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

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<b>In re</b>	:	<b>Chapter 11 Case No.</b>
	:	
<b>MOTORS LIQUIDATION COMPANY, et al.,</b>	:	<b>09-50026 (REG)</b>
<b>f/k/a General Motors Corp., et al.</b>	:	
	:	
<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
	:	
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**DEBTORS' REPLY TO RESPONSE OF SHERIF R. KODSY OPPOSING  
OMNIBUS OBJECTION TO INCORRECTLY CLASSIFIED CLAIMS**  
**(Omnibus Objection No. 98)**

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

Motors Liquidation Company (f/k/a General Motors Corporation) and its affiliated debtors, as debtors and debtors in possession (collectively, the “**Debtors**”),<sup>1</sup> file this reply (the “**Reply**”) to the Responses (defined below) interposed to the 98th Omnibus Objection to Incorrectly Classified Claims (the “**98th Omnibus Objection**”), and respectfully represent:

<sup>1</sup> The Debtors are MLC (f/k/a General Motors Corporation) (“**MLC**”), 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.), Remediation and Liability Management Company, Inc. (“**REALM**”), and Environmental Corporate Remediation Company, Inc.

### **Preliminary Statement**

1. On September 21, 2010, the Debtors filed the 98th Omnibus Objection (ECF No. 7050), which initially was scheduled to be heard on October 26, 2010 at 9:45 a.m. Prior to that hearing, the Debtors received two responses (collectively, the “**Responses**,” and the parties filing Responses, the “**Responding Parties**”) to the 98th Omnibus Objection. As the Debtors worked to resolve these Responses consensually, the hearing was repeatedly adjourned and claimants were informed that unresolved Responses would be set for hearing at a later date. Under the *Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c) and 9007 Establishing Notice and Case Management Procedures*, as amended (ECF No. 8360), replies are to be filed no later than three business days prior to the hearing on the objection. Accordingly, the Debtors did not file a reply, but continued to speak with the Responding Parties in an attempt to consensually resolve the issues raised in their Responses.

2. Although the Debtors are continuing to work toward a consensual resolution with one of the Responding Parties, the other, Sherif R. Kodsy, was not receptive to the Debtors’ explanation regarding the basis for the relief requested in the 98th Omnibus Objection. A hearing to address Mr. Kodsy’s Response has been scheduled for April 26, 2011 at 9:45 a.m. (Eastern Time).

3. With respect to the Response of Mr. Kodsy (ECF No. 7309), the Debtors reiterate their position that the claim asserted by Mr. Kodsy, as reflected in proof of claim number 69683 (the “**Kodsy Claim**”), is not entitled to its alleged secured status and should be reclassified as a general unsecured claim.

### **The Kodsy Claim Should Be Reclassified as an Unsecured Claim**

4. Section 506(a) of the Bankruptcy Code defines a “secured claim,” in relevant part, as an “allowed claim of a creditor secured by a lien on property in which the estate

has an interest, or that is subject to setoff under section 553 . . . to the extent of the value of such creditor's interest in the estate's interest in such property." 11 U.S.C. § 506(a).

5. On January 4, 2010, Mr. Kodsy asserted in a proof of claim, a copy of which is annexed hereto as **Exhibit "A,"** a secured claim against REALM in the amount of \$15 million for "personal injury, conspiracy, fraud, gross negligence, strict liability, [and] punitive damages." The proof of claim form alleges that the Kodsy Claim is secured by a lien on a "Motor Vehicle" and "Other" property, but provides no further information on the alleged security interests. On September 21, 2010, the Debtors sought to reclassify the Kodsy Claim as a general unsecured claim pursuant to the 98th Omnibus Objection to Claims because such claim is not secured by property of the Debtors' estates.

6. On September 30, 2010, the claimant, acting *pro se*, filed a Response that contained numerous factual allegations and legal conclusions regarding the underlying claim, including new, and baseless, accusations of discrimination, perjury, and bribery. The claimant also asserted that the Debtors recognized the Kodsy Claim as secured and, therefore, the 98th Omnibus Objection was made in bad faith. Specifically, the claimant argued that the Kodsy Claim "was previously not objected to, by Motors Liquidation Company or the General Motors Company, as it was a recognized secured claim, 'claim #69683', until now, and the Debtor's [sic] do not now allege a reason why [they] should not pay [their] claimant as it is their obligation to do so for [their] product defect and for the injuries [they] caused. This claim was previously secured correctly without an objection." (Kodsy Response at 4–5.) The Response further asserts that the Debtors "are without a viable objection as they do not outline causes of action or a basis for an objection, besides their bad faith motion of an omnibus objection and it should not be granted in the instant claim. All material data to prove the claim herein was

previously approved and was secured by debtors.” (Id. at 5.) The claimant’s Response includes a proposed order whereby the Court would grant summary judgment on the Kodsy Claim.

