

Barry N. Seidel (BS-1945)  
Stefanie Birbrower Greer (SG-2898)  
DICKSTEIN SHAPIRO LLP  
1633 Broadway  
New York, New York 10019-6708  
Telephone: (212) 277-6500  
Facsimile: (212) 277-6501

Attorneys for Motors Liquidation  
Company GUC Trust

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

|  |                                 |
|--|---------------------------------|
| -----X                                     |                                 |
| <b>In re</b>                               | : <b>Chapter 11 Case No.</b>    |
|  | :                               |
| <b>MOTORS LIQUIDATION COMPANY, et al.,</b> | : <b>09-50026 (REG)</b>         |
| <b>f/k/a General Motors Corp., et al.</b>  | :                               |
|  | :                               |
| <b>Debtors.</b>                            | : <b>(Jointly Administered)</b> |
|  | :                               |
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**NOTICE OF OBJECTION TO CLAIM NUMBERS 70860 and 70869  
FILED BY TRACY WOODY AND MOTION REQUESTING ENFORCEMENT  
OF COURT ORDERS SETTING DEADLINES TO FILE PROOFS OF CLAIM**

**PLEASE TAKE NOTICE** that, on November 17, 2011, the Motors Liquidation Company GUC Trust (the “**GUC Trust**”), formed by the above-captioned debtors (collectively, the “**Debtors**”) in connection with the Debtors’ Second Amended Joint Chapter 11 Plan, dated March 18, 2011, filed its objection to proofs of claim numbered 70860 and 70869 filed by Tracy Woody and motion requesting enforcement of court orders setting deadlines to file proofs of claim (the “**Objection**”), and that a hearing (the “**Hearing**”) to consider the Objection 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 **December 20, 2011, at 9:45 a.m. (Eastern Time)**, or as soon thereafter as counsel may be heard.

**PLEASE TAKE FURTHER NOTICE** that any response to the Objection 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) Dickstein Shapiro, LLP, attorneys for the GUC Trust, 1633 Broadway, New York, New York, 10019-6708 (Attn: Barry N. Seidel, Esq., and Stefanie Birbrower Greer, 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 Street, 21st Floor,

New York, New York 10004 (Attn: Tracy Hope Davis, Esq.); (ix) the U.S. Attorney's Office, S.D.N.Y., 86 Chambers Street, Third Floor, New York, New York 10007 (Attn: David S. Jones, Esq. and Natalie Kuehler, Esq.); (x) Caplin & Drysdale, Chartered, attorneys for the official committee of unsecured creditors holding asbestos-related claims, 375 Park Avenue, 35th Floor, New York, New York 10152-3500 (Attn: Elihu Inselbuch, Esq. and Rita C. Tobin, Esq.) and One Thomas Circle, N.W., Suite 1100, Washington, DC 20005 (Attn: Trevor W. Swett III, Esq. and Kevin C. Maclay, Esq.); (xi) Stutzman, Bromberg, Esserman & Plifka, A Professional Corporation, attorneys for Dean M. Trafelet in his capacity as the legal representative for future asbestos personal injury claimants, 2323 Bryan Street, Suite 2200, Dallas, Texas 75201 (Attn: Sander L. Esserman, Esq. and Robert T. Brousseau, Esq.); (xii) Gibson, Dunn & Crutcher LLP, attorneys for Wilmington Trust Company as GUC Trust Administrator and for Wilmington Trust Company as Avoidance Action Trust Administrator, 200 Park Avenue, 47th Floor, New York, New York 10166 (Attn: Keith Martorana, Esq.); (xiii) FTI Consulting, as the GUC Trust Monitor and as the Avoidance Action Trust Monitor, One Atlantic Center, 1201 West Peachtree Street, Suite 500, Atlanta, Georgia 30309 (Attn: Anna Phillips); (xiv) Crowell & Moring LLP, attorneys for the Revitalizing Auto Communities Environmental Response Trust, 590 Madison Avenue, 19th Floor, New York, New York 10022-2524 (Attn: Michael V. Blumenthal, Esq.); and (xv) Kirk P. Watson, Esq., as the Asbestos Trust Administrator, 2301 Woodlawn Boulevard, Austin, Texas 78703, so as to be received no later than **December 13, 2011, at 4:00 p.m. (Eastern Time)** (the "**Response Deadline**").

