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Objection deadline: June 17, 2011

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:
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MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	:
f/k/a General Motors Corp., <i>et al.</i>	:
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Debtors.	:
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**MOTION OF THE UNITED STATES OF AMERICA FOR AN ORDER APPROVING  
THE CONSENT DECREE AND SETTLEMENT AGREEMENT REGARDING  
NATURAL RESOURCE DAMAGE CLAIMS BETWEEN  
THE DEBTORS, THE UNITED STATES OF AMERICA, THE STATE OF INDIANA, THE  
STATE OF NEW YORK, AND THE ST. REGIS MOHAWK TRIBE**

**PRELIMINARY STATEMENT**

The United States of America, on behalf of the United States Department of the Interior (“**DOI**”) and the National Oceanic and Atmospheric Administration (“**NOAA**”) (collectively, the “**Settling Federal Agencies**”), with the concurrence of State and Tribal trustees for natural resources, by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, hereby moves this Court for (i) an order approving under applicable environmental laws

the natural resource damage (“**NRD**”) consent decree (the “**NRD Consent Decree**”) by and among the United States, the States of Indiana and New York, the St. Regis Mohawk Tribe (collectively, “**Settling Trustee Parties**”), and debtor Motors Liquidation Company (f/k/a General Motors Corporation, hereafter, “**MLC**”), its affiliated debtors, and its successors, as debtors (collectively, the “**Debtors**”); and (ii) an order shortening the required notice period to the extent required to permit this motion to be heard on the Court’s calendar currently scheduled for June 22, 2011. The NRD Consent Decree with March 31, 2011 notice of lodging in this Court is annexed as Exhibit 1 hereto, and a proposed order granting the requested relief is annexed as Exhibit 2 hereto.<sup>1</sup>

As explained below, under prior orders of this Court, Debtors 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 and, prior to the effective date of the Debtors’ confirmed plan of liquidation, the Official Committee of Unsecured Creditors received notice of the proposed NRD Consent Decree yet did not object to it. The Court’s approval is required, however, under federal environmental laws. Such approval is warranted here.

Under the NRD Consent Decree, the Settling Trustee Parties will be granted allowed NRD claims at a total of 5 sites in the aggregate amount of \$11,571,413. NRD claims involving the Onondaga Superfund Site in New York remain unresolved and are not affected by the NRD Consent Decree.

As required by the environmental laws, notice of the proposed NRD Consent Decree was published in the Federal Register, and the public comment period has expired. *See 76 Fed. Reg.*

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<sup>1</sup> While this brief is filed only on behalf of the United States, the state environmental agencies and tribe who are parties to the proposed NRD Consent Decree have authorized the United States to inform the Court that they join in the United States’ request that the Court approve and enter the NRD Consent Decree.

20372 (Apr. 12, 2011). The United States received no comments concerning the proposed NRD Consent Decree, and believes that the settlement is fair, reasonable, and in the public interest.

The United States therefore requests that the Court approve the NRD Consent Decree.

The function of the Court in reviewing such motions is not to substitute its judgment for that of the parties to the proposed Agreement, but to confirm that the terms of the proposed 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. *See 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. *See 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 NRD Consent Decree lodged with this Court on March 4, 2011.

## **I. GENERAL STATUTORY/FACTUAL BACKGROUND**

### **A. Statutory Background**

Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (“**CERCLA**”), 42 U.S.C. §§ 9601-9675, to provide a framework for cleanup of the nation’s worst hazardous waste sites. The primary goal of CERCLA is to protect and preserve public health and the environment from the effects of releases or threatened releases of hazardous substances to the environment. *See Voluntary Purchasing Groups, Inc. v. Reilly*, 889 F.2d 1380, 1386 (5th Cir. 1989); *Dedham Water Co. v. Cumberland Farms Dairy, Inc.*, 805 F.2d

1074, 1081 (1st Cir. 1986); *New York v. Shore Realty Corp.*, 759 F.2d 1032, 1040, n.7 (2d Cir. 1985).

Section 107(f) of CERCLA, 42 U.S.C. § 9607(f)(2), provides for the designation of governmental trustees who may assert claims for natural resource damages on behalf of the public, seeking recovery of assessment and restoration costs necessitated by releases of hazardous substances. DOI and NOAA are the relevant federal natural resource trustees for the sites covered under the proposed NRD Consent Decree; the States of New York and Indiana and the St. Regis Mohawk Tribe are joint trustees along with DOI and/or NOAA at certain of the sites at issue. Under CERCLA section 107(f), potentially responsible parties (“**PRPs**”) are liable for natural resource damages and assessment costs incurred and to be incurred by natural resource trustees where such damages and/or costs are caused by the PRP’s release of hazardous substances to the environment.

Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), permits the Federal, State, and Tribal Trustees to recover natural resource damages, including assessment costs 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); *O’Neil*, 883 F.2d at 178; *United States v. Monsanto*, 858 F.2d 160, 168-171 (4th Cir. 1988). Section 107(a) of CERCLA creates strict, joint and several liability where environmental harm is indivisible. *See Alcan Aluminum Corp.*, 990 F.2d at 722. The United States, New York, Indiana, and the St. Regis Mohawk Tribe all asserted claims against Debtors under this provision and/or analogous state laws.

Having created the liability system and enforcement tools to allow the United States 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. *See* 42 U.S.C. § 9622(a).<sup>2</sup> CERCLA encourages settlements by, inter alia, providing parties who settle with the United States protection from contribution claims for matters addressed in the settlement. *See* 42 U.S.C. § 9613(f)(2). This provision provides settling parties with a measure of finality in return for their willingness to settle.<sup>3</sup>

**B. Overview of NRD Claims at Issue; the Parties' Settlement Negotiations, Drafting and Lodging of the Consent Decree; and Public Notice and Comment Period (During Which No Comments Were Received)**

The United States filed a timely claim (Claim No. 64064) that presented numerous federal environmental claims, and included natural resource damage claims for restoration and/or assessment costs at six sites. The Consent Decree resolves NRD claims at five of those sites, while leaving one unresolved. Many of the claims seeking restoration for natural resource damages are joint with co-trustees, namely the State of Indiana (at the Bedford, Indiana site) and the State of New York and St. Regis Mohawk Tribe (at the Massena, New York site), each of whom also timely filed NRD claims (Claims Nos. 50636 and 59087). In addition, New York

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<sup>2</sup> *See also United States v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1184 (3d Cir. 1994); *United States v. Akzo Coatings of America, Inc.*, 949 F.2d 1409, 1436 (6th Cir. 1991); *In re Cuyahoga Equipment Corporation*, 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. Cannons Engineering Corp.*, 899 F.2d 79, 92 (1st Cir. 1990); *United States v. DiBiase*, 45 F.3d 541, 545-46 (1st Cir. 1995); H.R. Rep. No. 253, pt. 1, 99th Cong., 1st Sess. 80 (1985), *reprinted in* 1986 U.S. Code Cong. & Ad. News 2862.

