attach and file herewith and are subject to various confidentiality obligations. Copies may be made available as necessary. These documents can, however, be summarized as including at least the following:

- OEPA's Director's FFOs and U.S. EPA's AOC;
- 1999 and 2003 U.S. EPA Fact Sheet, North Sanitary Landfill Superfund Site;

- Cost summaries supporting costs incurred and to be incurred by VLSG and its Members and other Respondents under the FFOs and AOC and to perform the remedy at the Site;
- The Judgment; and
- The PRP Agreement.

### **RESERVATION OF RIGHTS**

1. This Proof of Claim is filed with full reservation of rights, including, without limitation, the right to assert that NCR has an ownership interest in the Total Overage and that the Debtor holds the Total Overage not in its own right but rather as an express trustee, a constructive trustee, or a bailee.
2. NCR also reserves the right to assert additional, supplementary and/or amended proofs of claim and requests for administrative expense reimbursements based on subsequent events or information and documents obtained from the debtors or other parties through discovery or otherwise.
3. NCR further fully reserves: (a) all rights arising out of or relating to any executory contract between NCR and the Debtors, including, without limitation, as a result of the assumption, assignment or rejection thereof, including any cure amounts and rejection damages; (b) all setoff and recoupment rights; and (c) any other rights, claims, actions, or defenses, including the right of subrogation or exoneration, to which NCR is or may be entitled under agreements, at law, in equity or otherwise.
4. By filing this Proof of Claim, NCR does not consent to the jurisdiction of the Bankruptcy Court. Neither this Proof of Claim nor any other claim or request filed by or on behalf of NCR shall waive: (1) the right of NCR to have final orders in non-core matters entered only after de novo review by a United States District Court (the "District Court"); (2) the right of NCR to trial by jury in any proceeding so triable in this case or any other case, controversy or proceeding related to this case; (3) the right of NCR to have the District Court withdraw the reference in any matter subject to mandatory or discretionary withdrawal; or (4) the right to assert that the amounts owed to NCR are entitled to

administrative expense treatment pursuant to Sections 503(b) and 507(a)(2) of the Bankruptcy Code, 11 U.S.C. § 503(b) & 507(a)(2).

**Correspondence Concerning Claim**

All correspondence concerning claim should be directed to:

Matthew A. Hamermesh, Esquire  
Hangley Aronchick Segal & Pudlin, P.C.  
One Logan Square, 27th Floor  
Philadelphia, PA 19103

With a copy to:

Edward Gallagher, Esquire  
Law Vice President  
NCR Corporation, WHQ-2E  
1700 South Patterson Blvd.  
Dayton OH 45479

# **EXHIBIT B**



HANGLEY ARONCHICK SEGAL & PUDLIN  
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(215) 568-6200

*Attorneys for NCR Corporation*

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

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<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>GENERAL MOTORS CORPORATION., <u>et al.</u></b>	:	<b>(Jointly Administered)</b>
	:	
<b>Debtors.</b>	:	<b>Case No. 09-50026 (REG)</b>

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**SUPPLEMENT TO CARDINGTON ROAD PROOF OF CLAIM**

This proof of claim is filed on behalf of NCR Corporation (“NCR”), a creditor and party-in-interest in the above-captioned cases. In support thereof, NCR states as follows:

1. NCR and the Debtor have each previously been identified as potentially responsible parties (“PRPs”), along with numerous other parties, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) and similar federal and state laws at several sites. At each of these sites, to the extent the Debtor has failed or in the future fails to comply with its obligations to undertake or contribute financially to cleanup efforts, government cost reimbursement or to pay natural resource damages, the Debtor is or will become liable to NCR for cost recovery and contribution under statutory and/or common law.

2. In particular, both NCR and the Debtor are alleged to have shipped wastes, including hazardous substances, to a National Priorities List site named the Sanitary Landfill Company (IWD) Superfund Site, also known as the Cardington Road Landfill, in Moraine, Ohio (the “Site”). Federal and/or state environmental authorities asserted that NCR and the Debtor, along with others, are PRPs for the cleanup of the Site. Since that time, both NCR and the

Debtor have participated in and contributed financially to the investigation, removal and remediation of hazardous substances at the Site.

3. The members of the Cardington Road Site Group (“CRSG”) are among the PRPs at the Site. The members of CRSG at the time, including Debtor, entered into a consent decree (“Consent Decree”) with the United States for performance of Remedial Action and payment of response costs with respect to the Site.

