

PLEASE TAKE NOTICE that upon the annexed Memorandum of Law in Support of Motion to Approve Settlement Agreement Between the Debtors and the United States, dated March 7, 2012, of the United States of America (the “**United States**”), a hearing (the “**Hearing**”) to consider the Motion 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 **March 29, 2012 at 9:30 a.m. (Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses 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-399 (which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)) by registered users of the Bankruptcy Court's filing system, and (b) by all other parties in interest, on a CD-ROM or 3.5 inch disk, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399 and on (i) Weil, Gotshal & Manges LLP, attorneys for the GUC Trust, 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 Motors Liquidation Company, 401 South Old Woodward Avenue, Suite 370, Birmingham, Michigan 48009 (Attn: Thomas Morrow); (iii) General Motors, LLC, 400 Renaissance Center, Detroit, Michigan 48265 (Attn: Lawrence S. Buonomo, Esq.); (iv) 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.); (v) the United States Department of the Treasury, 1500 Pennsylvania Avenue NW, Room 2312, Washington, D.C. 20220 (Attn: Joseph Samarias, Esq.); (vi) 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.); (vii) Kramer Levin Naftalis & Frankel LLP, attorneys for the statutory committee of unsecured creditors, 1177 Avenue of the Americas, New York, New York 10036 (Attn: Thomas Moers Mayer, Esq., Robert Schmidt, Esq., Lauren Macksoud, Esq., and Jennifer Sharret, Esq.); (viii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall

**PLEASE TAKE FURTHER NOTICE** that if no responses are timely filed and served with respect to the Motion, the United States may, on or after the Response Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered with no further notice or opportunity to be heard offered to any party.

Dated: New York, New York  
March 7, 2012

PREET BHARARA  
United States Attorney for the  
Southern District of New York  
Attorney for the United States of America

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**Hearing Date and Time: March 29, 2012 at 9:30 a.m. (ET)**  
**Objection Deadline: March 22, 2012**

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

In re:

MOTORS LIQUIDATION COMPANY *et al.*,f/k/a GENERAL MOTORS CORP. *et al.*,

Debtors.

## Chapter 11

Case No. 09-50026 (REG)

Jointly Administered

**UNITED STATES' MEMORANDUM OF LAW IN SUPPORT OF ITS  
MOTION TO APPROVE SETTLEMENT AGREEMENT  
BETWEEN THE DEBTORS AND THE UNITED STATES OF AMERICA**

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## PRELIMINARY STATEMENT

The United States of America (the “**United States**”), on behalf of the United States Environmental Protection Agency (“**EPA**”), respectfully submits this memorandum of law in support of its Motion for an Order Approving the Consent Decree and Settlement Agreement between the United States of America and the Debtors (the “**Non-Owned Site Settlement Agreement**” or “**Settlement Agreement**”). The proposed Settlement Agreement resolves environmental liabilities of the Debtors asserted by the United States on behalf of EPA, under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“**CERCLA**”), 42 U.S.C. §§ 9601 – 9675, for response costs in connection with three hazardous waste sites and facilities in New Jersey, Maryland, and Missouri (the “**Settled Non-Owned Sites**”). Under the Settlement Agreement, the United States, on behalf of EPA, will receive an allowed general unsecured claim in the total amount of \$20,902,000. In addition, the United States, on behalf of EPA, will receive work up to the amount of \$2,896,334 million in accordance with bond requirements. The proposed Settlement Agreement is annexed as Exhibit 1.

Pursuant to federal environmental laws, public notice of the proposed Settlement Agreement was published in the Federal Register, 77 Fed. Reg. 23 at 5569 (February 3, 2012), (the “**Federal Register Notice**”). The United States received no comments concerning the Settlement Agreement.

Under prior orders of this Court, the Motors Liquidation GUC Trust and the Debtors’ estates are authorized to enter this agreement without obtaining the Court’s approval under Bankruptcy Rule 9019, because the resolved claim amount is less than \$50 million. *See In re Motors Liquidation Co.*, Ch. 11 Case No. 09-50026 (REG), Findings of Fact, Conclusions of Law, and Order Pursuant to Sections 1129(a) and (b) of the Bankruptcy Code and Rule 3020 of

the Federal Rules of Bankruptcy Procedure Confirming Debtors' Second Amended Joint Chapter 11 Plan, dated March 29, 2011, Docket No. 9941 (Bankr. S.D.N.Y.). The Court's approval is required, however, under federal environmental laws. Such approval is warranted here. As explained more fully below, the United States has determined that the proposed Settlement Agreement is fair, reasonable and consistent with environmental law. The settlement was reached after lengthy negotiation of its terms among sophisticated counsel. In addition, the parties weighed the merits, costs, risks and delays that litigation would entail against the value of settlement.

The function of the Court in reviewing motions to approve environmental settlement agreements is not to substitute its judgment for that of the parties to the proposed Settlement Agreement but to confirm that the terms of the proposed Settlement Agreement are "fair and adequate and are not unlawful, unreasonable, or against public policy." *United States v. Hooker Chem. & Plastics Corp.*, 540 F. Supp. 1067, 1072 (W.D.N.Y. 1982), *aff'd*, 749 F.2d 968 (2d Cir. 1984). The Court should also confirm that the proposed Settlement Agreement is consistent with CERCLA's goals. *United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1426 (6th Cir. 1991). Finally, in conducting its review, the Court should be deferential to the United States' determination that the settlement is in the public interest. *United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990). Accordingly, for the reasons set forth herein, the United States respectfully requests that this Court approve and enter the proposed Non-Owned Site Settlement Agreement lodged with this Court on January 30, 2012.

## I. GENERAL STATUTORY/FACTUAL BACKGROUND

### A. CERCLA's Statutory Background

The environmental liabilities that are resolved by the Settlement Agreement derive from a single federal statute, CERCLA. CERCLA was enacted to provide a framework for cleaning up the nation's worst hazardous waste sites. The primary goal of CERCLA is to protect and preserve the environment and public health from the effects of releases or threatened releases of hazardous substances. *See* 42 U.S.C. § 9601(24); *New York v. Shore Realty Corp.*, 759 F.2d 1032, 1040 n.7 (2d Cir. 1985); *Voluntary Purchasing Groups, Inc. v. Reilly*, 889 F.2d 1380, 1386-87 (5th Cir. 1989); *O'Neil v. Picillo*, 682 F. Supp. 706, 726 (D.R.I. 1988), *aff'd*, 883 F.2d 176 (1st Cir. 1989); *Dedham Water Co. v. Cumberland Farms Dairy, Inc.*, 805 F.2d 1074, 1081 (1st Cir. 1986).

