

Jeffrey Kurtzman, Esquire (7689)
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1835 Market Street, Suite 1400
Philadelphia, PA 19103
Telephone: 215-569-4493
Facsimile: 215-568-6603

Attorneys for Modcomp, Inc.

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

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

**RESPONSE OF MODCOMP, INC. TO DEBTORS'
160TH OMNIBUS OBJECTION TO CLAIMS**

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

The response of Modcomp, Inc. ("Modcomp" or the "Claimant"), by and through its undersigned attorneys, to the 160th Omnibus Objection to Claims ("Claims Objection") filed by Motors Liquidation Company ("MLC") and its affiliated debtors, as debtors-in-possession (collectively with "MLC", the "Debtors"), respectfully represents as follows:

BACKGROUND

1. On June 1, 2009 (the "Petition Date"), certain of the Debtors, including MLC, filed voluntary petitions for reorganization with this Court pursuant to Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

2. On July 5, 2009, this Court entered an order approving MLC's sale of certain of its assets to an entity now known as General Motors, LLC ("New GM").

3. Modcomp is engaged in the business of providing engineering support and computer services to customers. In 2008, Modcomp and the Debtors entered into a Hardware Maintenance Agreement (the "Modcomp Agreement") pursuant to which Modcomp agreed to provide certain engineering services for a six month period commencing on January 1, 2009, and concluding on June 30, 2009 (the "Term").

4. Pursuant to the Modcomp Agreement, the Debtors agreed to pay the sum of \$15,083 per month during the Term. A copy of the Modcomp Agreement is annexed hereto and made a part hereof as Exhibit "A".

5. On September 16, 2009, this Court entered an order establishing November 30, 2009 as the deadline for the filing of proofs of claim against the Debtors. Modcomp timely filed claim no. 1087 in the amount of \$75,415.00 (the "Modcomp Claim"), reflecting amounts due and owing by the Debtors under the Modcomp Agreement.

6. On or about January 26, 2011, the Debtors filed the Claims Objection, which seeks to expunge the Modcomp Claim, among other claims.

7. The sole apparent basis for the relief sought in the Claims Objection as it relates to Modcomp is that the Debtors assumed and assigned the Modcomp Agreement to New GM under the terms of a Master Purchase Agreement (as defined in the Claims Objection) and, as a consequence, that New GM assumed all of the Debtors' liabilities under and in connection with the Modcomp Agreement, including the obligation to cure the Modcomp Claim. Claims Objection ¶ 11.

8. For the reasons hereinafter set forth, the relief requested in the Claims Objection should be denied as it relates to the Modcomp Claim.

RELIEF REQUESTED AND THE REASONS THEREFOR

9. The Claims Objection is predicated on the Debtors' assertion that "[p]ursuant to the Master Purchase Agreement, New GM has assumed all liabilities and obligations related to purchased contracts or assumed executory contracts," Claims Objection at ¶ 11, and that the Modcomp Claim is an assumed liability of New GM.

10. The Debtors are mistaken for two separate reasons. First, this Court's approval of the Master Purchase Agreement and the sale of the Debtors' assets to New GM thereunder did not occur until July 5, 2009. As set forth above, the Modcomp Agreement expired by its terms on June 30, 2009, six days prior to the approval of the sale. In this regard, Modcomp respectfully requests the Court to note that the Term is clearly specified on the face of the Modcomp Agreement and that such contract expired by its terms prior to the sale of the Debtors' assets to New GM.

11. As such, the Debtors had no rights in or under the Modcomp Agreement as of the expiration of the Term on June 30, 2009, and no executory contract existed within the meaning of § 365 of the Bankruptcy Code as of the sale date. For this reason, the Debtors could not have assumed and assigned the Modcomp Agreement since there was no valid, enforceable agreement between the parties for the Debtors to assign.