<sup>3</sup> *Cannons Engineering*, 899 F.2d at 92; *O'Neil v. Picillo*, 883 F.2d 176, 178-79 (1st Cir. 1989); *United Technologies Corp. v. Browning-Ferris Industries, Inc.*, 33 F.3d 96 (1st Cir. 1994); H.R. Rep. No. 253, pt. 1, 99th Cong., 1st Sess. 80 (1985), *reprinted in* 1986 U.S. Code Cong. & Ad. News 2862.

State and the St. Regis Mohawk Tribe asserted an additional claim for natural resource damages arising from the severe cultural impacts of the damage caused by Debtors. Certain of the Trustees also sought reimbursement for their past costs of natural resource damage assessment.

All parties to the NRD Consent Decree engaged in intensive, arms'-length negotiations concerning the NRD claims at issue, assisted by retained environmental and economic consultants with expertise in natural resource damage issues. The parties reviewed and debated the significance of, among other things, available technical data and environmental and biological 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 the NRD claims at each site. The parties then negotiated the precise wording of the NRD Consent Decree document itself. As is recited in that document, Debtors informed the Official Committee of Unsecured Creditors of the proposed settlement prior to the agreement's lodging with the Court. On information and belief, the Committee has expressed no objection to the NRD Consent Decree.

On March 31, 2011, the United States lodged the NRD Consent Decree with this Court (Dkt. No. 9987, copy annexed hereto as **Exhibit "1"**) and the proposed settlement was subject to a 30-day public comment period following the April 12, 2011 publication of notice of the Settlement Agreement in the *Federal Register*. See 76 *Fed. Reg.* 20372 (Apr. 12, 2011). The public comment period concluded on May 12, 2011. No comments were received.

### **C. Terms of the NRD Consent Decree**

Under the NRD Consent Decree, the Settling Trustee Parties will receive allowed General Unsecured Claims in the total amount of \$11,571,413 as provided in the NRD Consent Decree in satisfaction of MLC's NRD obligations at five sites in New York, New Jersey, and Indiana (except that Indiana reserves rights in connection with its past NRD costs, which are not resolved by the NRD Consent Decree). As permitted by section 5.7 of Debtors' confirmed Plan of Liquidation and paragraph 11 of the NRD Consent Decree, the United States is reserving a right of offset to the extent available to satisfy portions of its NRD Claim. Toward that end, the United States is presently negotiating and intends to seek simultaneous Court approval of a stipulation that identifies the portion of the United States' allowed NRD claims for each of the five sites that will potentially be recovered in full by right of offset, and that defers distributions on account of those portions of the United States' NRD claims pending a determination of whether the anticipated offset right will materialize, while leaving undisturbed the contemplated distribution process for the remaining portions of the allowed claim for which no offset is anticipated. Under the contemplated stipulation, if the anticipated offset recovery does not materialize, the deferred portion of the Federal NRD claim will then be paid as an unsecured claim. If, on the other hand, the United States achieves an offset recovery, the deferred portion of the United States' allowed NRD claim shall be deemed satisfied, and the United States shall transfer or cause to be transferred the amounts received via offset to the appropriate NRD account.

In the NRD Consent Decree, the Settling Trustee Parties covenant not to sue Debtors with respect to NRD claims at the Settled NRD Sites, and the Settling Trustee Parties' proofs of claim with respect to the NRD at the Settled NRD Sites are deemed satisfied (other than

Indiana's claim for past costs, which remains unresolved and not affected by the NRD Consent Decree). The Settling Trustee Parties reserve all other claims against Debtors other than with respect to the settled NRD claims. The Debtors covenant not to sue the Settling Trustee Parties concerning the NRD claims at the Settled NRD Sites. As noted, Indiana reserves its claims for past costs at the Bedford, Indiana site, which are not resolved or affected by the NRD Consent Decree.

Site-specific provisions of the NRD Consent Decree are as follows:

**Central Foundry Division a/k/a Massena Superfund Site** -- The Massena Superfund Site was a 270-acre GM aluminum casting facility placed on the Superfund National Priority List in 1984. Contaminants of concern released by this facility include polychlorinated biphenyls (PCBs) and polycyclic aromatic hydrocarbons (PAHs). Releases from the Site have caused injury to fish, birds, wildlife, and other natural resources in the assessment area.

The NRD Consent Decree settles NRD liability at the Massena Site for a total allowed claim of \$9.5 million, subject to the United States' reservation of possible offset rights. Pursuant to Paragraph 7 of the NRD Consent Decree, the NRD Trustees for Massena (New York, the St. Regis Mohawk Tribe, and DOI and NOAA) have determined that this amount shall be allocated as follows: \$1.5 million will be allocated for past assessment costs of the United States (of which \$1,232,329 will compensate DOI for its past costs, and \$267,671 will compensate NOAA for its past costs), and \$8.0 million will be allocated for restoration projects, including activities that will address cultural damages alleged in the Tribe's and State's claims.

The Settling Trustee Parties concluded that this is a fair resolution of the pending claims.

**Diamond Alkali Superfund Site** -- The Diamond Alkali Superfund Site in and around Essex, Hudson, and Passaic Counties, New Jersey (the "Diamond Alkali Site") includes a former



pesticide manufacturing facility in Newark, New Jersey, that was operated by Diamond Shamrock Chemicals Company from 1951 to 1969, and surrounding property, a 17-mile portion of the Passaic River and its tributaries known as the Lower Passaic River Study Area (“LPRSA”), the Newark Bay Study Area, which includes Newark Bay and portions of the Hackensack River, the Arthur Kill, the Kill Van Kull, and the areal extent of contamination. The Site comprises an unknown number of acres and implicates many PRPs.

From 1918 to 1970, GM owned and operated the Hyatt Roller Bearings Company automotive facility in Harrison, New Jersey (the “Harrison Facility”), the operations of which began in 1907 and included metal working, heat treating and grinding, and the use of oil for heat-treated metal. By discharging hazardous substances from its Harrison Facility into the Passaic River from 1918 to 1970, GM disposed of or arranged for the disposal of hazardous substances at the Diamond Alkali Site. Moreover, as corporate successor to Hyatt Roller Bearings Company, GM is also liable for the disposal of hazardous substances from the Harrison Facility into the Passaic River from 1907 to 1918. These hazardous substances have been determined to include PCBs, copper, lead, zinc and oil.

The federal proof of claim sought compensation for past assessment costs totalling \$2,696,288 at the overall Diamond Alkali Site, but that figure was not reduced to reflect MLC’s approximate equitable share of contamination at the site. Accordingly, the parties agreed to settle the claim taking into account MLC’s equitable share for purposes of settlement of DOI’s and NOAA’s past costs, resulting in a total federal allowed unsecured claim of \$44,721 for NRD at this site, subject to the United States’ reservation of possible offset rights.

**GM Bedford Plant Site** -- The GM Bedford Plant Site in Lawrence County, Indiana (the “Bedford Site”) contains an aluminum foundry and powertrain plant that has been operated by GM

since 1946 and is currently owned by New GM. The Bedford Site comprises approximately 150 acres. Old GM owned and operated the Bedford aluminum foundry from 1946 to July 2009, during which time hazardous substances were disposed of at the Bedford Site. These hazardous substances have been determined to include PCBs and oils. Hazardous substances have been detected in the soil, groundwater and surface water at the Bedford Site.