7. The Debtors’ counsel worked with the claimant in an attempt to submit the Kodsy Claim to the Court-approved alternative dispute resolution procedures. In December 2010, after considerable negotiation, the Debtors sent a letter to the claimant accepting his proposal that the Kodsy Claim would be capped at \$9.5 million and would be deemed an unsecured claim. Shortly thereafter, however, the claimant stated that he did not receive the acceptance letter and would no longer agree to cap the Kodsy Claim.

8. The Debtors continue to stand by the position, as articulated in the 98th Omnibus Objection to Claims, that the Kodsy Claim is not entitled to secured status because it is not secured by property of the Debtors’ estates. Although the claimant checked boxes on the proof of claim form indicating that the claim was secured by liens on a “Motor Vehicle” and “Other” property, no support for, or evidence of, security interests in any of the Debtors’ property was provided in either the proof of claim or the claimant’s Response. The claimant completely fails to identify any lien securing the Kodsy Claim, and, indeed, the Debtors are aware of no such lien.

9. Moreover, the claimant’s assertions that the Debtors recognized the Kodsy Claim as secured are misguided or blatantly false. The claimant states that the Kodsy Claim was recognized as proof of claim number 69683 without an objection and, therefore, was secured. In making this argument, the claimant clearly mistakes the “recognition” necessary for the administrative tasks of assigning a claim number and compiling a claims register for allowance of a claim or its alleged secured status. Such administrative actions have no bearing on whether

the Kodsy Claim is properly considered a secured claim under section 506 of the Bankruptcy Code, and the claimant's conclusion is entirely without basis.

10. The claimant is also misguided in his assertion that the Debtors "are without a viable objection as they do not outline causes of action or a basis for an objection, besides their bad faith motion of an omnibus objection . . . ." (Kodsy Response at 5.) To begin, the claimant's accusation of bad faith on the part of the Debtors is completely unsubstantiated. The Response identifies no specific bad faith conduct by the Debtors except for requesting relief that the claimant now opposes. Moreover, the Debtors determined the Kodsy Claim was not entitled to secured status in the course of their ongoing claim review process and included the Kodsy Claim among the claims to be reclassified pursuant to the 98th Omnibus Objection to Claims. Thus, the Debtors' good faith in objecting to the Kodsy Claim is manifest, and the claimant's unsupported accusation to the contrary is insufficient to establish bad faith or preclude the Debtors' request to reclassify the claim as unsecured, subject to further objection on substantive grounds.

11. Moreover, an objection refuting at least one of a claim's essential allegations, such as entitlement to secured status, shifts the burden to demonstrate the validity of the claim onto the claimant. *See In re Oneida, Ltd.*, 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009), *aff'd*, No. 09 Civ. 2229, 2010 WL 234827 (S.D.N.Y. Jan. 22, 2010); *In re Adelpia Commc'ns Corp.*, Ch. 11 Case No. 02-41729, 2007 Bankr. LEXIS 660, at \*15 (Bankr. S.D.N.Y. Feb. 20, 2007). Here, the claimant's Response completely fails to satisfy the claimant's burden because it provides no support for the position that the Kodsy Claim is secured by liens on property in which the Debtors have an interest. Accordingly, the Court should grant the order reclassifying

the Kody Claim as a general unsecured claim in its entirety, subject to the Debtors' continuing right to object to the Kody Claim on substantive grounds.

**Conclusion**

WHEREFORE, for the reasons set forth above, the Debtors respectfully request that the Court reclassify the Kody Claim as requested in the 98th Omnibus Objection and grant such other and further relief as is just.

Dated: New York, New York  
March 22, 2011

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UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PROOF OF CLAIM

Name of Debtor (Check Only One) Case No
[X] Remediation and Liability Management Company, Inc (subsidiary of General Motors Corporation) 09-50029 (REG)
[ ] Environmental Corporate Remediation Company, Inc (subsidiary of General Motors Corporation) 09-50030 (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)
Name and address where notices should be sent
SHERIF RAFIK KODSY
15968 LAUREL OAK CIRCLE
DEL RAY Bch. FL 33484
Telephone number 561-6660237
Email Address

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

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.

Name and address where payment should be sent (if different from above)
FILED - 69683
MOTORS LIQUIDATION COMPANY
F/W/A GENERAL MOTORS CORP
SDNY # 09-50026 (REG)
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

1 Amount of Claim as of Date Case Filed, October 9, 2009 \$ 15,000,000.00
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 PERSONAL INJURY - CONSPIRACY - FRAUD - GROSS NEGLIGENCE - STRICT LIABILITY

Specify the priority of the claim
Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B)

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

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)

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 [X] Motor Vehicle [ ] Equipment [X] 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 \$

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)

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

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 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.
Sherif R. Kody

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