The Hazardous Substance Superfund, commonly known as the Superfund, was established pursuant to 26 U.S.C. § 9507 to finance federal response actions undertaken pursuant to section 104(a) of CERCLA, 42 U.S.C. § 9604(a). Although CERCLA authorizes cleanup of sites contaminated with hazardous substances using money provided by the Superfund, the Superfund is a limited source of funding intended for use only when responsible parties are not available to conduct or finance a site's cleanup. *See* S. Rep. No. 96-848, 96th Cong., 2d Sess. at 17-18 (1980), *reprinted in* 1 Sen. Comm. on Env't & Pub. Works, Legislative History of CERCLA 305, 324-25 (1983). The Superfund cannot finance cleanup of all of the many contaminated sites nationwide, so replenishment of expended Superfund monies is crucial to the continuing availability of funds for future cleanups. Thus, the United States is tasked with seeking to ensure that Potentially Responsible Parties (“PRPs”) perform site cleanups, or, when Superfund monies are expended by the federal government in response to a release or threatened

release of hazardous substances, that those monies are recovered from PRPs through the liability scheme set forth in section 107 of CERCLA. *See B.F. Goodrich Co. v. Murtha*, 958 F.2d 1192, 1197-98 (2d Cir. 1992) (one statutory purpose of CERCLA is to hold responsible parties liable for the costs of the cleanup).

Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), permits the United States to recover its costs of responding to releases of hazardous substances from PRPs. Pursuant to section 107(a), PRPs include the owners and operators of Superfund sites at the time of the disposal of hazardous substances at the sites, the current owners and operators of Superfund sites, as well as the generators and transporters of hazardous substances sent to Superfund sites. *See United States v. Alcan Aluminum Corp.*, 990 F.2d 711, 722 (2d Cir. 1993) (describing potential liability for generating hazardous wastes found at a Superfund site); *O'Neil*, 883 F.2d at 178 (distinguishing waste generators from waste transporters); *United States v. Monsanto*, 858 F.2d 160, 168-171 (4th Cir. 1988) (laying out the distinction between owner liability and generator liability).

Sections 104(a) and (b) of CERCLA, 42 U.S.C. § 9604(a)-(b), authorize EPA to use Superfund monies to investigate the nature and extent of hazardous substance releases from contaminated sites and to clean up those sites. Moreover, EPA may also issue unilateral administrative orders to PRPs that require them to clean up sites, may seek injunctive relief through a civil action to secure such relief, or may seek to reach agreements with PRPs through which one or more PRPs agree to perform the necessary cleanup of sites. *See* 42 U.S.C. §§ 9604, 9606, and 9622.

Having created the liability system and enforcement tools to allow EPA to pursue responsible parties for Superfund cleanups, Congress expressed a strong preference that the

United States settle with responsible parties in order to avoid spending resources on litigation rather than on cleanup. 42 U.S.C. § 9622(a).<sup>1</sup> CERCLA encourages settlements, *inter alia*, by providing parties who settle with the United States protection from contribution claims for matters addressed in the settlement. 42 U.S.C. § 9613(f)(2). This provision was designed to provide settling parties “with a measure of finality in return for their willingness to settle.”<sup>2</sup>

## **B. Procedural Background**

On June 1, 2009, General Motors Corp. (“**Old GM**”) and three wholly-owned direct or indirect subsidiaries (collectively the “**Debtors**”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, and on October 9, 2009, REALM and ENCORE each also filed voluntary chapter 11 petitions. On November 28, 2009, the United States timely filed proof of claim No. 64064, asserting environmental liabilities against the Debtors (the “**U.S. Proof of Claim**”). Most of the environmental liabilities asserted in the U.S. Proof of Claim have been resolved through prior settlement agreements, and a revised proof of claim against the Debtors was filed on April 8, 2011 (the “**Second U.S. Proof of Claim**”). This Settlement Agreement resolves the Debtors’ environmental liabilities at three of the remaining sites: the Diamond Alkali Site in New Jersey (the “**Diamond Alkali Site**”), the Kane & Lombard Street Drum Superfund Site in Maryland (the “**Kane & Lombard Site**”), and the Hayford Bridge Road Groundwater Superfund Site in Missouri (the “**Hayford Bridge Site**”).

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<sup>1</sup> See also *In re Cuyahoga Equip. Corp.*, 980 F.2d 110 (2d Cir. 1992) (citing *City of New York v. Exxon Corp.*, 697 F. Supp. 677, 693 (S.D.N.Y. 1988)); *United States v. DiBiase*, 45 F.3d 541, 545-46 (1st Cir. 1995); *United States v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1184 (3d Cir. 1994); *Akzo Coatings*, 949 F.2d at 1436; *Cannons Eng’g*, 899 F.2d at 92; H.R. Rep. No. 99-253, pt. 1, at 80 (1985), *reprinted in* 1986 U.S.C.C.A.N. 2862.

<sup>2</sup> *Cannons Eng’g*, 899 F.2d at 92; see also *United Techs Corp. v. Browning-Ferris Indus., Inc.*, 33 F.3d 96, 103 (1st Cir. 1994), *cert. denied*, 513 U.S. 1183 (1995); H.R. Rep. No. 99-253, pt. 1, at 80 (1985), *reprinted in* 1986 U.S. C.C.A.N. 2862.

The United States and Debtors engaged in intensive, arms'-length negotiations concerning the environmental liabilities at issue in the Settlement Agreement, assisted by retained environmental and economic consultants with expertise in environmental remediation issues. The parties reviewed and debated the significance of, among other things, available technical data and environmental and technical studies at the relevant sites, as well as other relevant literature and studies that shed light on issues raised at various sites. Negotiations involved repeated in-person meetings and many telephone conferences spanning several months. Ultimately, the parties concluded that the negotiated resolution represented a reasonable compromise of the parties' respective positions and the asserted strengths and weaknesses of EPA's claims at each site. The parties then negotiated the precise wording of the Settlement Agreement itself.

On January 30, 2012, the United States lodged the Settlement Agreement with this Court, and the proposed settlement was subject to a 30-day public comment period following the February 3, 2012, publication of notice of the Settlement Agreement in the *Federal Register*. *See 77 Fed. Reg. 23* (Feb. 3, 2012). The public comment period concluded on March 5, 2012. No comments were received.

### **C. The Settlement Agreement<sup>3</sup>**

#### **1. Allowed General Unsecured Claims**

The Non-Owned Site Settlement Agreement provides that the United States, on behalf of EPA, will receive an allowed general unsecured claim totaling \$20,902,000 to resolve Debtors'

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<sup>3</sup> This memorandum of law contains an abbreviated summary of the terms and provisions of the Settlement Agreement. If there is any conflict between the description of the settlement contained in this memorandum and the terms and provisions of the Settlement Agreement, the terms and provisions of the Settlement Agreement are controlling.

liabilities for contamination at the Diamond Alkali and Hayford Bridge Sites. The amount of the allowed claim for contamination at each site was determined, for settlement purposes, by taking into account: (1) estimated total past and future response costs; (2) the Debtors' estimated percentage allocation or fair share of liability for the site; and (3) litigation considerations. Based on these considerations, the United States will receive an allowed general unsecured claim of \$19,500,000 for the Diamond Alkali Site, and \$1,402,000 for the Hayford Bridge Site. In addition, the United States, on behalf of EPA, will receive work up to the amount of \$448,000 to address contamination at the Hayford Bridge Site and \$2,448,334 at the Kane & Lombard Site in accordance with respective bond requirements at each of these sites.