12. Secondly, and no less critically, despite the Debtors' allegations that the Modcomp Agreement had been assumed and assigned to New GM, New GM takes a contrary position. Annexed hereto and made a part hereof as Exhibit "B" is a letter from New GM to Modcomp disclaiming **any** liability with respect to the Modcomp Claim and

denying that the Modcomp Agreement had in fact been assumed and assigned in the context of the sale. In pertinent part, the letter states, “Since the invoices for which you are seeking payment from GM relate to the period prior to the Petition Date and do not constitute claims that were addressed in connection with the assumption by MLC and assignment to GM of executory contracts, these claims must be brought to the attention of MLC.”

13. New GM’s disclaimer of liability to Modcomp is material to the resolution of the Claims Objection. Since mid-2009, Modcomp has attempted to recover the amount of the Modcomp Claim from New GM based upon the Debtors’ assertions that New GM undertook financial responsibility following the asset sale. Employees and representatives of New GM have repeatedly advised Modcomp’s counsel that the Modcomp Agreement was not an executory contract which had in fact had been assumed and assigned to New GM or an “assumed liability” within the meaning of the Master Purchase Agreement.

14. This position is borne out on the face of the Modcomp Agreement itself since that instrument expired by its terms prior to the sale, as set forth above.

15. Under Section 365(a) of the Bankruptcy Code, a debtor may assume or reject any executory contract, subject to bankruptcy court approval. For purposes of Section 365(a), an “executory contract” is a contract under which the obligations of both the debtor and the non-debtor party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing the performance of the other. In re Wireless Data, 547 F.3d 484 (2d Cir. 2008); In re Penn Traffic Co., 524 F.3d 373 (2d Cir. 2008). As a result, in order for the Modcomp

Agreement to be “executory” within the meaning of the statute, it had to be enforceable against Modcomp as of the date of the Debtors’ purported assumption and assignment of the Modcomp Agreement to New GM.

16. As this Court has previously held, when an executory contract has terminated in accordance with its terms, the bankruptcy court is not authorized to reinstate the contract for purposes of a debtor’s assumption or rejection. In re Comp III, Inc., 136 B.R. 636 (Bankr. S.D.N.Y. 1992); In re E.C. Ernst, Inc., 24 B.R. 192 (Bankr. S.D.N.Y. 1982) (holding that contract which is no longer executory cannot be rejected by debtor-in-possession).

17. Where, as here, the contract expired by its terms after the Petition Date, it is not executory and thus not susceptible to assumption or rejection under Section 365. In re Child World, Inc., 147 B.R. 847, 852 (Bankr. S.D.N.Y. 1992), citing, Gloria Manufacturing Corp. v. International Ladies Garment Workers’ Union, 734 F.2d 1020 (4th Cir. 1984); In re Government Securities Corp., 101 B.R. 343 (Bankr. S.D. Fla. 1989), affirmed 972 F.2d 328 (11th Cir. 1992); In re Pesce Baking Co., Inc., 43 B.R. 949, 957 (Bankr. N.D. Ohio 1984).

18. The Claims Objection places Modcomp in a position which is both unfair and untenable. On one hand, the Debtors assert that the Modcomp Agreement was assumed and assigned, with financial responsibility for the Modcomp Claim having passed to New GM upon the approval of the sale. On the other hand, New GM disavows any and all liability with respect to the Modcomp Claim, asserting instead that the Modcomp Agreement was not among those executory contracts which were assumed and assigned in connection with the asset sale transaction.

19. To the extent that this Court grants the claims objection as it relates to the Modcomp Claim, Modcomp will effectively be without a remedy or a source of recovery for its claim. Because the Debtors are not contesting the amount or validity of the Modcomp Claim, such claim should be allowed pursuant to Section 502 of the Bankruptcy Code in the absence of an order of this Court determining that the Modcomp Agreement was in fact assumed and assigned to New GM and directing New GM to satisfy such claim in full.

20. In view of the fact that the Modcomp Agreement could not have been assumed and assigned after the expiration of the Term, however, Modcomp respectfully submits that the entry of an order expunging and disallowing the Modcomp Claim would be both inequitable and inappropriate as a matter of law. For the foregoing reasons, the Claims Objection should be denied as it relates to the Modcomp Claim.

CONCLUSION

For the reasons hereinabove set forth, the Claims Objection should be overruled as it relates to the Modcomp Claim, and the Modcomp Claim should be allowed as a general unsecured claim against the Debtors pursuant to Section 502 of the Bankruptcy Code.