DOI completed a NRD assessment of the Bedford Site to determine the extent of damage done by the release of hazardous substances from the Site. Under the terms of the settlement, the United States on behalf of DOI shall have an Allowed General Unsecured Claim for NRD (subject to partial recovery by right of offset if it materializes) in the total amount of \$2,000,000, including for restoration and DOI's past assessment costs.<sup>4</sup> Cash payments for restoration to the Joint Bedford NRD Trustees shall subsequently be deposited into a separate DOI-administered account to be jointly managed by the Joint Bedford NRD Trustees, and, subject to possible offset recovery, shall be in satisfaction of DOI's and Indiana's restoration claims at Bedford, and DOI's past cost claim.<sup>5</sup>

**Kin-Buc Landfill Superfund Site** -- The Kin-Buc Landfill Superfund Site located in Middlesex County, New Jersey (the "Kin-Buc Site") is a former landfill that was operated by various individuals and corporations, including Kin-Buc, Inc., from the late 1940s to 1976, and that accepted industrial and municipal wastes from 1971 to 1976. The Site comprises approximately 220 acres with two Operating Units ("OUs"). OU1 includes waste mounds, as well as low-lying areas and a leachate collection pond. OU2 includes Mill Brook/Martins Creek, Edmonds Creek,

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<sup>4</sup> DOI's past costs totalled \$339,677.

<sup>5</sup> The State of Indiana's past costs at the Bedford Site will be resolved pursuant to a separate litigation or settlement concerning both those costs and other environmental claims of the State of Indiana.

and associated wetlands. Old GM arranged for the transport of at least 15 million gallons of hazardous substances from various Old GM facilities to, and the disposal of those hazardous substances at, the Kin-Buc Site from 1971 through 1976. These hazardous substances included PCBs and hydraulic fluids.

NOAA has conducted a limited assessment of the Kin-Buc Site and, as of June 2009, NOAA had incurred approximately \$26,318 in unreimbursed past costs associated with the NRD assessment at the Kin-Buc Site. NOAA did not assert a restoration claim against MLC with respect to the Kin-Buc Site. In settlement and satisfaction of the United States' Claim No. 64064 with respect to the Kin-Buc Site, the United States, on behalf of NOAA, shall have an Allowed General Unsecured Claim in the amount of \$26,318, subject to the United States' possible right of offset. The NRD Consent Decree provides for the full allowance of NOAA's past costs.

**National Lead Industries Superfund Site** -- The National Lead Industries Superfund Site ("National Lead Site" or "NL Site"), located in Salem County, New Jersey, is a former secondary lead smelting facility that was operated from 1972 to 1982, and was sold to National Smelting of New Jersey, Inc. ("NSNJ") in 1983. The facility, which recycled lead from spent automotive batteries, continued to operate until 1984, when NSNJ filed for bankruptcy. The Site comprises approximately 44 acres with two OUs. OU1 includes the site's groundwater, surface water, contaminated soil, and sediment, and OU2 includes ponded water, slag pits, building structures, and debris. GM arranged for the transport of hazardous substances to, and the disposal of those hazardous substances at, the NL Site from 1983 to 1984. These hazardous substances included dust, sulphuric acid, lead scrap, lead oxide, and slag.

NOAA has conducted a limited natural resources damage assessment of the National Lead Site, which documents past injuries to estuarine and freshwater habitat. As of September

2009, NOAA had incurred approximately \$41,537 in unreimbursed past costs associated with the natural resources damage assessment at the National Lead Site. In settlement and satisfaction of the United States' Claim No. 64064 with respect to the National Lead Site, the United States, on behalf of NOAA, shall have an Allowed General Unsecured Claim in the amount of \$374 for assessment costs based on MLC's estimated equitable allocation for purposes of settlement, subject to possible right of setoff.

**Reservation of Right of Offset** – While the NRD Consent Decree otherwise provides that the Settling Trustee Parties shall receive allowed general unsecured claims in specified amounts, the Consent Decree and Plan specifically preserve the United States' potential right to recover on parts of its NRD Claim by right of offset. *See* Plan of Liquidation § 5.7; NRD Consent Decree ¶ 11. As noted, the United States anticipates that, at the same time it seeks Court approval of the NRD Consent Decree, it will request approval of a separate stipulation and order providing that specified amounts of the settled NRD claims will not result in an immediate distribution, but will be subject to a deferral of distributions pending negotiations relating to any right of offset. If the United States successfully recovers on account of such a right of offset, the United States will advise the GUC Trust (or any other party responsible for administering distributions) so that any assets reserved on account of possible further NRD claim distributions can be released. In the event an offset recovery does not materialize, the United States will request, and Debtors will provide, additional distributions on account of the reserved portions of the allowed NRD claims, so that the NRD claims ultimately will be allowed and compensated based on the full amounts set forth herein and in the NRD Consent Decree.

**Remaining Unresolved NRD Claim** -- If and when the Court approves the NRD Consent Decree, the only remaining federal NRD claim will involve the Onondaga County, New

York site. That site is the subject of ongoing discussions, and the NRD Consent Decree has no effect on the parties' positions with respect to NRD claims at that site.

## ARGUMENT

### THE COURT SHOULD APPROVE THE NRD CONSENT DECREE

#### A. Statement of Relief Requested

The United States, with the concurrence of the other Settling Trustee Parties, moves for approval under the environmental laws of the NRD Consent Decree, which partially resolves proof of claim No. 64064 timely filed by the United States (the “**US NRD Claim**”), proof of claim No. 59181 timely filed by the State of Indiana (the “**Indiana NRD Claim**”), proof of claim No. 50636 timely filed by the State of New York (the “**New York NRD Claim**”), and proof of claim No. 59087 timely filed by the St. Regis Mohawk Tribe (the “**St. Regis Mohawk Tribe Claim**”).

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, upon 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.

The United States also respectfully requests an order shortening the notice time on this motion so that the motion can be heard and approved during the now-scheduled June 22, 2011 calendar. The notice provided will give sufficient opportunity for any interested party to object, especially as the agreement is already agreed to by Debtors and not objected to by the Official

Committee of Unsecured Creditors, has been lodged with the Court since March 31, 2011, and was the subject of no public comment during the notice and comment period.

**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**

Although the Debtors, at the time the NRD Consent Decree was executed, had authority to enter into settlements where, as in here, the total settlement amount is less than or equal to \$50 million (*see* Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 3007 and 9019(b) Authorizing the Debtors to (i) File Omnibus Claims Objections and (ii) Establish Procedures for Settling Certain Claims (ECF No. 4180) (the “**Settlement Procedures Order**”)), a consent decree and settlement agreement negotiated by the United States to protect the public interest is subject to judicial review under federal environmental laws.