**PLEASE TAKE FURTHER NOTICE** that if no response is timely filed and served with respect to the Objection, the GUC Trust 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 Objection, which order may be entered with no further notice or opportunity to be heard offered to any party.

Dated: New York, New York  
November 17, 2011

/s/ Stefanie Birbrower Greer  
Barry N. Seidel (BS-1945)  
Stefanie Birbrower Greer (SG-2898)

DICKSTEIN SHAPIRO LLP  
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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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| <b>In re</b>                               | : |
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| <b>MOTORS LIQUIDATION COMPANY, et al.,</b> | : |
| <b>f/k/a General Motors Corp., et al.</b>  | : |
|  | : |
| <b>Debtors.</b>                            | : |
|  | : |
| -----X                                     |   |

**Chapter 11 Case No.**

**09-50026 (REG)**

**(Jointly Administered)**

**OBJECTION TO CLAIM NUMBERS 70860 and 70869  
FILED BY TRACY WOODY AND MOTION REQUESTING ENFORCEMENT  
OF COURT ORDERS SETTING DEADLINES TO FILE PROOFS OF CLAIM**

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

The Motors Liquidation Company GUC Trust (the “**GUC Trust**”), formed by the above-captioned debtors (collectively, the “**Debtors**”) in connection with the Debtors’ Second Amended Joint Chapter 11 Plan, dated March 18, 2011 (as may be amended, supplemented, or modified from time to time, the “**Plan**”), objects to proofs of claim numbered 70860 and 70869 filed by Tracy Woody (collectively the “**Supplemental Claims**”) on the basis that such claims were received after the February 7, 2011 deadline set forth in this Court’s Order Denying the Motion of Tracy Woody for Relief from Stay and

Granting Supplemental Relief (the “**Stay Order**”). In support of this motion and objection, the GUC Trust respectfully represents:

### **INTRODUCTION**

1. In October 2010, Tracy Woody, a *pro-se* claimant, filed two proofs of claim in the amount of \$33,687.36 (Claim Nos. 70490 and 70481, collectively, the “**Original Claims**,” and together with the Supplemental Claims, the “**Claims**”) against Motors Liquidation Company, seeking recovery of the property value of an allegedly defective vehicle and certain additional costs (the “**Vehicle**”). The Original Claims were filed over one year after the November 30, 2009 deadline set by the Court (the “**Bar Date**”) for the filing of prepetition claims against the Debtors.

2. In October 2010, Ms. Woody filed a motion with the Court seeking relief from the automatic stay (the “**Stay Motion**”) to pursue a lawsuit against “General Motors Company/Chevrolet Division of GM/General Motors Corp.” in the General Court of Justice for Wake County, North Carolina (the “**Lawsuit**”).<sup>1</sup> The Lawsuit includes claims for, among other things, violations of the Magnuson-Moss Warranty Act and the Truth and Lending Act. After a hearing on the Stay Motion, the Court entered the Stay Order, denying Ms. Woody relief from the stay and establishing February 7, 2011 as the deadline for Ms. Woody to file proofs of claim against the Debtors. (The Stay Order is attached hereto as **Exhibit A.**)

3. On February 10, 2011 and February 11, 2011 (after the deadline set forth in the Stay Order) Ms. Woody filed proofs of claim numbered 70860 and 70869, respectively, asserting secured and unsecured claims in the amount of \$39,376.02 arising from various losses

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<sup>1</sup> Ms. Woody has also filed other pleadings in the Debtors’ cases, including an “Objection to Debtor’s [Motion] for Entry of an Order Establishing Claims Reserves in Connection with Distributions to be Made Under the Debtors’ Amended Joint Chapter 11 Plan with Respect to, Among Other Things, Certain Unliquidated Claims.” (Feb. 22, 2011).

related to the Vehicle, including “legal expenses” related to the Lawsuit. Ms. Woody checked the box on each of the proofs of claim indicating that the Supplemental Claims amend the previously filed Original Claims.