Dated: February 21, 2011

KLEHR | HARRISON | HARVEY |
BRANZBURG LLP

By: 

Jeffrey Kurtzman (JK7689)
1835 Market Street, Suite 1400
Philadelphia, PA 19103
(215) 569-4493

- and -

Raul Gastesi, Jr., Esquire
Gastesi & Associates, P.A.
8105 NW 155th Street
Miami Lakes, FL 33016

Attorneys for Modcomp, Inc.

EXHIBIT "A"

Hardware Maintenance Agreement

6 MONTH SHORT TERM

MODCOMP, Inc.
1500 South Powerline Road
Deerfield Beach, Florida 33442
Tel 954 571-4602
Fax 954 571-4702

Engineering Support Agreement

Number CTR0065

Site I.D. Multi Sites

Commencement Date 01/01/09 TO 06/30/09

Customer Name and Billing Address:

GM - POWERTRAIN

ACCOUNTS PAYABLE

GM FINANCIAL SHARED SERVICES

c/o OLIMPIC RECEIPTING

PHOENIX AZ 85082-3490

Contact: _____

Phone No. _____

Customer Name and Installation Address:

GM-POWERTRAIN

JOE DITRAPANI MC 483-710-106

POWERTRAIN ENG BLDG 2

30003 VAN DYKE AVENUE

WARREN MI 48090-9060

Contact: JOE DITRAPANI

Phone No. 248 388-9937

"Customer" enters into this Agreement with MODCOMP, Inc. (hereinafter "MODCOMP") whereby MODCOMP will furnish the maintenance services to Customer at the monthly charges indicated therein, and subject to the Terms and Conditions (hereinafter referred to as the "Agreement") set forth on the face, reverse side of, or attached to, this Agreement.

TOTAL MONTHLY AMOUNT: \$15,083

Customer: GM - POWERTRAIN

By Authorized
Signature: _____

Name: _____
(Print or Type)

Title: _____
(Print or Type)

Date: _____

MODCOMP, Inc.

By Authorized
Signature:  _____

Name: Ron Cook
(Print or Type)

Title: VP Operations
(Print or Type)

Date: 10/09/07

**EQUIPMENT LIST
FOR
GENERAL MOTORS CORPORATION
DETROIT DIESEL ENGINES
37350 ECORSE ROAD
ROMULUS, MI. 48174-1376**

Description	Maintenance	
	Monthly Amount	6 Months Amount
SUMMARY PAGE		
STANDARD FULL SERVICE Monday through Friday 0800-1700		
DN03 (ED03)	\$ 883	\$ 5,298
DN04 (ED04)	849	5,094
DN05 (ED05)	883	5,298
DN06 (ED06)	849	5,094
EN01 (EE01)		\$ -
EN02 (EE02)		\$ -
EN03 (EE03)	849	5,094
EN04 (EE04)	849	5,094
EN05 (EE05)	849	5,094
EN06 (EE06)	849	5,094
ES01 (EE07)	849	5,094
ES02 (EE08)	849	5,094
ES03 (EE09)	849	5,094
ES04 (EE10)	849	5,094
ES05 (EE11)	849	5,094
ES06 (EE12)	849	5,094
SAT SD1	1,393	8,358
SAT SD2	1,346	8,076
SAT SE1	1,351	8,106
SAT SE2	1,420	8,520
NSC NSD	1,309	7,854
NSC NSE	1,309	7,854
DEVELOPMENT SDS	1,223	7,338
MAINTENANCE MNT	749	4,494
TOTAL MONTHLY CHARGE	\$ 22,054	\$ 132,324
Customer Appreciation Certification Disc	(8,822)	(52,930)
Total Maintenance	\$13,232	\$79,394
OPTION 1: Full Service Maintenance with Line Drivers/REC'R and A/B Switches	1,133	6,798
OPTION 2: AVCO Front End and Tustin MUX		0
Note 1: GM Will Provide or Fund Test Fixtures for Option 2		
Total Including Options	\$14,365	\$86,192
6 month short term contract	\$718	\$4,308
Monthly Total	\$15,083	\$90,500