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” to the government environmental agency (there, the Environmental Protection Agency); *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. *See 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 NRD Consent Decree 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 objected to the proposed NRD Consent Decree, despite its being publicly docketed since March 31, 2011 in a highly visible bankruptcy that is followed widely in the environmental and bankruptcy bar, and despite having been the subject of a public notice and comment period. Indeed, that process yielded no comments whatsoever.

#### **1. The NRD Consent Decree 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 NRD Consent Decree 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 with the assistance of technical experts on matters such as estimating the extent of ecological and associated harms and the cost of future restoration activities. *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 settling agency).

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 NRD Consent Decree is substantively fair because the amount of the allowed claim for each site was determined by considering actual assessment costs, the parties’ best estimates of ecological and associated harms and resulting restoration needs and costs, and Debtors’ estimated percentage allocation or fair share of liability for each site. Often, these estimates were determined after extensive discussions with environmental experts and/or agency technical personnel responsible for the sites. The amount of the allowed claim for each site therefore represents a substantively fair resolution of the Debtors’ liabilities taking into account the uncertainties and litigation risks involved.

## **2. The NRD Consent Decree Is Reasonable**

Courts evaluating the reasonableness of CERCLA settlements have considered three factors: (i) technical adequacy of the work to be performed; (ii) satisfactory compensation to the public; 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; *see also United States v. Montrose Chemical Co.*, 50 F.3d 741, 746 (9th Cir. 1996) (Court evaluates whether CERCLA settlement is fair, reasonable, and consistent with CERCLA).

Although the first prong of the reasonableness inquiry is not at issue in this settlement, as the claims derive from past assessment costs as well as anticipated restoration work that will not be performed by Debtors, the NRD Consent Decree satisfies the other, necessarily intertwined, considerations relevant to reasonableness. As discussed above, the United States and the other Settling Trustee Parties will receive Allowed General Unsecured Claims for NRD totaling more than \$11.5 million, with potential United States offset rights reserved.

These settlement terms compensate the public and further the goals of CERCLA's natural resource damage provision. *See* CERCLA § 107(a), (f), 42 U.S.C. § 9607(a), (f). Specifically, the NRD Consent Decree reasonably balances the extent of Debtors' liability, the Trustees' need to recover funds for restoration and to compensate for assessment costs, and the need to minimize the expense and potential delay of protracted litigation. Accordingly, the proposed NRD Consent Decree is reasonable.

### **3. The NRD Consent Decree 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 NRD Consent Decree furthers these statutory goals. As discussed above, the proposed NRD Consent Decree accounts for past assessment costs and estimated restoration costs at the sites at issue. The settlement further meets CERCLA's statutory goal of providing final resolution of liability for settling parties. Moreover, the

proposed NRD Consent Decree 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.

**Notice**

Pursuant to Bankruptcy Rule 9006(c)(1), the Court may shorten time without notice. Accordingly, no separate notice of this Motion to Shorten Time has been given.

**No Prior Request**

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

WHEREFORE, the United States, with the concurrence of the other Settling Trustee Parties, respectfully requests entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: New York, New York  
June 16, 2011

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Southern District of New York

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

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In re:	:	Chapter 11
	:	
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	:	Case No. 09-50026 (REG)
<i>f/k/a/ GENERAL MOTORS CORP., et</i>	:	
<i>al.</i> ,	:	Jointly Administered
	:	
Debtors.	:	
	:	
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**NOTICE OF LODGING OF PROPOSED  
 CONSENT DECREE AND SETTLEMENT AGREEMENT  
 REGARDING NATURAL RESOURCE DAMAGE CLAIMS**

The United States of America hereby lodges with the Court a proposed Consent Decree and Settlement Agreement Regarding Natural Resource Damage Claims Between the Debtors, the United States of America, the State of Indiana, the State of New York, and the St. Regis Mohawk Tribe (the “NRD Settlement Agreement”). A copy of the NRD Settlement Agreement is attached hereto as Exhibit A, and has been executed by all parties.

The United States requests that the Court not approve the proposed Settlement Agreement at this time. Notice of the lodging of the proposed Settlement Agreement will be published in the

*Federal Register*, following which the United States Department of Justice will accept public comments on the proposed Settlement Agreement for a 30-day period. After the conclusion of the public comment period, the United States will file with the Court any comments received, as well as responses to the comments, and at that time, if appropriate, will request that the Court approve the proposed Settlement Agreement.

Dated: New York, New York  
March 31, 2011

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

By:                   /s/David S. Jones                    
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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 REGARDING  
NATURAL RESOURCE DAMAGE CLAIMS BETWEEN  
THE DEBTORS, THE UNITED STATES OF AMERICA, THE STATE OF INDIANA,  
THE STATE OF NEW YORK, AND THE ST. REGIS MOHAWK TRIBE**

**I. BACKGROUND**

WHEREAS, on June 1, 2009, four of the Debtors, including Motors Liquidation Company (f/k/a General Motors Corporation) (“**MLC**”), 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, 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);

WHEREAS on October 6, 2009, the Court entered that certain Order pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 3007 and 9019(b)

Authorizing the Debtors to (i) File Omnibus Claims Objections and (ii) Establish Procedures for Settling Certain Claims (the “**Settlement Procedures Order**”);

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 Department of the Interior (“**DOI**”), and the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration (“**NOAA**”), have alleged that MLC and/or affiliated Debtors are potentially responsible or liable parties with respect to the sites identified in Paragraphs 4-8 below (the “**Settled NRD Sites**”);

WHEREAS, the United States on behalf of DOI and NOAA, the States of Indiana and New York (collectively, the “**States**”), and the St. Regis Mohawk Tribe (the “**Tribe**”) have alleged that Debtors are liable under the Comprehensive Environmental Response, Compensation, and Liability Act (“**CERCLA**”), 42 U.S.C. §§ 9601-9675, and analogous state laws, for damages for injury to, destruction of, or loss of natural resources as defined in 42 U.S.C. § 9601(16) (“**NRD**”) and costs of natural resource damage assessment and restoration actions that DOI, NOAA, the States and/or the Tribe have incurred or will incur at or in connection with the Settled NRD Sites;

WHEREAS on October 6, 2009, the Court entered that certain Order pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 3007 and 9019(b) Authorizing the Debtors to (i) File Omnibus Claims Objections and (ii) Establish Procedures for Settling Certain Claims (the “**Settlement Procedures Order**”);

WHEREAS pursuant to the Settlement Procedures Order, the Debtors are authorized, with certain exceptions, to settle any and all claims asserted against the Debtors without prior approval of the Court or other party in interest whenever (i) the

aggregate amount to be allowed for an individual claim (the “**Settlement Amount**”) is less than or equal to \$1 million or (ii) the Settlement Amount is within 10 percent of the noncontingent, liquidated amount listed on the Debtors’ schedules of assets and liabilities so long as the difference in amount does not exceed \$1 million (any settlement amount within (i) or (ii) being a “*De Minimis Settlement Amount*”);