The Settlement Agreement further provides that the Debtors may reduce the distribution reserve amount to be used by the GUC Trust pursuant to Article VII of the Plan for the remaining unresolved general unsecured claims against Debtors asserted in the Second U.S. Proof of Claim to no less than \$200 million.

2. Environmental Claims Not Resolved by the Agreements

EPA reserves all rights against Debtors' estates and the GUC Trust with respect to all matters not specifically settled by the Non-Owned Site Settlement Agreement, including (i) all rights with respect to any site that is not a Settled Non-Owned Site; (ii) any criminal liability; (iii) any liability for damages for injury to, destruction of, or loss of natural resources; and (iv) any action to enforce the agreement.

3. Covenants Not to Sue and Contribution Protection

The Non-Owned Site Settlement Agreement provides Debtors' estates and the GUC Trust with covenants not to sue from EPA with respect to the Settled Non-Owned Sites. The Settlement Agreement also provides reciprocal covenants not to sue from Debtors' estates and

the GUC Trust for EPA. Finally, the Settlement Agreement provides the Debtors' estates and the GUC Trust with contribution protection for matters addressed therein as provided for by section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

## **II. ARGUMENT**

### **The Court Should Approve the Settlement Agreement Because It Is Fair, Reasonable, and Consistent With Environmental Law**

#### **A. Statement of Relief Requested**

The United States moves for approval under the environmental laws of the proposed Non-Owned Site Settlement Agreement. As explained below, the Debtors' Settlement Procedures Order (as defined below) does not require Court approval for settlements less than or equal to \$50 million, and the Court therefore need not analyze this motion under the rubric of Bankruptcy Rule 9019. However, under the environmental laws, the United States was required to provide notice and an opportunity for public comment on the proposed settlement, after which, if (as is true here), the Government concludes that the settlement should be approved, the United States must seek Court approval of the settlement under applicable environmental laws.

#### **B. Jurisdiction**

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.

#### **C. The Relief Requested Should Be Approved by the Court**

The Court should approve the proposed Settlement Agreement negotiated by the United States because it is fair, adequate, lawful, reasonable, and comports with public policy and the goals of CERCLA. Under the environmental laws, approval of a settlement agreement is a judicial act committed to the informed discretion of the Court. *In re Cuyahoga*, 908 F.2d at 118;

*Cannons Eng'g*, 720 F. Supp. at 1035. Judicial review of a settlement negotiated by the United States to protect the public interest is subject to special deference; the Court should not engage in “second-guessing the Executive Branch.” *Cannons Eng'g*, 899 F.2d at 84; *In re Cuyahoga*, 980 F.2d at 118 (noting the “usual deference given the EPA”); *New York v. Solvent Chem. Corp.*, 984 F. Supp. 160, 165 (W.D.N.Y. 1997) (“This Court recognizes that its function in reviewing consent decrees apportioning CERCLA liability is not to substitute its judgment for that of the parties to the decree but to assure itself that the terms of the decree are fair and adequate and are not unlawful, unreasonable, or against public policy.”) (internal quotation marks omitted). An evidentiary hearing is not required in order to evaluate a proposed CERCLA consent decree because such hearings would frustrate the statutory goal of expeditious settlement; hearing requests are therefore routinely and properly denied. *United States v. Charles George Trucking Inc.*, 34 F.3d 1081, 1085 (1st Cir. 1994); *Cannons Eng'g*, 899 F.2d at 94. This “limited standard of review reflects a clear policy in favor of settlements.” *Solvent Chem. Corp.*, 984 F. Supp. at 165.

As discussed below, the Court should approve the Non-Owned Site Settlement Agreement because it is fair, reasonable, in the public interest, and furthers the goals of CERCLA. *See Charles George Trucking*, 34 F.3d at 1084; *Cannons Eng'g*, 899 F.2d at 85; *Solvent Chem. Corp.*, 984 F. Supp. at 166; *Hooker Chem.* 540 F. Supp. at 1073 (“the task has been to examine the proposal and determine whether it is a fair and adequate settlement and whether its implementation will reflect concern for the problems for which Congress has enacted the various environmental statutes.”). The merit of this application is highlighted by the fact that no one has submitted adverse comments relating to the proposed Settlement Agreement during the notice and comment process, despite its being publicly docketed since January 30, 2012, in a

highly visible bankruptcy that is followed widely by the public and by the environmental and bankruptcy bar.

1. The Settlement Agreement Is Fair

The fairness criterion of a CERCLA settlement integrates both procedural fairness and substantive fairness. *Cannons Eng'g*, 899 F.2d at 86-88. To measure procedural fairness, the Court “should ordinarily look to the negotiation process and gauge its candor, openness, and bargaining balance.” *Id.* at 86. The proposed Settlement Agreement is procedurally fair because it was negotiated at arm’s length over many months, with good faith participation by governmental actors and parties who were represented by experienced counsel, and involved assistance by technical experts for both sides on matters such as estimating the cost of future response actions. *See id.* at 87 (finding a CERCLA settlement procedurally fair based on criteria including an arms-length negotiation, experienced counsel, and good faith participation by EPA).

To measure “substantive” fairness, the Court considers whether the settlement is “based upon, and roughly correlated with, some acceptable measure of comparative fault, apportioning liability . . . according to rational (if necessarily imprecise) estimates of how much harm each PRP has done.” *Id.* at 87; *see also United States v. Davis*, 261 F.3d 1, 24 (1st Cir. 2001); *Charles George Trucking*, 34 F.3d at 1087; *DiBiase*, 45 F.3d at 544-45. The proposed Settlement Agreement is substantively fair because the amount of the allowed claim for each site was determined by considering estimated total response costs and Debtors’ estimated percentage allocation of liability for the site, taking into account the existence of other PRPs, the circumstances under which the contamination occurred, and multiple other factors. Debtors’ liability at the Settled Non-Owned Sites formed the backdrop for lengthy negotiations between the parties regarding the nature, extent, and cost of the cleanup that will be required at the Settled

Non-Owned Sites, and the estimates of future response costs were determined after extensive discussions with environmental experts and/or EPA technical personnel overseeing the cleanup of the sites. The amount of the allowed claim and future work obligation for each site therefore represents a substantively fair resolution of the Debtors' liabilities taking into account the uncertainties and litigation risks involved.

2. The Settlement Agreement Is Reasonable

Courts evaluating the reasonableness of CERCLA settlements have considered three factors: (i) technical adequacy of the cleanup work to be performed; (ii) satisfactory compensation to the public for response costs; and (iii) the risks, costs, and delays inherent in litigation. *See Charles George Trucking*, 34 F.3d at 1085; *Cannons*, 899 F.2d at 89-90. Though the first prong of the reasonableness inquiry is not at issue in this settlement, as the Debtors are not performing any cleanup, the Settlement Agreement satisfies the other, necessarily intertwined, considerations relevant to reasonableness. As discussed above, the United States will receive an Allowed General Unsecured Claims totaling more than \$20.9 million and work up to the amount of \$2,896,334 in accordance with performance bond requirements.