CONTRACT NO. CTR0065
CONTRACT TERM 01/01/2008 TO 12/31/2009

Ron Cook

From: arnold.discher@gm.com
Sent: Thursday, November 20, 2008 9:34 AM
To: Ron Cook
Subject: Fw: info needed

Ron

I faxed you a copy of the po this morning - please verify receipt ✓

Arnie Discher
GM Global Purchasing
313-667-1003 ph
313-667-4622 fax

----- Forwarded by Arnold Discher/C/US/GM/GMC on 11/20/2008 09:32 AM -----

Arnold Discher/C/US/GM/GMC

To "Ron Cook" <RCook@modcomp.com>

cc Joe DiTrapani/US/GM/GMC@GM

11/19/2008 12:52 PM

Subject RE: info needed [Link](#)

Ron,

Alteration po# TCS85231-002 issued today to cover the additional 6 months. I will fax you a copy tomorrow.

Thank you,

Arnie Discher
GM Global Purchasing
313-667-1003 ph
313-667-4622 fax

"Ron Cook" <RCook@modcomp.com>

To <arnold.discher@GM.Com>

cc

11/11/2008 03:06 PM

Subject RE: info needed

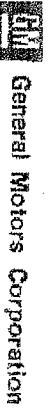
Hi Arnie,

Attached are the updated documents you requested. Please have someone sign the cover sheet and return a copy to me. If you have any questions please email or call me. Thank you.

Regards,

Ron Cook
MODCOMP, Inc.
Phone: 954-571-4602

2/18/2011



General Motors Corporation

GENERAL MOTORS CORP.,
GLOBAL PURCHASING
200 RENAISSANCE CENTER
BOX 200 M/C 482-B29-D84
DETROIT MI
48265-2000

VENDOR NUMBER 17-633-5420
MODCOMP INC
1500 S POWERLINE RD
DEERFIELD BEACH FL
33442-8162

SHIP TO:
GM - POWERTRAIN DIVISION
ROMULUS ENGINEERING CENTER
37350 ECRORSE RD
DOCK 1
ROMULUS MI
48174-1376

INVOICE TO:
INVOICE FOR SERVICE, MACHINERY
& EQUIP ONLY. QUESTIONS TO:
CUSTOMER SERVICE: GM FSS ABP
MAIL INVOICE: GM FSS ABP
PO BOX 63490, PHOENIX AZ
85082-3490

THE WORD IS IN HANDS WITH MUTUAL ACCEPTANCE SHOULD BE OBTAINED AT APPROVED POINT COPY WHICH SHOULD BE
RETURNED TO BUYER.
ON THE RETURN COPY, PLEASE SIGN THE TERMS AND CONDITIONS TO WHICH YOU AGREE BY SIGNATURE OF THE BUYER.
IF YOU RETURN THE ORDER WITHOUT SIGNATURE, IT WILL BE TREATED AS A COUNTER OFFER. THE BUYER'S SIGNATURE IS REQUIRED TO COMPLETE THE ORDER.
IF GOVERNMENT CONTRACT NUMBER IS SHOWN HEREON, ADDITIONAL TERMS AND CONDITIONS
ATTACHED HERETO APPLY.

PAYMENT TERMS
NET 2ND DAY OF 2ND MONTH

PURCHASE PAGE 1 11/20/2008

ORDER: TCS85231 002

A L T E R A T I O N ###
This Number Must Appear On All Invoices, Packing Slips,
Packages and Bills of Lading.
(2) copies of your packing slip must accompany each shipment.
Item Identification Number(s) must be shown on Packing Slips and
Invoices.
Invoice Attn: Accounts Payable
Do not Declare Valuation of Express Shipments or Insure Parcel
Post.