4. The CRSG completed the Remedial Action at the Site in approximately 1999 and has been performing long term operation and maintenance (O&M) since then.

5. NCR is asserting its claims under Sections 107 and 113 of CERCLA against the Debtor, which is a member of CRSG. NCR’s claims include contribution claims and cost recovery against the Debtor.

6. NCR is also asserting its claims under the “Site Participation Agreement” entered into by the members of CRSG in 1996, including NCR and Debtor. The Site Participation Agreement obligates Debtor to perform the remedy and pay its share of response costs at the Site, including O&M costs.

7. The Debtor’s proportionate share of all claims is no less than \$ 1,506,403.92, related to O&M, U.S. EPA and other governmental administrative and oversight costs, fulfillment of the CRSG’s obligations under the Consent Decree, and any other costs relating to the Site.

8. In addition, because NCR paid costs at the Site in excess of its share at the beginning of the remediation, NCR is due an additional \$127,965.00 that the Debtor is obligated to pay on NCR's behalf. This calculation is based on an agreement that the Debtor would pay NCR's share until Site costs reached \$13.9 million. Site costs so far are approximately \$12.4

million, so the Debtor's obligation to pay NCR's share on the remaining \$1.5 million is \$127,965.00.

9. The Site Participation Agreement obligates Debtor to pay 37.6601 % of costs the CRSG incurs to fulfill its obligations under the Consent Decree. A member of the CRSG that became insolvent and no longer pays its share was obligated under the Site Participation Agreement to pay 40% of those costs. Disregarding the insolvent member's 40 % share, Debtor's share is 62.766833 %. NCR asserts claims against the Debtor for Debtor's share of no less than \$ 1,506,403.92 related to Debtor's remaining obligations under the Site Participation Agreement. This amount is based on Debtor's 62.766833 % share of currently estimated future assessments of \$ 2.4 million to complete work currently required under the Consent Decree.

10. These claims are made by the NCR, based on actual and estimated costs that Debtor is or may be responsible for as to the Site. The actual amount of claims of NCR shall be amended once the actual and future costs have been fully determined.

11. The documents supporting this Proof of Claim are too voluminous to attach and file herewith. Copies may be made available as necessary. These documents can, however, be summarized as including at least the following:

- The Consent Decree;
- The Site Participation Agreement;
- Cost summaries supporting costs incurred and to be incurred by CRSG and its Members to perform the O&M and pay other costs at the Site; and
- Letter Agreement between NCR and GM dated October 7, 1996.

#### **RESERVATION OF RIGHTS**

1. This Proof of Claim is filed with full reservation of rights, including, without limitation, the right to assert additional, supplementary and/or amended proofs of claim and

requests for administrative expense reimbursements based on subsequent events or information and documents obtained from the debtors or other parties through discovery or otherwise.

2. NCR further fully reserves: (a) all rights arising out of or relating to any executory contract between NCR and the Debtors, including, without limitation, as a result of the assumption, assignment or rejection thereof, including any cure amounts and rejection damages; (b) all setoff and recoupment rights; and (c) any other rights, claims, actions, or defenses, including the right of subrogation or exoneration, to which NCR is or may be entitled under agreements, at law, in equity or otherwise.

3. By filing this Proof of Claim, NCR does not consent to the jurisdiction of the Bankruptcy Court. Neither this Proof of Claim nor any other claim or request filed by or on behalf of NCR shall waive: (1) the right of NCR to have final orders in non-core matters entered only after de novo review by a United States District Court (the "District Court"); (2) the right of NCR to trial by jury in any proceeding so triable in this case or any other case, controversy or proceeding related to this case; (3) the right of NCR to have the District Court withdraw the reference in any matter subject to mandatory or discretionary withdrawal; or (4) the right to assert that the amounts owed to NCR are entitled to administrative expense treatment pursuant to Sections 503(b) and 507(a)(2) of the Bankruptcy Code, 11 U.S.C. § 503(b) & 507(a)(2).