WHEREAS pursuant to the Settlement Procedures Order, if the Settlement Amount is not a *De Minimis Settlement Amount*, but is less than or equal to \$50 million, the Debtors must submit the proposed settlement to the official committee of unsecured creditors appointed in these chapter 11 cases (the “**Creditors’ Committee**”). If applicable, within five business days of receiving the proposed settlement, the Creditors’ Committee may object or request an extension of time within which to object. If there is a timely objection made by the Creditors’ Committee, the Debtors may either (a) renegotiate the settlement and submit a revised notification to the Creditors’ Committee or (b) file a motion with the Court seeking approval of the existing settlement under Bankruptcy Rule 9019 on no less than ten days’ notice. If there is no timely objection made by the Creditors’ Committee or if the Debtors receive written approval from the Creditors’ Committee of the proposed settlement prior to the objection deadline (either of such events hereafter defined as “**Committee Consent**”), then the Debtors may proceed with the settlement;

WHEREAS, Debtors have provided notice of this settlement to the Creditors’ Committee in accordance with the Settlement Procedures Order;

WHEREAS, the State of Indiana timely filed proof of claim numbered 59181 (the “**Indiana NRD Claim**”) seeking, *inter alia*, NRD damages and assessment costs with

respect to the General Motors Bedford Site located in Lawrence County, Indiana (the “**Bedford Site**”);

WHEREAS, the State of New York timely filed proof of claim number 50636 (the “**New York NRD Claim**”) seeking NRD damages and assessment costs with respect to the Central Foundry Division a/k/a Massena Superfund Site located in St. Lawrence County, New York (the “**Massena Site**”);

WHEREAS, the St. Regis Mohawk Tribe timely filed proof of claim numbered 59087 (the “**Tribe NRD Claim**”) seeking NRD damages and assessment costs with respect to the Massena Site;

WHEREAS, on November 28, 2009, the United States timely filed proof of claim No. 64064 against MLC asserting, *inter alia*, that Debtors are liable to the United States, DOI and NOAA for certain NRD damages and assessment costs with respect to (i) the Kin-Buc Landfill Superfund Site located in Middlesex County, New Jersey (the “**Kin-Buc Site**”); (ii) the National Lead Industries Superfund Site located in Salem County, New Jersey (the “**National Lead Site**”), (iii) the Diamond Alkali Superfund Site located in and around Essex, Hudson, Bergen, and Passaic Counties, New Jersey (the “**Diamond Alkali Site**”), (iv) the Onondaga Lake Superfund Site in New York (the “**Onondaga Site**”), (v) the Bedford Site, and (vi) the Massena Site (the “**US NRD Claim**” and together with the Indiana NRD Claim, the New York NRD Claim and the Tribe NRD Claim, the “**NRD Claims**”).

WHEREAS, the United States, States, and Tribe allege in the NRD Claims that Debtors are liable for damages for injury to, destruction of, or loss of natural resources as defined in 42 U.S.C. § 101(16) and natural resource damages assessment costs and restoration actions;



WHEREAS, the Debtors on the one hand and the United States, the States and the Tribe on the other hand (collectively, the “**Parties**”) have differences of opinion with respect to the NRD Claims regarding the Settled NRD Sites and wish to resolve certain differences 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;

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 Code**” has the meaning set forth in the recitals.
- c. “**Bankruptcy Court**” or the “**Court**” has the meaning set forth in the recitals.
- d. “**CERCLA**” has the meaning set forth in the recitals.
- e. “**Claim**” has the meaning provided in Section 101(5) of the Bankruptcy Code.

- f. **“District Court”** means the United States District Court for the Southern District of New York.
- g. **“DOJ”** has the meaning set forth in the recitals.
- h. **“Effective Date”** means the date an order is entered by the Bankruptcy Court approving this Settlement Agreement.
- i. **“US NRD Claim”** has the meaning set forth in the recitals.
- j. **“GUC Trust”** has the meaning set forth in the Plan.
- k. **“Indiana NRD Claim”** has the meaning set forth in the recitals.
- l. **“MLC”** has the meaning set forth in the recitals.
- m. **“New York NRD Claim”** has the meaning set forth in the recitals.
- n. **“NOAA”** has the meaning set forth in the recitals.
- o. **“Parties”** has the meaning set forth in the recitals.
- p. **“Petition Date”** means June 1, 2009, in the case of all Debtors other than REALM and ENCORE, and October 9, 2009, in the case of REALM and ENCORE.
- q. **“Plan of Liquidation”** or **“Plan”** means the Second Amended Joint Chapter 11 Plan of Debtors, dated March 18, 2011 (as revised, amended, and supplemented from time to time).
- r. **“Settlement Agreement”** means this Consent Decree and Settlement Agreement Regarding Natural Resource Damage Claims Between the Debtors the United States of America, the State of Indiana, the State of New York, and the St. Regis Mohawk Tribe.
- s. **“Settled NRD Sites”** has the meaning set forth in the recitals.

- t. “**Tribe NRD Claim**” 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 DOI and NOAA.

**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, DOI, NOAA, the States, the Tribe, the Debtors, the Debtors’ legal successors and assigns, and any trustee, examiner, or receiver appointed in the Bankruptcy Cases.

**V. ALLOWED CLAIMS**

4. In settlement and satisfaction of the US NRD Claim with respect to the Kin-Buc Site, the United States, on behalf of NOAA, shall have an Allowed General Unsecured Claim in the amount of \$26,318, for past assessment costs only, classified in Class 3 under the Plan of Liquidation.

5. In settlement and satisfaction of the US NRD Claim with respect to the National Lead Site, the United States, on behalf of NOAA, shall have an Allowed General Unsecured Claim in the amount of \$374 for past assessment costs only, classified in Class 3 under the Plan of Liquidation.

6. In settlement and satisfaction of the US NRD Claim with respect to the Diamond Alkali Site, the United States, on behalf of DOI, shall have an Allowed General Unsecured

Claim in the amount of \$44,721, for past assessment costs only, classified in Class 3 under the Plan of Liquidation.

7. (a) In settlement and full satisfaction of the New York NRD Claim and the Tribe NRD Claim, and in settlement and satisfaction of the US NRD Claim with respect to the Massena Site, the United States on behalf of DOI and NOAA, New York and the St. Regis Mohawk Tribe (collectively, “**the Joint Massena Trustees**”) shall have a total Allowed General Unsecured Claim in the amount of \$9,500,000.00, classified in Class 3 under the Plan of Liquidation (the “**Massena NRD Allowed Claim**”), which includes (i) restoration costs at the Massena Site sought by the Joint Massena Trustees; (ii) DOI’s past assessment costs incurred at the Massena Site; (iii) NOAA’s past assessment costs incurred at the Massena Site; (iv) New York’s past assessment costs incurred at the Massena Site; (v) the St. Regis Mohawk Tribe’s past assessment costs incurred at the Massena Site; and (vi) cultural damages incurred by the St. Regis Mohawk Tribe and New York attributable to the Massena Site. If, after reviewing any public comments regarding this Settlement Agreement, the United States determines that the Settlement is appropriate, adequate and proper, the United States’ motion seeking the Bankruptcy Court’s approval of the Settlement under applicable environmental laws will provide instructions for purposes of distribution as to the exact amounts of past assessment costs, if any, incurred by each of the Joint Massena Trustees. Before filing its Motion, the United States will obtain the concurrence of the State of New York and the St. Regis Mohawk Tribe as applicable. Distributions on account of the Massena NRD Allowed Claim shall be made pursuant to the instructions set forth in Paragraphs 15 through 18. Any cash payments and all proceeds from the sale of non-cash consideration for restoration costs or cultural damages shall be deposited into DOI NRDAR, Account No. 14X5198 (the “**Massena**