ORDER DATE 12/20/05
ALTERNATION ISSUE DATE 11/19/08
ALTERNATION EFFECTIVE DATE 11/19/08

SHIP VIA UNITED PARCEL SERVICE

PHONE: 313-667-1003
A DISCHER
PA02 BUYER

Mark
PURCHASING AGENT

ITEM SEQUENCE	QUANTITY ORDERED	ITEM IDENTIFICATION NO.	MOQ/M NAME	DESCRIPTION	REQ NUMBER	DATE REQUIRED	TAX CODE %	BASE UNIT PRICE	PRICE PER MULTIPLE	UNIT
0003	6	PRWX0242 001	### THIS ITEM HAS BEEN ADDED ###	HARDWARE MAINTENANCE WITH LINE DRIVERS/RECEIVERS, A/B SWITCHES, AVCO FRONT END, AND JUSTIN MUX JOSEPH DITRAPANI (248) 388-9937 DELIVER TO: ERIC EYLER 37350 ECRORSE RD ROMULUS, MI 48174 WHO ORDERED: (248) 388-9937		12/31/08	C 0.00%	15083.0000		MO
0004	20	PRWX0242 002	### THIS ITEM HAS BEEN ADDED ###	ASSISTANCE BY MODCOMP WITH IDENTIFYING OF AVCO POWER SUPPLY, PROCESSOR OR FRONT-END BOARD PROBLEMS JOSEPH DITRAPANI (248) 388-9937 WHO ORDERED: (248) 388-9937		12/31/08	C 0.00%	250.0000		HRS

EXHIBIT "B"



General Motors North American Operations

Recent Inquiry Concerning Payment for Claims for Goods Shipped or Services Rendered Prior to June 1, 2009

Dear Supplier:

This letter is in follow-up to your recent inquiry concerning claims for payment for invoices relating to goods shipped to or services performed for the former General Motors Corporation, now known as Motors Liquidation Company ("MLC") prior to June 1, 2009 (the "Petition Date"). On the Petition Date, MLC commenced a voluntary Chapter 11 bankruptcy proceeding in the United States District Court for the Southern District of New York (the "Bankruptcy Court"). On July 5, 2009, the Bankruptcy Court approved MLC's sale of certain of its assets to a United States Treasury-sponsored purchaser and that entity is now known as General Motors LLC ("GM"). Since the invoices for which you are seeking payment from GM relate to the period prior to the Petition Date and do not constitute claims that were addressed in connection with the assumption by MLC and assignment to GM of executory contracts, these claims must be brought to the attention of MLC.

MLC maintains an official website at www.motorsliquidation.com and we encourage you to visit that website where you can obtain further information concerning the processing of your claim. The website indicates that parties with claims-related questions concerning Motors Liquidation Company can email claims@motorsliquidation.com or call (800) 414-9607. The information contained in this letter does not constitute legal advice, but is instead to be used for informational purposes only.

Thank you for your inquiry.

1033368737019-0000402808984

Arnold,

The MLD debits indicate the items in question are pre-petition and have been rejected as payable by GM with a referral to MLC. Attached is one of the documents on one of the debits that contains a letter the supplier should have received (I can pull the other documents if needed, they all contain the entry form and letter indicating the invoice was rejected to MLC). The letter has the contact information for the supplier on how to follow up with MLC for further information on these items. These items cannot be paid from DACOR due to this reason.

Please let me know if you have any further questions.

(See attached file: ImageServlet.pdf)

Thank you,

Jason Byrne
Service Delivery Manager 1
Finance & Accounting Outsourcing
ACS, A Xerox Company
(602) 797-5193 (work phone)
(602) 797-6569 (work fax)

lee.perez@gm.com@
SMTP@Exchange

01/04/2011 11:30
AM

Jason Byrne/PAPAGO@ACS, LaKesha
Welch/PAPAGO@ACS

To

arnold.discher@gm.com@SMTP@Exchange
Subject

cc

Fw: Modcomp v. GM

Jason and LaKesha,
Based on a vme I received from Arnie he stated supplier was effected by bankruptcy. Can you or a team member review and advise Arnie?

Adalila Pérez (Lee)
General Supervisor - SME
GFSS Disbursement Services & Invoice Processing

email: lee.perez@gm.com
phone: 313.667.7353

GFSS Web Site: <http://comptroller.gm.com/fss/index.html>

Goal: Create positive, lasting relations with customers, dealers, communities, union partners and suppliers to drive our operating success.