These settlement terms satisfactorily compensate the public while reasonably balancing the strength of the United States' case against the Debtors, the Debtors' bankruptcy, and the need to recover funds for cleanup and minimize the expense and potential delay of protracted litigation. Accordingly, the proposed Settlement Agreement is reasonable.

3. The Settlement Agreement Is Consistent with the Goals of CERCLA

The primary goals of CERCLA are to "encourage prompt and effective responses to hazardous waste releases and to impose liability on responsible parties," and to "encourage settlements that would reduce the inefficient expenditure of public funds on lengthy litigation."

*In re Cuyahoga*, 980 F.2d at 119. The Settlement Agreement furthers these statutory goals. As discussed above, the proposed Settlement Agreement accounts for past and estimated future response costs at non-debtor-owned sites. The settlement further meets CERCLA's statutory goal of providing final resolution of liability for settling parties. Moreover, the proposed Settlement Agreement serves CERCLA's goal of reducing, where possible, the litigation and transaction costs associated with response actions, as well as the public policy favoring settlement to reduce costs to litigants and burdens on the courts. *See Solvent Chem. Corp.*, 984 F. Supp. at 165; *Hooker Chem.*, 540 F. Supp. at 1072.

WHEREFORE, the United States respectfully requests entry of the proposed order annexed as Exhibit 2 approving and entering the proposed Non-Owned Site Settlement Agreement.

Dated: New York, New York  
March 7, 2012

PREET BHARARA  
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Southern District of New York  
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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

MOTORS LIQUIDATION COMPANY *et al.*,

f/k/a GENERAL MOTORS CORP. *et al.*,

Debtors.

Chapter 11

Case No. 09-50026 (REG)

(Jointly Administered)

**CONSENT DECREE AND SETTLEMENT AGREEMENT BETWEEN  
THE DEBTORS AND THE UNITED STATES OF AMERICA**

**I. BACKGROUND**

WHEREAS, on June 1, 2009, Motors Liquidation Company (f/k/a General Motors Corporation) (“**MLC**”) and its affiliated debtors (collectively, the “**Initial Debtors**”), commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) before the United States Bankruptcy Court for the Southern District of New York (the “**Court**”), Case No. 09-50026 (REG);

WHEREAS, on October 9, 2009, two additional debtors, REALM and ENCORE (together with the Initial Debtors, the “**Debtors**”), commenced voluntary cases under chapter 11 of the Bankruptcy Code;

WHEREAS, the chapter 11 cases filed by the Initial Debtors, REALM and ENCORE have been consolidated for procedural purposes and are being administered jointly as Case No. 09-50026 (REG) (the “**Bankruptcy**”);

WHEREAS, the United States of America (the “**United States**”), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, on behalf of the United States Environmental Protection Agency (“**EPA**”), has alleged that MLC and/or affiliated Debtors are

potentially responsible or liable parties with respect to the Diamond Alkali Superfund Site in New Jersey, the Kane & Lombard Street Drum Superfund Site in Maryland and the Hayford Bridge Road Groundwater Superfund Site in Missouri (the “**Settled Non-Owned Sites**”);

WHEREAS, the United States on behalf of EPA has alleged that the Debtors are liable under the Comprehensive Environmental Response, Compensation, and Liability Act (“**CERCLA**”), 42 U.S.C. §§ 9601-9675, to comply with injunctive orders and for costs EPA has incurred or will incur in response to releases and threats of releases of hazardous substances at or in connection with the Settled Non-Owned Sites;

WHEREAS on March 29, 2011, the Court issued its Findings of Fact, Conclusions of Law, and Order Pursuant to Sections 1129(a) and (b) of the Bankruptcy Code and Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming Debtors’ Second Amended Joint Chapter 11 Plan (the “**Plan of Liquidation**”) which, among other things, confirmed the Debtors’ Second Amended Joint Chapter 11 Plan (“**Plan**”), and established the Motors Liquidation GUC Trust (“**GUC Trust**”) pursuant to the Motors Liquidation Company GUC Trust Agreement;

WHEREAS pursuant to the Plan of Liquidation, the Debtors have dissolved and the GUC Trust is authorized to resolve all remaining claims on behalf of the Debtors;

WHEREAS, (i) on November 28, 2009, the United States timely filed duplicate copies of its proof of claim against MLC both in the Bankruptcy Court and directly with the Debtors’ claims agent, and the two copies of the identical proof of claim were assigned Nos. 67362 and 64064, and (ii) on April 16, 2010, the United States filed proofs of claim against REALM and ENCORE which were assigned Nos. 70254 and 70255, respectively, (collectively, the “**First U.S. Proof of Claim**”);

WHEREAS, on March 29, 2011, and June 17, 2011, the Bankruptcy Court entered a total of nine previous Consent Decrees and Settlement Agreements Between the Debtors and the United States resolving certain claims of the United States for various sites other than the Settled Non-Owned Sites;

WHEREAS, on April 8, 2011, the United States filed a second proof of claim (the **“Second U.S. Proof of Claim”**) against MLC in the Bankruptcy Court that supersedes the First U.S. Proof of Claim;

WHEREAS, the GUC Trust and the United States (collectively, the **“Parties”**) have differences of opinion with respect to the claims asserted by the United States regarding the Settled Non-Owned Sites in the Second U.S. Proof of Claim and wish to resolve their differences with respect to the Settled Non-Owned Sites in the Second U.S. Proof of Claim as provided herein;

WHEREAS, the treatment of liabilities provided for herein represents a compromise of the positions of the Parties and is entered into solely for purposes of this settlement;

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving these matters;

WHEREAS the claims set forth in the Second U.S. Proof of Claim for all sites other than the Settled Non-Owned Sites which have not been otherwise settled (the **“Surviving Claims”**) shall survive and in no way be affected by this settlement, and the GUC Trust retains all existing rights to object to all or some of the Surviving Claims;

NOW, THEREFORE, without the admission of liability or the adjudication of any issue of fact or law, and upon the consent and agreement of the parties to this Settlement Agreement by their attorneys and authorized officials, it is hereby agreed as follows:

## **II. DEFINITIONS**

1. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or its regulations or in the Bankruptcy Code shall have the meaning assigned to them in CERCLA, its regulations, or the Bankruptcy Code. Whenever terms listed below are used in this Settlement Agreement, the following definitions shall apply:

- a. **“Allowed General Unsecured Claim”** has the meaning set forth in the Plan of Liquidation.
- b. **“Bankruptcy”** has the meaning set forth in the recitals.
- c. **“Bankruptcy Code”** has the meaning set forth in the recitals.
- d. **“Bankruptcy Court”** or the **“Court”** has the meaning set forth in the recitals.
- e. **“CERCLA”** has the meaning set forth in the recitals.
- f. **“Claim”** has the meaning provided in section 101(5) of the Bankruptcy Code.
- g. **“Distribution”** has the meaning set forth in the Plan.
- h. **“Effective Date”** means the date an order is entered by the Bankruptcy Court approving this Settlement Agreement.
- i. **“EPA”** has the meaning set forth in the recitals.
- j. **“EPA Allowed Claim”** means the total amount of Allowed General Unsecured Claims by EPA in settlement and satisfaction of its claims concerning the Settled Non-Owned Sites.
- k. **“Motors Liquidation Company GUC Trust”** has the meaning set forth in the Plan.
- l. **“Hazardous Substance Superfund”** means the Hazardous Substance Superfund established by 26 U.S.C. § 9507.