**Correspondence Concerning Claim**

All correspondence concerning claim should be directed to:

Matthew A. Hamermesh, Esquire  
Hangley Aronchick Segal & Pudlin,  
P.C.  
One Logan Square, 27th Floor  
Philadelphia, PA 19103

With a copy to:

Edward Gallagher, Esquire  
Law Vice President  
NCR Corporation, WHQ-2E  
1700 South Patterson Blvd.  
Dayton OH 45479

# **EXHIBIT C**



UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PROOF OF CLAIM

Name of Debtor (Check Only One):
M Motors Liquidation Company (f/k/a General Motors Corporation)
MLCS, LLC (f/k/a Saturn, LLC)
MLCS Distribution Corporation (f/k/a Saturn Distribution Corporation)
MLC of Harlem, Inc. (f/k/a Chevrolet-Saturn of Harlem, Inc.)
Case No.
09-50026 (REG)
09-50027 (REG)
09-50028 (REG)
09-13558 (REG)

Your Claim is Scheduled As Follows:

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case, but may be used for purposes of asserting a claim under 11 U.S.C. § 503(b)(9) (see Item # 5). All other requests for payment of an administrative expense should be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property): NCR Corporation

Name and address where notices should be sent:
Matthew A. Hamermesh, Esquire
Hangley Aronchick Segal & Pudlin
One Logan Square, 27th Floor
Philadelphia, PA 19103
215-568-6200
Telephone number:
Email Address: mhamermesh@hangley.com

Check this box to indicate that this claim amends a previously filed claim.
Court Claim Number:
If known
Filed on:

Name and address where payment should be sent (if different from above):
Edward Gallagher, Law Vice President
NCR Corporation, WHQ-2E
1700 South Patterson Blvd.
Dayton, OH 45479
Telephone number:

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
Check this box if you are the debtor or trustee in this case.

If an amount is identified above, you have a claim scheduled by one of the Debtors as shown. (This scheduled amount of your claim may be an amendment to a previously scheduled amount.) If you agree with the amount and priority of your claim as scheduled by the Debtor and you have no other claim against the Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is listed as DISPUTED, UNLIQUIDATED, or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Amount of Claim as of Date Case Filed, June 1, 2009: \$ See attached.

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. If all or part of your claim is asserted pursuant to 11 U.S.C. § 503(b)(9), complete item 5.

Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: South Dayton Dump - Contract/Environmental Laws
(See instruction #2 on reverse side.) (See attached)

3. Last four digits of any number by which creditor identifies debtor:
3a. Debtor may have scheduled account as:
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.
Nature of property or right of setoff: Real Estate Motor Vehicle Equipment Other
Describe:
Value of Property: \$ Annual Interest Rate %
Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$
Basis for perfection:
Amount of Secured Claim: \$ Amount Unsecured: \$

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain in an attachment.

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

- Specify the priority of the claim.
Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
Wages, salaries, or commissions (up to \$10,950\*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).
Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).
Up to \$2,425\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).
Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
Value of goods received by the Debtor within 20 days before the date of commencement of the case - 11 U.S.C. § 503(b)(9) (§ 507(a)(2))
Other - Specify applicable paragraph of 11 U.S.C. § 507(a)( ).
Amount entitled to priority:

\* Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

Date: 11/25/09
Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

FOR COURT USE ONLY

## RIDER

Debtor is a potentially responsible party ("PRP") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"), the federal statute giving statutory contribution and cost recovery to parties that incur costs to remediate contaminated sites, at the South Dayton Dump and Landfill, located at 1975 Dryden Road (a/k/a Springboro Pike), Moraine, Montgomery County, Ohio ("Site"). Creditor has incurred and will continue to incur costs associated with the investigation and remediation of alleged environmental contamination at the Site.

Creditor and Debtor are among a group of PRPs which are potentially responsible under CERCLA for costs associated with the investigation and remediation of the Site. The United States Environmental Protection Agency ("U.S. EPA") has alleged that the Debtor is responsible for the disposal of an unknown quantity of waste including wastes containing hazardous substances. According to U.S. EPA, these wastes contributed to the alleged environmental contamination at the Site. As a result, Debtor is liable for response and other remedial costs at the Site pursuant to CERCLA. Under CERCLA, Debtor's liability may be joint and several.

The Creditor, Debtor and certain other PRPs have entered into an Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study (the "ASAOC for RI/FS"), with an effective date of August 15, 2006, Docket No. V-W-06-C-852 with the EPA to perform an RI/FS at the Site. The costs for the RI/FS are estimated to range from approximately \$2,000,000 to over \$3,300,000 and, depending on Site conditions, may actually be higher. In addition, U.S. EPA and Ohio EPA ("OEPA") have demanded reimbursement pursuant to CERCLA for all past and future Site costs, including oversight costs

related to the performance of the RI/FS. If the participating PRPs are unable to complete the RI/FS per U.S. EPA requirements, U.S. EPA may complete the RI/FS, such performance may be mandated pursuant to a unilateral administrative order or, in the alternative, U.S. EPA may perform the remedy and demand reimbursement for all its site costs. Regardless of the mechanism under which U.S. EPA seeks to have work performed or to seek reimbursement for its costs in performing the work, the identified PRPs, including the Debtor, will be responsible for all related Site costs.