----- Forwarded by Lee Perez/US/GM/GMC on 01/04/2011 01:26 PM -----

From: Arnold Discher/C/US/GM/GMC
To: Lee Perez/US/GM/GMC@GM
Date: 01/03/2011 01:52 PM
Subject: Fw: Modcomp v. GM

Lee,

Please find some attachments and correspondence from ModComp as well as an attachment looking at DayCor - could you let me know how we can get these payments kicked loose.

Here is the "unpaid" report out of e-dacor ran this morning(12/22)-

Arnie

Arnold Discher
GM Global Purchasing
313-667-1003 desk ph
586-441-8942 cell ph
313-667-4678 fax

----- Forwarded by Arnold Discher/C/US/GM/GMC on 01/03/2011 01:47 PM -----

From: "Marilibes Izquierdo" <mizquierdo@gastesi.com>
To: <arnold.discher@gm.com>
Date: 12/22/2010 10:05 AM
Subject: Modcomp v. GM

Attached please find correspondence and enclosure with reference to the subject case.

Marilibes Izquierdo
Legal Assistant
Gastesi & Associates, P.A.
8105 N.W. 155th Street
Miami Lakes, Florida 33016
Tele: 305-818-9993
Fax: 305-818-9997
Email: mizquierdo@gastesi.com

Modcomp v. GM

Marilibes Izquierdo

to:
arnold
.disch

Jeffrey Kurtzman, Esquire (7689)
KLEHR | HARRISON | HARVEY | BRANZBURG, LLP
1835 Market Street, Suite 1400
Philadelphia, PA 19103
Telephone: 215-569-4493
Facsimile: 215-568-6603

Attorneys for Modcomp, Inc.

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

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

CERTIFICATE OF SERVICE

I, Jeffrey Kurtzman, Esquire, hereby certify that I served a true and correct copy of the foregoing Response of Modcomp, Inc. to Debtors' 160th Omnibus Objection to Claims via first class mail, postage prepaid upon the following:

Weil, Gotshal & Manges LLP
767 5th Avenue
New York, NY 10153
Attn.: Harvey R. Miller, Esquire
Stephen Karotkin, Esquire
Joseph H. Smolinsky, Esquire

Motors Liquidation Company
401 South Old Woodward Avenue
Suite 370
Birmingham, MI 48009
Attn: Thomas Morrow

General Motors LLC
400 Renaissance Center
Detroit, MI 48265
Attn: Lawrence Buonomo, Esquire

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

United States Treasure
1500 Pennsylvania Avenue, NW
Room 2312
Washington, DC 20220
Attn: Joseph Samarias, Esquire

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

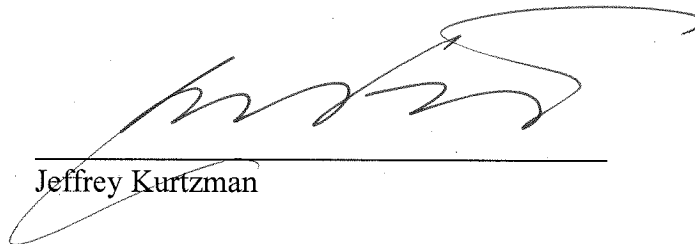
Kramer, Levin, Noftalis & Frankel, LLP
77 Avenue of the Americas
New York, NY 10036
Attn: Thomas Moers Mayer, Esquire
Robert Schmidt, Esquire

Office of the United States Trustee of the
Southern District of New York
33 Whitehall Street, 21st Floor
New York, NY 10004
Attn: Tracy Hope Davis, Esquire

U.S. Attorneys' Office
86 Chamber Street, 3rd Floor
New York, NY 10007
Attn: David S. Jones, Esquire
Natalie Kuehler, Esquire

Caplin & Drysdale, Chartered
375 Park Avenue, 35th Floor
New York, NY 10152-3500
Attn: Rita C. Tobin, Esquire

Stutzman, Bromberg, Esserman & Plifka
2323 Bryan Street, Suite 2200
Dallas, TX 75201
Attn: Sander L. Esserman, Esquire
Robert T. Brousseau, Esquire



Jeffrey Kurtzman