- m. “**MLC**” has the meaning set forth in the recitals.
- n. “**NPL**” means the National Priorities List, 40 C.F.R. Part 300.
- o. “**Parties**” has the meaning set forth in the recitals.
- p. “**Petition Date**” means June 1, 2009, in the case of the Initial Debtors, and October 9, 2009, in the case of REALM and ENCORE.
- q. “**Plan of Liquidation**” or “**Plan**” has the meaning set forth in the recitals.
- r. “**Second U.S. Proof of Claim**” has the meaning set forth in the recitals.
- s. “**Settlement Agreement**” means this Consent Decree and Settlement Agreement between the Debtors and the United States of America.
- t. “**Settled Non-Owned Sites**” has the meaning set forth in the recitals.
- u. “**United States**” means the United States of America and all of its agencies, departments, and instrumentalities, including EPA.

### **III. JURISDICTION**

2. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334, and 42 U.S.C. §§ 9607 and 9613(b).

### **IV. PARTIES BOUND; SUCCESSION AND ASSIGNMENT**

3. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the United States, the Debtors’ estates, the GUC Trust, their legal successors and assigns, and any other trustee, examiner, or receiver appointed in the Bankruptcy Cases.

### **V. ALLOWED CLAIMS**

4. In full settlement and satisfaction of the U.S. Proof of Claim with respect to the Diamond Alkali Superfund Site in New Jersey (the “**Diamond Alkali Site**”), the United States

shall receive an Allowed General Unsecured Claim in the amount of \$19,500,000, classified in Class 3 under the Plan of Liquidation.

5. With respect to the Kane & Lombard Street Drum Superfund Site in Maryland (the “**Kane & Lombard Site**”), MLC was required to maintain financial assurance securing its completion of remedial work. MLC satisfied its financial assurance obligation by executing a performance bond in the amount of \$2,448,334 with Westchester Fire Insurance Company (“**Westchester**”), naming EPA as beneficiary. EPA has notified Westchester that MLC had stopped performing remedial work at the Kane & Lombard Site and that its obligations under the bond had become due. In full settlement and satisfaction of the U.S. Proof of Claim with respect to the Kane & Lombard Site, and pursuant to an agreement entered into by EPA and Westchester on April 26, 2011, attached hereto as Exhibit A, Westchester will pay EPA up to \$2,448,334, as directed by EPA, for the cost of remedial work at the Kane & Lombard Site. The United States shall not receive any Allowed General Unsecured Claim for the Kane & Lombard Site under this Settlement Agreement.

6. With respect to the Hayford Bridge Road Groundwater Superfund Site in Missouri (the “**Hayford Bridge Site**”), MLC was required to maintain financial assurance securing its completion of remedial work. MLC satisfied its financial assurance obligation by executing a performance bond in the amount of \$448,000 with Westchester, naming EPA as beneficiary. Following the Bankruptcy, EPA notified Westchester that MLC had stopped performing remedial work at the Hayford Bridge Site and that its obligations under the bond had become due. In partial settlement and satisfaction of the U.S. Proof of Claim with respect to the Hayford Bridge Site, and pursuant to an agreement entered into by EPA and Westchester on November 9, 2011, attached hereto as Exhibit B, Westchester will pay EPA up to \$448,000, as

directed by EPA, for the cost of remedial work at the Hayford Bridge Site. The United States shall also receive an Allowed General Unsecured Claim for the Hayford Bridge Site in the amount of \$1,402,000, classified in Class 3 under the Plan of Liquidation. The performance bond in the amount of \$448,000 and the Allowed General Unsecured Claim in the amount of \$1,402,000 shall be in full settlement and satisfaction of the U.S. Proof of Claim with respect to the Hayford Bridge Site.

7. In light of the foregoing paragraphs 4, 5 and 6 the United States, on behalf of EPA, shall have an Allowed General Unsecured Claim in the total amount of \$20,902,000 (the “**EPA Allowed Claim**”). In accordance with bond requirements the United States, on behalf of EPA, will also receive up to \$2,896,334 for work performed at the Kane & Lombard and Hayford Bridge Sites.

8. Upon the Effective Date, the Second U.S. Proof of Claim shall be deemed fully settled and satisfied as to the Settled Non-Owned Sites only and the claims agent shall be authorized and empowered to adjust the claims register accordingly.

9. The Second U.S. Proof of Claim shall be deemed allowed in the respective amounts set forth herein as to the Settled Non-Owned Sites for purposes of distributions under the Plan of Liquidation, and shall be entitled to receive payment in the next distribution under the Plan.

10. As to those sites not resolved by this or any other settlement agreement between the United States and the GUC Trust, the Second U.S. Proof of Claim shall remain pending and the post-effective date Debtors and/or GUC Trust reserve all existing rights to object to the Second U.S. Proof of Claim.

11. Nothing contained herein shall reduce the ability of the GUC Trust to enforce as to all claimants, other than the United States, Section 7.2 of the Plan requiring that all claims must be resolved before any distribution on account of allowed claims may occur.

12. The GUC Trust shall reduce the distribution reserve amount to be used by the GUC Trust pursuant to Article VII of the Plan for the remaining unresolved general unsecured claims against Debtors asserted in the Second U.S. Proof of Claim to no less than \$200 million.

13. The allowed claims provided for herein shall be treated as provided under Section 4.3 of the Plan of Liquidation and shall not be subordinated to any other allowed Class 3 Unsecured Claim pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims, including, without limitation, Sections 105, 510, and 726(a)(4) of the Bankruptcy Code.

14. Any cash distribution or the proceeds of any non-cash distribution received by EPA on account of an Allowed General Unsecured Claim under this Settlement Agreement shall be deposited in a special account within the Superfund to be retained and used to fund response actions at the Settled Non-Owned Site for which it received the relevant Allowed General Unsecured Claim, or, if no further response action is required, or as otherwise required by EPA policy, transferred by EPA to the Superfund.

15. Only the amount of cash received by EPA (and net cash received upon sale of any non-cash distributions) pursuant to this Settlement Agreement for any Allowed General Unsecured Claim, and not the total amount of any Allowed General Unsecured Claim, shall be credited by EPA to its account for the Non-Owned Site for which it received an Allowed General

Unsecured Claim, and shall reduce the liability of non-settling potentially responsible parties for that site by the amount of the credit.