Such costs relating to Site investigation and remediation will include investigative costs, administrative costs, U.S. EPA past costs, and OEPA past costs. The costs for future remedial activities at the Site, including the costs to implement the remedial activities, associated administrative costs, and reimbursements to U.S. EPA and OEPA for oversight costs, are unknown at this time but may consist of millions of dollars, and possibly tens of millions of dollars, for which Creditor reserves the right to amend this proof of claim to include future response costs and other costs for oversight and administrative costs.

The documents supporting this claim are too voluminous to be attached but can be summarized to include at least the following:

- a. December 22, 2005 General Notice Letter ("GNL") addressed to Creditor, identifying Debtor-related party (GM) as a recipient of the GNL (GNL is included as an attachment to this Rider);
- b. ASAOC with cover letters (included as an attachment to this Rider);
- c. Other Site records from the U.S. EPA Administrative Record, OEPA files, and Montgomery County Combined Health District records;
- d. Invoices and cost summaries supporting costs incurred and to be incurred by Respondents, U.S. EPA, and OEPA under the Administrative Settlement Agreement and Order on Consent for RI/FS; and

e. Affidavits from person(s) familiar with operations at the Site.

Creditor reserves the right to amend this Proof of Claim to reflect adjustments to Debtor's share based upon the actual investigation, administrative, and remediation costs incurred and to be incurred and upon any new evidence concerning Debtor's waste volume and characteristics.

Creditor, while filing this proof of claim (a) does not submit to the jurisdiction of this Court except with respect to this proof of claim, (b) reserves any and all rights and remedies against any other person or entity, (c) reserves any and all rights with respect to any and all collateral which it may have, whether such collateral is owned by the Debtor or by any other person or entity, (d) does not waive its right to a trial by jury, and (e) reserves the right to amend this proof of claim in any and all respects.

HANGLEY ARONCHICK SEGAL & PUDLIN  
By: Matthew A. Hamermesh (admitted *pro hac vice*)  
Jacqueline R. Dungee (JD6936)  
One Logan Square, 27th Floor  
Philadelphia, PA 19103  
(215) 568-6200

*Attorneys for NCR Corporation*

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

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<b>In re:</b>	<b>:</b>	<b>Chapter 11</b>
	<b>:</b>	
<b>MOTORS LIQUIDATION COMPANY <i>et al.</i>,</b>	<b>:</b>	<b>(Jointly Administered)</b>
	<b>:</b>	
<b>Debtors.</b>	<b>:</b>	<b>Case No. 09-50026 (REG)</b>

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 22<sup>nd</sup> day of February, 2011, I caused a true and correct copy of the foregoing RESPONSE OF NCR CORPORATON IN OPPOSITION TO DEBTORS' 208TH OMNIBUS OBJECTION TO CLAIMS (CONTINGENT CO-LIABILITY CLAIMS) to be served by electronic mail on the following:

Weil, Gotshal & Manges LLP, attorneys for the Debtors:  
Harvey R. Miller, Esquire (harvey.miller@weil.com)  
Stephen Karotkin, Esquire (stephen.karotkin@weil.com)  
Joseph H. Smolinsky, Esquire (Joseph.Smolinsky@weil.com)

The Office of the United States Trustee for the Southern District of New York:  
Tracy Hope Davis, Esquire (tracy.davis@usdoj.gov)  
Andrea B. Schwartz, Esquire (andrea.b.schwartz@usdoj.gov)

Kramer Levin Naftalis & Frankel LLP, attorneys for the Creditors' Committee:  
Thomas Moers Mayer, Esquire (tmayer@kramerlevin.com)  
Robert Schmidt, Esquire (rschmidt@kramerlevin.com)  
Lauren Macksoud, Esquire (lmacksoud@kramerlevin.com)

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Cadwalader, Wickersham & Taft LLP, attorneys for the U.S. Treasury  
John J. Rapisardi, Esquire (john.rapisardi@cwt.com)

Vedder Price, P.C., attorneys for EDC  
Michael J. Edelman, Esquire (mjedelman@vedderprice.com)

/s/ Matthew A. Hamermesh  
Matthew A. Hamermesh