**Restoration Account**”), to be jointly managed by the Joint Massena NRD Trustees. A separate, Site-specific numbered account for the Massena Site has been or will be established within the DOI NRDAR Fund. The funds received shall be assigned to the Massena Restoration Account to allow the funds to be maintained as a segregated account within the DOI NRDAR Fund. The Joint Massena Trustees shall use the funds in the Massena Restoration Account, including all interest earned on such funds, for restoration activities at or in connection with the Massena Site as directed by the Joint Massena Trustees.

(b) For purposes of the Debtors’ claims register only, the Massena NRD Allowed Claim may be reflected as \$3,166,666.66 for the United States on behalf of DOI and NOAA, \$3,166,666.67 for New York State, and \$3,166,666.67 for the Tribe, provided, however, that all distributions on the Massena NRD Allowed Claim shall be paid in accordance with Paragraph 7(a) and Paragraphs 15 through 18. The United States may in its motion to approve the settlement, with the concurrence of New York State and the Tribe, revise the allocation of the Allowed Massena NRD Claim as among New York State, the Tribe, and the United States.

8. In settlement and satisfaction of the Indiana NRD Claim, except to the extent that the Indiana NRD Claim seeks past assessment costs incurred at the Bedford Site, and the US NRD Claim with respect to the Bedford Site, the United States on behalf of DOI shall have a total Allowed General Unsecured Claim in the amount of \$2,000,000, classified in Class 3 under the Plan of Liquidation (the “**Bedford NRD Allowed Claim**”), which includes (i) restoration costs sought by the United States and the State of Indiana (the “**Joint Bedford Trustees**”) at the Bedford Site; and (ii) DOI’s past assessment costs incurred at the Bedford Site. The Debtors’ claims agent shall be authorized and empowered to adjust the

claims register to indicate that the Indiana NRD Claim has been satisfied to the extent that such claim seeks restoration costs related to NRD at the Bedford Site. The Indiana NRD Claim, to the extent it seeks past assessment costs incurred at the Bedford Site, shall not be affected by this Settlement Agreement. All distributions to the United States shall be made pursuant to the instructions set forth in Paragraphs 15 through 18. Any cash payments and all proceeds from the sale of non-cash consideration transferred to the United States for restoration shall subsequently be deposited into DOI NRDAR, Account No. 14X5198, to be jointly managed by the Joint Bedford Trustees. A separate, Site-specific numbered account for the Site (the “**Bedford Restoration Account**”) has been or will be established within the DOI NRDAR Fund. The funds received shall be assigned to the Bedford Restoration Account to allow the funds to be maintained as a segregated account within the DOI NRDAR Fund. The Joint Bedford Trustees shall use the funds in the Bedford Restoration Account, including all interest earned on such funds, for restoration activities at or in connection with the GM Bedford Site as directed by the Joint Bedford Trustees.

9. The United States is authorized, within thirty days after the Effective Date, to file a new proof of claim in the Debtors’ chapter 11 cases representing the amounts it contends are owed to it for NRD at the Onondaga Site (the “**New US NRD Claim**”). The New US NRD Claim may not be objected to on the grounds of timeliness. The Debtors reserve all rights to object to the New US NRD Claim on any grounds other than timeliness.

10. 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.

11. Notwithstanding the allowance of the US NRD Claim for the Settled NRD Sites as a Class 3 Unsecured Claim, nothing in this Consent Decree and Settlement Agreement shall prejudice the rights of the United States to assert any additional right of offset that is or becomes available to the United States pursuant to Section 5.7 of Debtors' Plan of Liquidation.

12. The US NRD Claim for the Settled NRD Sites 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.

13. Only the cash and/or proceeds from the sale of the distribution received by the United States (and net cash received by each such entity 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 each such entity to its account for the Settled NRD Site for which it received an Allowed General Unsecured Claim, and shall reduce the liability of any non-settling potentially responsible parties for that particular site by the amount of the credit.

14. 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 United States timely filed proof of claim No. 64064 to \$[238,000,000.00.

## **VII. PAYMENT INSTRUCTIONS**

15. 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.

16. Non-cash distributions to the Joint Massena Trustees, the Joint Bedford Trustees, and the United States on behalf of DOI in connection with the Massena, Bedford and Diamond Alkali Sites shall be made to:

Merrill Lynch:  
For Federal Book Entry Securities:  
ABA#021000018  
BK of NYC/MLGOV  
Further Credit to the US Department of the Interior  
Account Number: 78L-09001

17. All non-cash distributions to the United States on behalf of NOAA in connection with the Massena, Kin-Buc and National Lead Sites shall be made to:

Merrill Lynch:  
DTC#: 5198 Merrill Lynch  
Account Name: U.S. Department of the Treasury  
Further Credit to the US National Oceanic and Atmospheric Administration  
Account#: 78L-09000

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

As to the United States:

BRUCE S. GELBER  
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



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86 Chambers Street, Third Floor  
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FUND MANAGER  
Natural Resource Damage Assessment and Restoration Fund  
Department of the Interior Office of Natural Resource Restoration  
1849 C Street, NW  
Mailstop 3548  
Washington, DC 20240

LAURIE J. LEE  
Office of General Counsel Natural Resources  
National Oceanic and Atmospheric Administration  
501 West Ocean Blvd., Suite 4470  
Long Beach, CA 90802

As to Indiana:

BETH ADMIRE  
Indiana Department of Environmental Management  
100 N. Senate Ave., Room 1307  
MC 60-01  
Indianapolis, IN 46204

As to New York:

Maureen F. Leary  
Assistant Attorney General  
Environmental Protection Bureau  
NYS Office of the Attorney General  
The Capitol  
Albany, NY 12224-0341

Nathaniel H. Barber  
Office of General Counsel  
New York State Dep't of Environmental Conservation  
625 Broadway  
Albany, NY 12233-6500

As to the St. Regis Mohawk Tribe:

John Privitera  
McNamee, Lochner, Titus & Williams, P.C.  
677 Broadway  
Albany, NY 12207

Danielle Lazore-Thompson, Esq.  
St. Regis Mohawk Tribe  
412 State Route 37  
Akwesasne, New York 13655

### **VIII. COVENANTS NOT TO SUE**

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 Paragraph 28, (i) the United States on behalf of DOI covenants not to file a civil action or to take any administrative or other civil action against the Debtors pursuant to Section 107 of CERCLA, 42 U.S.C. §9607, with respect to NRD at the Diamond Alkali Site, the Massena Site and the Bedford Site, including assessment and restoration costs and including NRD caused by or arising from releases of hazardous substances from any portion of such sites and all areas affected by migration of such substances from such sites, (ii) the United States on behalf of NOAA covenants not to file a civil action or to take any administrative or other civil action against the Debtors pursuant to Section 107 of CERCLA, 42 U.S.C. §9607, with respect to NRD at the Massena Site, the Kin-Buc Site, and the National Lead Site, including assessment and restoration costs and including NRD caused by or arising from releases of hazardous substances from any portion of such sites and all areas affected by migration of such substances from such sites, and (iii) neither DOI nor NOAA shall file any additional claims as to any of the Settled NRD Sites. This covenant is solely with respect to natural

resource damage claims, and shall have no effect on any claims or causes of action asserted now or in the future by or on behalf of the Environmental Protection Agency (“EPA”).