4. On August 24, 2011, the GUC Trust filed its 243rd Omnibus Objection to Claims, which included an objection to the Original Claims on the basis that such claims were not timely filed (the “**Original Objection**”). Ms. Woody filed her response to the Original Objection, which included, among other things, various baseless allegations against the Debtors and a wholly unsubstantiated request for sanctions against two attorneys at Dickstein Shapiro LLP, counsel to the GUC Trust (the “**Woody Response**”). The source of Ms. Woody’s distress appears to be her (mis)understanding that the Court “has already allowed the proof of claim.” *Woody Response*, ¶2; *But see December 2, 2010 Transcript*, at p. 54 (providing Ms. Woody additional time to file claims “without prejudice to the rights of Old GM or its creditor’s committee to object to the proof of claim if one is filed”); *Stay Order* (noting deadline is “without prejudice to any other party’s rights to be heard as to the allowance of that claim”).<sup>2</sup>

5. Though the GUC Trust believes the Claims are untimely and that neither the Claims nor the allegations in the Woody Response have any substantive merit, the GUC Trust has made various settlement offers to Ms. Woody – both in connection with the Stay Motion and the Original Objection. The GUC Trust’s efforts to settle the Claims reflect the need to be judicious in the use of the GUC Trust’s limited resources and the *de minimis* value of the Claims. Most recently, the GUC Trust proposed to Ms. Woody, by letter dated October 18, 2011, that she accept an allowed unsecured claim in a fixed amount, in full and final settlement of the Claims. The Settlement Letter set November 11, 2011 as a deadline for the claimant to

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<sup>2</sup> In accordance with the Case Management Order, the GUC Trust will be filing a separate reply to the Woody Response at least three days prior to the scheduled hearing.

respond to such offer. Ignoring the Court's suggestion at the hearing on the Stay Motion, Ms. Woody did not respond to the Settlement Letter. *See December 2, 2010 Hearing Transcript*, at p. 54 ("I would encourage you, Ms. Woody, considering how little a claim may be worth, to seriously consider any settlement offer that GM might offer you."). (The relevant portion of the December 2, 2010 Hearing Transcript is attached hereto as **Exhibit B.**) Counsel not been able to reach Ms. Woody by phone, as the number provided in her proofs of claim has been disconnected. Given that efforts to resolve the Claims have proved fruitless, the GUC Trust has no choice but to pursue both the Original Objection and this Objection.

### **RELIEF REQUESTED**

6. By this Objection, the GUC Trust seeks entry of an order enforcing the deadline for Ms. Woody to file claims against the Debtors, as set forth in the Stay Order, pursuant to section 502(b) of title 11, United States Code (the "**Bankruptcy Code**") and seeking entry of an order disallowing and expunging the Supplemental Claims. Additionally, the GUC Trust requests that this Objection be heard by the Court together with the Original Objection.

### **JURISDICTION**

7. 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).

### **THE CLAIMS**

8. On October 21, 2010 and October 25, 2010, almost a year after the Bar Date, Ms. Woody filed Claim Nos. 70490 and 70481, respectively, against Motors Liquidation Company:

- Claim Number 70490: This claim is for a "pending state court lawsuit." The basis of the claim, a portion of which appears to be classified as secured, is described as a manufactured defect of car; a loan ensued from a third party; and a product liability lawsuit pending revocation of contract." The value of the property,



presumably of the Vehicle, is stated as \$33,687.36. Attached to the claim are consumer credit documents between Ms. Woody and Farm Ranch Auto Sales and receipts from Chevy Trucks listing the Vehicle Price as \$41,775.00.

- Claim Number 70481: This claim appears to be an exact duplicate of Claim No. 70490.

9. On February 10, 2011 and February 11, 2011, Ms. Woody filed Claim Nos. 70860 and 70869, respectively, against Motors Liquidation Company:

- Claim No. 70860: This claim states that it amends Claim No. 70481 and seeks \$39,376.02, a portion of which Ms. Woody appears to classify as secured. The proof of claim form attaches a summary of expenses for which she is seeking reimbursement from the Debtors, including: (i) a deficiency surplus calculated aggregate owed and loss of SUV vehicle; (ii) the amount Ms. Woody paid for the SUV; (iii) car repairs and loss of items expenses; (iv) legal expenses; and (v) cost of renting a vehicle after loss of use of SUV. The proof of claim includes a copy of the complaint filed by Ms. Woody in Wake County, NC against a number of defendants, including GM. Ms. Woody also attaches a number of documents, presumably to support the expenses incurred regarding her Vehicle including: a letter from Capital One regarding a car loan for a Chevrolet car; a bill from Five Points Service Center; a bill from West Coast Towing; a bill from Walmart for a battery; and a bill from Farm Ranch Auto Sales.
- Claim No. 70869: This claim appears to be an exact duplicate of Claim No. 70860.