## **VI. PAYMENT INSTRUCTIONS**

16. Cash distributions to the United States pursuant to this Settlement Agreement shall be made at <https://www.pay.gov> to the U.S. Department of Justice account in accordance with instructions provided to the Debtors by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of New York and shall reference Bankruptcy Case Number 09-50026 and DOJ File Number 90-11-3-09754.

17. Non-cash distributions to the United States shall be made to:

U.S. Environmental Protection Agency  
Attn: Molly Williams  
Suite 300  
4411 Montgomery Rd.  
Cincinnati, OH 45212

18. The GUC Trust shall transmit written confirmation of such cash and non-cash distributions to the United States at the addresses specified below:

The United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044  
Ref. DOJ File No. 90-11-3-1-09754

DAVID S. JONES  
NATALIE N. KUEHLER  
Assistant United States Attorney  
Office of the United States Attorney  
for the Southern District of New York  
86 Chambers Street, Third Floor  
New York, NY 10007

EPA:

CRAIG KAUFMAN  
Attorney-Advisor  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**VII. COVENANTS NOT TO SUE AND RESERVATION OF RIGHTS**

19. In consideration of the payments and/or distributions that will be made under the terms of this Settlement Agreement, and except as specifically provided in Paragraphs 21 through 23, the United States on behalf of EPA covenants not to file a civil action or to take any administrative or other civil action against the GUC Trust pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to the Settled Non-Owned Sites.

20. These covenants not to sue (and any reservations thereto) shall also apply to the GUC Trust's successors, assigns, officers, directors, employees, and trustees, but only to the extent that the alleged liability of the successor or assign, officer, director, employee, or trustee of the GUC Trust or the post-effective date Debtors is based solely on its status as and in its capacity as a successor or assign, officer, director, employee, or trustee of the GUC Trust or the post-effective date Debtors. For purposes of this Paragraph, New GM shall not be considered a successor or assign of the GUC Trust.

21. The covenants not to sue set forth in this Settlement Agreement shall extend only to the GUC Trust and the persons described in Paragraph 20 above and do not extend to any other person. Nothing in this Settlement Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than the GUC Trust, the United States, and the persons or entities described in Paragraph 20 above. The United States and the GUC Trust expressly

reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which they may have against all other persons, firms, corporations, entities, or predecessors of the GUC Trust for any matter arising at or relating in any manner to the Settled Non-Owned Sites.

22. The covenants not to sue set forth in Paragraph 19 do not pertain to any matters other than those expressly specified therein.

23. The United States expressly reserves, and this Settlement Agreement is without prejudice to, all rights against the GUC Trust with respect to all matters other than those set forth in Paragraph 19. The United States also specifically reserves, and this Settlement Agreement is without prejudice to, any action based on (i) a failure to meet a requirement of this Settlement Agreement; (ii) criminal liability; (iii) liability for damages for injury to, destruction of, or loss of natural resources; and (iv) liability with respect to any site other than the Settled Non-Owned Sites. In addition, the United States reserves, and this Settlement Agreement is without prejudice to, all rights against the GUC Trust with respect to the Settled Non-Owned Sites for liability under federal or state law for acts by the GUC Trust, or their respective successors, or assigns that occur after the date of lodging of this Settlement Agreement. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to such authority. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable law or regulation, or to excuse the Debtors or

the GUC Trust from any disclosure or notification requirements imposed by CERCLA or any other applicable law or regulation.

24. The GUC Trust and the Debtors' estates hereby covenant not to sue and agree not to assert or pursue any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, with respect to the Settled Non-Owned Sites, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substances Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim against the United States under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613; or (iii) any claims arising out of response activities at the Settled Non-Owned Sites. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

#### **VIII. CONTRIBUTION PROTECTION**

25. The Parties agree, and by entering this Settlement Agreement the Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the GUC Trust is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. Subject to the last sentence of this Paragraph, the "matters addressed" in this Settlement Agreement, as that phrase is used in Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), include, without limitation, claims by EPA or potentially responsible parties for response costs at or in connection with the Settled Non-Owned Sites, including claims related to releases of hazardous substances from any portion of the Settled Non-Owned Sites and all areas affected by migration of hazardous substances emanating from the Settled Non-Owned Sites. The

“matters addressed” in this Settlement Agreement do not include claims against the Debtors or the GUC Trust for past response costs incurred by potentially responsible parties prior to the date of lodging this Settlement Agreement with the Bankruptcy Court and included in proofs of claim filed in any of the Bankruptcy Cases by potentially responsible parties with respect to the Settled Non-Owned Sites, nor do such “matters addressed” include any claim for natural resource damages, assessment costs, or restoration costs filed by or on behalf of the United States Department of Interior and/or National Oceanic and Atmospheric Administration.

26. The GUC Trust and the Debtors’ estates each agree that, with respect to any suit for contribution brought against any of them after the Effective Date for matters related to this Settlement Agreement, they will notify the United States within fifteen business days of service of the complaint upon them. In addition, in connection with such suit, the GUC Trust and the Debtors’ estates shall notify the United States within fifteen business days of service or receipt of any Motion for Summary Judgment and within fifteen business days of receipt of any order from a court setting a case for trial (provided, however, that the failure to notify the United States pursuant to this Paragraph shall not in any way affect the protections afforded under Section VIII of this Settlement Agreement).

#### **IX. JUDICIAL APPROVAL AND PUBLIC COMMENT**

27. The GUC Trust shall promptly seek approval of this Settlement Agreement under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code.

28. This Settlement Agreement shall be lodged with the Bankruptcy Court and shall thereafter be subject to a period of public comment following publication of notice of the Settlement Agreement in the *Federal Register*. After the conclusion of the public comment period, the United States will file with the Bankruptcy Court any comments received, as well as

the United States' responses to the comments, and at that time, if appropriate, the United States will request approval of the Settlement Agreement. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is not in the public interest.

29. If for any reason (i) the Settlement Agreement is withdrawn by the United States as provided in Paragraph 28, or (ii) the Settlement Agreement is not approved by the Bankruptcy Court: (a) this Settlement Agreement shall be null and void and the parties hereto shall not be bound under the Settlement Agreement or under any documents executed in connection herewith; (b) the parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; and (c) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

#### **X. NOTICES**

30. Whenever, under the terms of this Settlement Agreement, written notice is required to be given, or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below via U.S. mail, unless those individuals or their successors give notice of a change of address to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Except as otherwise provided in this Settlement Agreement, written notice as specified herein shall constitute complete satisfaction of any written notice requirement in the Settlement Agreement with respect to the United States and the GUC Trust or the Debtors' estates, respectively.