20. 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 Paragraph 8 and 28, the State of Indiana covenants not to file a civil action or to take any administrative or other civil action against the Debtors pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, with respect to NRD at the Bedford Site, including assessment and restoration costs and including NRD caused by or arising from releases of hazardous substances from any portion of the Bedford Site and all areas affected by migration of such substances from the Bedford Site. As per Paragraph 8, Indiana reserves and may continue to assert its claim as to past assessment costs at the Bedford Site.

21. 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 Paragraph 28, the State of New York covenants not to file a civil action or to take any administrative or other civil action against the Debtors pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, with respect to NRD or cultural resource damages at the Massena Site, including assessment and restoration costs and including NRD caused by or arising from releases of hazardous substances from any portion of the Massena Site and all areas affected by migration of such substances from the Massena Site.

22. In consideration of the distributions that will be made under the terms of this Settlement Agreement, and except as specifically provided in Paragraph 28, the St. Regis Mohawk Tribe covenants not to file a civil action or to take any administrative or other civil action against the Debtors pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607,

with respect to NRD or cultural resource damages at the Massena Site, including assessment and restoration costs and including NRD caused by or arising from releases of hazardous substances from any portion of the Massena Site and all areas affected by migration of such substances from the Massena Site.

23. These covenants not to sue (and any reservations thereto) shall also apply to Debtors' 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 Debtors is based solely on its status as and in its capacity as a successor or assign, officer, director, employee, or trustee of Debtors. The covenants not to sue (and any reservations thereto) shall also apply to the Environmental Response Trust referenced in Debtors' confirmed Plan of Liquidation. For purposes of this Paragraph, General Motors Company, a/k/a New GM, shall not be considered a successor or assign of Debtors.

24. The covenants not to sue set forth in this Settlement Agreement shall extend only to Debtors and the persons described in Paragraph 23 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 Debtors and the persons or entities described in Paragraph 23 above. The United States, the States, the Tribe and the Debtors 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 Debtors for any matter arising at or relating in any manner to the Settled NRD Sites.

25. The covenants not to sue set forth in Paragraphs 19 through 24 do not pertain to any matters other than those expressly specified therein.

## **IX. RESERVATION OF RIGHTS**

26. The United States, the States, and the Tribe expressly reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtors with respect to all matters other than those set forth in Paragraphs 4 through 8. The United States, the States and the Tribe also specifically reserve, 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; and (iii) liability with respect to any site other than the Settled NRD Sites. In addition, the United States, the States and the Tribe reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtors with respect to the Settled NRD Sites for liability under federal or state law for acts by the Debtors, their successors, or assigns that occur after the date of lodging of this Settlement Agreement. Future acts creating liability under CERCLA or state law do not include continuing releases from the Settled NRD Sites related to the Debtors' conduct prior to the Effective Date. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States, the States or the Tribe 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 from any disclosure or notification requirements imposed by CERCLA or any other applicable federal or state law or regulation.

27. The Debtors hereby covenant not to sue and agree not to assert or pursue any claims or causes of action against the States, the Tribe, and the United States, including any

department, agency, or instrumentality of the United States, with respect to the Settled NRD 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, the States or the Tribe under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613; or (iii) any claims arising out of response or restoration activities at the Settled NRD 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).

#### **X. CONTRIBUTION PROTECTION**

28. 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 Debtors are 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) and subject to the covenants not to sue and releases and reservations of rights set forth in Sections VIII and IX herein, include, without limitation, claims by the United States on behalf of DOI and NOAA, the States, the Tribe, or potentially responsible parties for natural resource damages, including assessment costs at or in connection with natural resource damages at the Settled NRD Sites for which covenants not to sue were provided, including natural resource damages resulting from releases of hazardous substances from any portion of the Settled NRD Sites and all areas affected by migration of hazardous substances emanating

from the Settled NRD Sites. The “matters addressed” in this Settlement Agreement do not include claims against any of the Debtors asserted on behalf of EPA, the States or the Tribe for past response costs incurred by potentially responsible parties prior to the Petition Date and included in proofs of claim filed in any of the Bankruptcy Cases by potentially responsible parties with respect to the Settled NRD Sites. Matters addressed in this Settlement Agreement also include NRD claims asserted by the States and the Tribe, including restoration and assessment costs relating to or in connection with the NRD Settled Sites. Matters addressed in this Settlement Agreement do not include any matters that are the subject of the reservations of rights set forth in Section IX herein.

29. The Debtors 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 Debtors 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 IX of this Settlement Agreement.

#### **XI. PUBLIC COMMENT**

30. 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 inappropriate, improper, or inadequate.

31. If for any reason (i) the Settlement Agreement is withdrawn by the United States as provided in Paragraph 29, 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.

## **XII. JUDICIAL APPROVAL**

32. This Settlement Agreement shall be subject to approval of the Bankruptcy Court.

## **XIII. NOTICES**

33. 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 Debtors, respectively.



As to the United States:

Bruce S. Gelber  
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. 90-11-3-09736

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

Amy L. Horner  
Office of the Solicitor-Environmental Restoration Branch  
U.S. Department of the Interior  
1849 C St NW  
MS 5325  
Washington, DC 20240

Laurie J. Lee  
Office of General Counsel Natural Resources  
National Oceanic and Atmospheric Administration  
501 West Ocean Blvd., Suite 4470  
Long Beach, CA 90802

As to Indiana:

Beth Admire  
Indiana Department of Environmental Management  
100 N. Senate Ave., Room 1307  
MC 60-01  
Indianapolis, IN 46204

As to New York:

Maureen F. Leary  
Assistant Attorney General  
Environmental Protection Bureau

NYS Office of the Attorney General  
The Capitol  
Albany, NY 12224-0341

Nathaniel H. Barber  
Office of General Counsel  
New York State Dep't of Environmental Conservation  
625 Broadway  
Albany, NY 12233-6500

As to the St. Regis Mohawk Tribe:

John J. Privitera  
McNamee, Lochner, Titus & Williams, P.C.  
677 Broadway  
Albany, NY 12207

Danielle Lazore-Thompson, Esq.  
St. Regis Mohawk Tribe  
412 State Route 37  
Akwesasne, New York 13655

As to the Debtors:

TED STENGER  
Executive Vice President  
Motors Liquidation Company, as agent for  
the foregoing entity,  
500 Renaissance Center, Suite 1400  
Detroit, MI 48243

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

**XIV. INTEGRATION, AMENDMENTS, AND EXECUTION**

34. 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.

35. 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.

36. Each undersigned representative of a Party certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of such a Party and bind it legally to the terms and provisions herein.

**XV. RETENTION OF JURISDICTION**

37. 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.


**XVI. EFFECTIVE DATE**

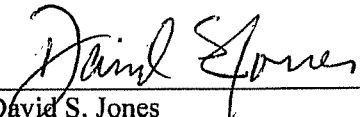
38. This Settlement Agreement shall be effective upon approval by the Court in accordance with Paragraph 32 above.

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

**FOR THE UNITED STATES:**

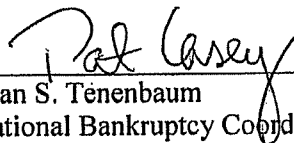
**PREET BHARARA**  
United States Attorney for the  
Southern District of New York

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

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

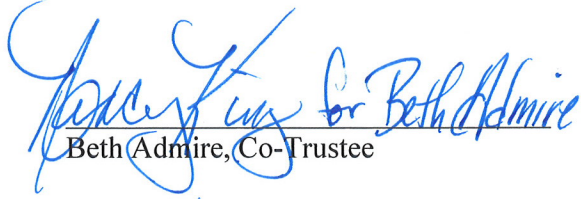
Date: 3/30/11

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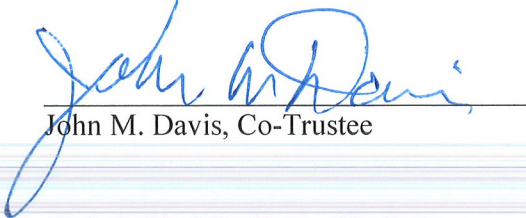
  
\_\_\_\_\_  
Alan S. Tenenbaum  
National Bankruptcy Coordinator  
Patrick Casey  
Senior Counsel  
Environment and Natural Resources Division  
Environmental Enforcement Section  
U.S. Department of Justice

Date: 3-30-11

**ON BEHALF OF THE NATURAL RESOURCES TRUSTEES FOR THE STATE  
OF INDIANA:**

  
Beth Admire, Co-Trustee

Date: 3/30/11


  
John M. Davis, Co-Trustee


Date: 3-31-11

On behalf of the State of Indiana:

Indiana Attorney General  
GREGORY F. ZOELLER  
Attorney No. 1958-02

Trial Counsel:

By:   
Patricia Orloff Erdmann  
Chief Counsel for Litigation  
Atty. No. 17664-49A

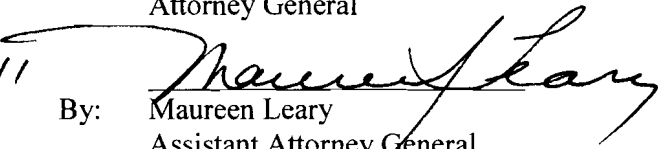
By:   
Timothy J. Junk  
Deputy Attorney General  
Atty. No. 5587-02

**FOR THE STATE OF NEW YORK:**

ERIC T. SCHNEIDERMAN  
Attorney General

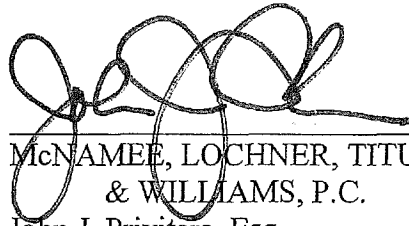
Date: *March 31, 2011*

By:

  
Maureen Leary  
Assistant Attorney General  
Chief, Toxics Section  
NYS Department of Law  
Environmental Protection Bureau  
The Capitol  
Albany, New York 12224-0341  
Tel.: (518) 474-7154  
Fax: (518) 473-2534  
maureen.leary@ag.ny.gov

**FOR THE SAINT REGIS MOHAWK TRIBE:**

Date: 03/31/11

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a horizontal line.

McNAMEE, LOCHNER, TITUS  
& WILLIAMS, P.C.

John J. Privitera, Esq.

Jacob F. Lamme, Esq.

677 Broadway

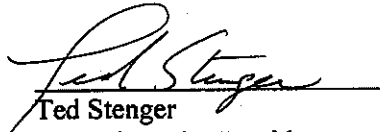
Albany, New York 12207

Tel.: (518) 447-3200

Fax: (518) 426-4260

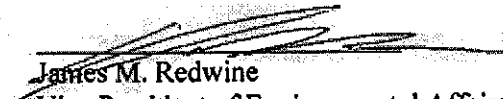
**FOR MLC, REALM, AND ENCORE:**

Date: 3/30/11



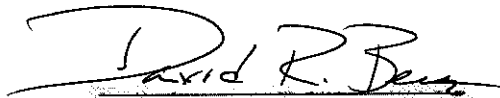
Ted Stenger  
Executive Vice President  
Motors Liquidation Company, as agent for  
each of the foregoing entities,  
500 Renaissance Center, Suite 1400  
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Tel.: (313) 486-4044  
Fax: (313) 486-4259  
Email: [tstenger@alixpartners.com](mailto:tstenger@alixpartners.com)

Date: 3/30/11



James M. Redwine  
Vice President of Environmental Affairs  
Motors Liquidation Company, as agent for  
each of the foregoing entities

Date: 3/30/11



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Email: [david.berz@weil.com](mailto:david.berz@weil.com)



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

**ORDER APPROVING CONSENT DECREE AND SETTLEMENT AGREEMENT  
BETWEEN THE DEBTORS AND THE UNITED STATES**

Upon the Motion, dated June 16, 2011 (the “**Motion**”), of the United States of America, for entry of an order approving that certain consent decree and settlement agreement (the “**NRD Consent Decree**”) by and between the United States of America (the “**United States**”), on behalf of the United States Department of the Interior (the “**DOI**”) and the National Oceanic and Atmospheric Administration (“**NOAA**”), the States of Indiana and New York, the St. Regis Mohawk Tribe, and Debtors, partially resolving proof of claim No. 64064 timely filed by the United States (the “**US NRD Claim**”), proof of claim No. 59181 timely filed by the State of Indiana (the “**Indiana NRD Claim**”), proof of claim No. 50636 timely filed by the State of New York (the “**New York NRD Claim**”), and proof of claim No. 59087 timely filed by the St. Regis Mohawk Tribe (the “**St. Regis Mohawk Tribe Claim**”), all as more fully described in the Motion; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Motion is fair, reasonable, and in the public interest, and furthers the goals of CERCLA, and having found and concluded that the legal and factual bases set forth in the

Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted and the NRD Consent Decree is approved; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York  
\_\_\_\_\_, 2011

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UNITED STATES BANKRUPTCY JUDGE