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044  
Ref. DOJ File No. 90-11-3-09754

Natalie N. Kuehler  
Assistant United States Attorney  
Office of the United States Attorney  
for the Southern District of New York  
86 Chambers Street, Third Floor  
New York, NY 10007

Craig Kaufman  
Attorney-Advisor  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

As to the GUC Trust and the Debtors' estates:

David A. Vanaskey  
Vice President  
Wilmington Trust Company  
Rodney Square North  
1110 North Market Street  
Wilmington, DE 19890-1615

David R. Berz  
Weil, Gotshal & Manges LLP  
Attorneys for Debtors and Debtors in Possession  
1300 Eye Street, NW, Suite 900  
Washington, D.C. 20005

**XI. INTEGRATION, AMENDMENTS, AND EXECUTION**

31. This Settlement Agreement constitutes the sole and complete agreement of the parties hereto with respect to the matters addressed herein. This Settlement Agreement may not be amended except by a writing signed by all parties to this Settlement Agreement.

32. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

**XII. RETENTION OF JURISDICTION**

33. The Bankruptcy Court shall retain jurisdiction over the subject matter of this Settlement Agreement and the parties hereto for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.

[SIGNATURE PAGE FOLLOWS]

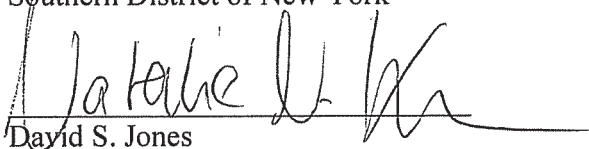
**THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT:**

**FOR THE UNITED STATES:**

\_\_\_\_\_  
Robert G. Dreher  
Acting Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice

Date: \_\_\_\_\_

PREET BHARARA  
United States Attorney for the  
Southern District of New York

  
\_\_\_\_\_  
David S. Jones  
Natalie N. Kuehler  
Assistant U.S. Attorneys  
86 Chambers St., 3<sup>rd</sup> Floor  
New York, NY 10007

Date: 1/30/2012

\_\_\_\_\_  
Alan S. Tenenbaum  
National Bankruptcy Coordinator  
Patrick Casey  
Senior Counsel  
Environment and Natural Resources Division  
Environmental Enforcement Section  
U.S. Department of Justice


Date: \_\_\_\_\_

\_\_\_\_\_  
Cynthia Giles  
Assistant Administrator  
Office of Enforcement and Compliance  
Assurance  
U.S. Environmental Protection Agency

Date: \_\_\_\_\_

**THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT:**

**FOR THE UNITED STATES:**


  
\_\_\_\_\_  
Robert G. Dreher  
Acting Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice

PREET BHARARA  
United States Attorney for the  
Southern District of New York

\_\_\_\_\_  
David S. Jones  
Natalie N. Kuehler  
Assistant U.S. Attorneys  
86 Chambers St., 3<sup>rd</sup> Floor  
New York, NY 10007

Date: 1/30/12

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Alan S. Tenenbaum  
National Bankruptcy Coordinator  
Patrick Casey  
Senior Counsel  
Environment and Natural Resources Division  
Environmental Enforcement Section  
U.S. Department of Justice  
Date: 1/30/12

\_\_\_\_\_  
Cynthia Giles  
Assistant Administrator  
Office of Enforcement and Compliance  
Assurance  
U.S. Environmental Protection Agency

Date: \_\_\_\_\_

**THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT:**

**FOR THE UNITED STATES:**

PREET BHARARA

United States Attorney for the  
Southern District of New York

\_\_\_\_\_  
Robert G. Dreher  
Acting Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice

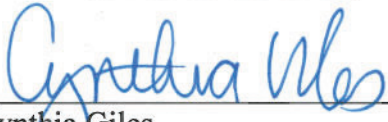
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David S. Jones  
Natalie N. Kuehler  
Assistant U.S. Attorneys  
86 Chambers St., 3<sup>rd</sup> Floor  
New York, NY 10007

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Alan S. Tenenbaum  
National Bankruptcy Coordinator  
Patrick Casey  
Senior Counsel  
Environment and Natural Resources Division  
Environmental Enforcement Section  
U.S. Department of Justice

Date: \_\_\_\_\_

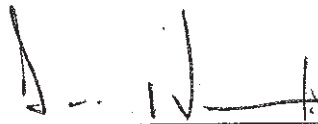
  
\_\_\_\_\_  
Cynthia Giles  
Assistant Administrator  
Office of Enforcement and Compliance  
Assurance  
U.S. Environmental Protection Agency

Date: 1/30/12

**FOR THE GUC TRUST AND THE DEBTORS' ESTATES:**

Date:

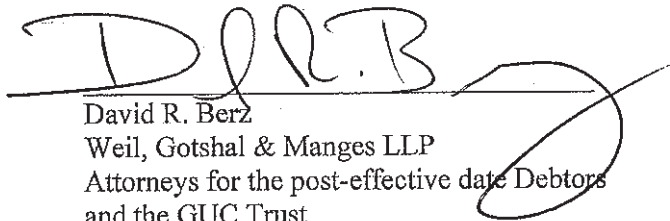
1/30/12



Motors Liquidation Company GUC Trust  
By Wilmington Trust Company, not in its  
individual capacity, but solely as MLC  
GUC Trust Administrator

Date:

1/30/12



David R. Berz  
Weil, Gotshal & Manges LLP  
Attorneys for the post-effective date Debtors  
and the GUC Trust  
1300 Eye Street, NW, Suite 900  
Washington, D.C. 20005  
Tel.: (202) 682-7000  
Fax: (202) 857-0939  
Email: david.berz@weil.com

# **EXHIBIT A**

### **Bond Payment Reduction and Discharge Agreement**

The parties to this Bond Payment Reduction and Discharge Agreement ("Agreement"), the United States Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103 (hereafter, "U.S. EPA") and Westchester Fire Insurance Company, c/o ACE USA, 436 Walnut Street, Routing Code WA10A, Philadelphia, Pennsylvania 19106 (hereafter, "Westchester"), hereby enter into this Agreement as of this 26<sup>th</sup> day of April, 2011 to resolve the bond claim described herein by payment and discharge as set forth below.

WHEREAS, Westchester issued surety bond number K07593521 in the amount of \$2,448,334.00 (the "Bond") on behalf of General Motors Corporation ("GM") in favor of the U.S. EPA in connection with GM's obligations, under a certain Consent Decree entered on November 3, 2006, in the United States District Court for the District of Maryland in a case captioned United States of America and State of Maryland v. Browning-Ferris, Inc., et al. (No. L-06-1134) ("2006 Consent Decree"), to perform remedial action selected by U.S. EPA at the Kane and Lombard Superfund Site;

WHEREAS, GM subsequently defaulted on performance of the work required by the 2006 Consent Decree;

WHEREAS, Westchester is prepared to make payments under the Bond for performance of the work required by the 2006 Consent Decree or to implement any other remedial action selected by U.S. EPA for the Kane and Lombard Site (collectively, the "Work"), provided that such payments will reduce the penal sum of the Bond and, when the full penal sum has been paid, will discharge Westchester from all further liability in connection with the Bond and Westchester's obligations to perform work on behalf of GM pursuant to the terms of the Bond, Westchester and U.S. EPA agree as follows:

1. U.S. EPA will periodically send billing statements with costs incurred for performance of the Work to counsel for Westchester at the address set forth below. Within fifteen (15) business days of receipt of such statements, Westchester shall remit payment in accordance with payment instructions provided with each statement.
2. Upon receipt by U.S. EPA of confirmation of each such payment by the payee designated in each statement, the penal sum of the Bond shall be reduced in the amount of the payment; and
3. Upon the earlier of (i) the Work being completed or (ii) reduction in the penal sum of the Bond to \$0.00, Westchester's obligation to remit payment hereunder shall be satisfied, and Westchester shall be released and discharged from any and all obligations, liabilities, costs, expenses or claims arising from or related in any manner to the Bond or GM's performance of the Work including, without limitation, past, present or future claims.
4. Billing statements should be sent to counsel for Westchester at the following physical or e-mail address:

Robert McL. Boote  
Ballard Spahr LLP  
1735 Market Street, 51st Floor  
Philadelphia, PA 19103  
boote@ballardspahr.com

5. Westchester and U.S. EPA represent and warrant to each other that the signatories to this Agreement have full power and authority to enter into this Agreement to resolve the U.S. EPA bond claim as described herein. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

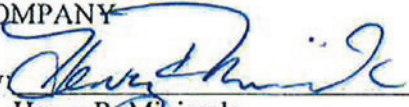
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Printed Name:

Title: *DIRECTOR, HAZARDOUS SITE  
CLEANUP DIVISION*

Date Executed: *4/20/11*

WESTCHESTER FIRE INSURANCE  
COMPANY

By:   
Henry R. Minissale

Title: Vice President

Date Executed: *3/29/11*

## **EXHIBIT B**

**Bond Payment Reduction and Discharge Agreement**

The parties to this Bond Payment Reduction and Discharge Agreement ("Agreement"), the United States Environmental Protection Agency, Region 7, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101 (hereafter, "U.S. EPA") and Westchester Fire Insurance Company, c/o ACE USA, 436 Walnut Street, Routing Code WA10A, Philadelphia, Pennsylvania 19106 (hereafter, "Westchester"), hereby enter into this Agreement as of this 9<sup>th</sup> day of April, 2010 to resolve the bond claim described herein by payment and discharge as set forth below.

WHEREAS, Westchester issued surety bond number K07734086 in the amount of \$448,000.00 (the "Bond") on behalf of General Motors Corporation ("GM") in favor of the U.S. EPA in connection with GM's obligations under a certain Consent Decree entered by the United States District Court for the Eastern District of Missouri on August 16, 2007, in United States et al. v. Findett Real Estate Corp. et al., Docket No. 07-1215 ("Consent Decree"), for the Hayford Bridge Road Superfund site, which obligations are hereafter referred to as "Work";

WHEREAS, GM subsequently defaulted on performance of the Work required at the Hayford Bridge Road Superfund site;

WHEREAS, U.S. EPA submitted a claim under the Bond to Westchester on K07734086 by letter dated April 8, 2010; and

WHEREAS, Westchester is prepared to make payments under the Bond provided that such payments will reduce the penal sum of the Bond and, when the full penal sum has been paid, will discharge Westchester from all further liability in connection with the Bond, Westchester and U.S. EPA agree as follows:

1. U.S. EPA will send billing statements with costs incurred for performance of the Work under the Consent Decree and U.S. EPA's approval of such costs to counsel for Westchester at the address set forth below. Within fifteen (15) business days of receipt of such statements, Westchester shall remit payment to:

Hayford Bridge Road OU 3 Escrow Account,  
UMB Bank N.A., Corporate Trust Division  
South Broadway, Suite 435  
St. Louis, MO 63102  
Attention: Richard F. Novosak

2. Upon receipt of each such payment by UMB Bank N.A. (on behalf of the signatories to the Hayford Bridge Road OU3 Participation Agreement), the penal sum of the Bond shall be reduced in the amount of the payment; and

3. Upon the earlier of (i) the Work being completed or (ii) reduction in the penal sum of the Bond to \$0.00, Westchester's obligation to remit payment hereunder shall be satisfied, and Westchester shall be fully and unconditionally released and discharged from any and all obligations, liabilities, costs, expenses or claims, including, without limitation, past,

present or future claims arising from or related in any manner to the Hayford Bridge Road Superfund site and/or the Consent Decree and/or the Bond.

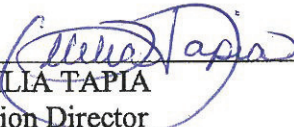
4. Billing statements should be sent to counsel for Westchester at the following physical or e-mail address:

Robert McL. Boote  
Ballard Spahr LLP  
1735 Market Street, 51st Floor  
Philadelphia, PA 19103  
boote@ballardspahr.com

5. Westchester and U.S. EPA represent and warrant to each other that the signatories to this Agreement have full power and authority to enter into this Agreement to resolve the U.S. EPA bond claim as described herein. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

WESTCHESTER FIRE INSURANCE  
COMPANY

By   
CECILIA TAPIA  
Division Director  
Superfund Division

By   
ROBERT B. COLLINS  
Director - Claim

Date executed: 11/9/10

Date executed: 10/25/10

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

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In re:

MOTORS LIQUIDATION COMPANY *et al.*,

f/k/a/ GENERAL MOTORS CORP. *et al.*,

Debtors.

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)  
) Chapter 11  
)  
) Case No. 09-50026 (REG)  
)  
) Jointly Administered  
)  
)  
)

**ORDER APPROVING THE NON-OWNED SITE  
ENVIRONMENTAL SETTLEMENT AGREEMENT**

Upon the Motion of the United States of America (the “**United States**”) for entry of an order approving the environmental consent decree and settlement agreement between the Debtors and the United States (the “**Approval Motion**”)<sup>1</sup>; and it appearing that the relief requested is in the best interests of Debtors’ estates, its creditors and other parties in interest; and the Court having jurisdiction to consider the Approval Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Approval 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 after lodging of the Non-Owned Site Settlement Agreement with this Court on January 30, 2012, and publication of the Non-Owned Site Settlement Agreement in the *Federal Register* for public comment; and notice of the Approval Motion having been filed by the United States on March 7, 2012; and the Court having reviewed the United States’ memorandum of law in support of the Approval Motion; and

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Approval Motion.

the Court having determined that the legal and factual bases set forth in the Approval Motion establish just cause for the relief granted herein; and upon all of the proceedings before the Court and after due deliberation and sufficient cause appearing therefore, it is hereby

1. **ORDERED** that the Approval Motion is granted;
2. **ORDERED** that the Non-Owned Site Settlement Agreement (Docket No. 11361) is hereby approved as fair, reasonable and consistent with environmental law;
3. **ORDERED** that the parties to the Non-Owned Site Settlement Agreement are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order;
4. **ORDERED** that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and
5. **ORDERED** that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

New York, New York  
Date: March \_\_\_\_\_, 2012

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United States Bankruptcy Judge