### ARGUMENT

10. The Supplemental Claims should be expunged because they were filed late, in blatant violation of the Stay Order. At the hearing on the Stay Motion, the Court granted Ms. Woody additional time to file proofs of claim against the Debtors. The Stay Order, entered by the Court on January 6, 2011, provided that Ms. Woody “shall have thirty (30) days from the **date of this Order** to file a proof of claim in these chapter 11 cases, to the extent no proof of claim was previously timely filed, without prejudice to any other party’s rights to be heard as to the allowance of that claim.” *Stay Order* (emphasis added). Thirty days from January 6, 2011 is

February 5, 2011. Given that February 5, 2011 falls on a weekend, the next business day is Monday, February 7, 2011. Thus, **February 7, 2011** was Ms. Woody's deadline to file her claims. Ms. Woody did not file either of the Supplemental Claims before such deadline. Indeed, Claim No. 70860 was filed on February 10, 2011, while Claim No. 70869 was filed one day later.

11. Section 502(b)(9) of the Bankruptcy Code provides that, upon the objection of a party in interest, a claim shall be disallowed to the extent that "proof of such claim is not timely filed." 11 U.S.C. § 502(b)(9). Pursuant to Bankruptcy Rule 3003(c)(3), a proof of claim is not timely filed unless it is filed "prior to a bar date established by order of a bankruptcy court." *In re XO Commc'n, Inc.*, 301 B.R. 782, 791 (Bankr. S.D.N.Y. 2003); Fed. R. Bankr. P. 3003(c)(3). Any creditor who fails to file a proof of claim on or before the applicable bar date "will be forever barred that is, forbidden – from asserting the claim against each of the Debtors and their respective estates." *Bar Date Order* at ¶6.

12. In this case, the Stay Order serves as the bar date order for the Supplemental Claims, clearly setting a deadline for Ms. Woody to file such claims against the Debtors.<sup>3</sup> *In re Mr. Goodbuys of New York Corp.*, 164 B.R. 24, 29 (Bankr. E.D.N.Y. 1994) (disallowing late-filed proof of claim by *pro se* claimant where claimant failed to comply with court-issued extension of the bar date order) Ms. Woody's failure to timely file the Supplemental Claims in accordance with the Stay Order should have the same consequences as

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<sup>3</sup> To the extent Ms. Woody argues that the Supplemental Claims are timely because they amend the Original Claims, such argument also fails. As will be explained in more detail in the GUC Trust's reply to the Woody Response, despite having received actual notice of the Bar Date, Ms. Woody filed the Original Claims over one year after the November 30, 2009 Bar Date. It is black letter law that an amendment to a claim cannot be deemed timely where the original claim was late. *Avidon v. Halpert*, 145 F.2d 884, 885 (2d. Cir. 1944) (for an amendment to occur, "[t]here must be a timely assertion, however informal, by the creditor of his claim against the debtor's estate."); *see also In re Enron Corp.*, 328 B.R. 75, 86-87 (Bankr. S.D.N.Y. 2005) (a timely filed original claim is a threshold requirement for amending a claim).

violation of the deadline in the Bar Date Order – *i.e.*, her claims should be disallowed and expunged and she should be “forever barred” from asserting claims against the Debtors. *Id.*

13. Ms. Woody had notice of the Stay Order (*See* Radhi S. Rai Affidavit of Service dated December 20, 2010, the relevant portion of which is attached hereto as **Exhibit C**) and was present at the hearing when the Court issued its ruling establishing the filing deadline. In light of the foregoing, there can be no reasonable dispute that Ms. Woody is bound by the Stay Order and the February 7, 2011 deadline set forth therein. Consequently, the Supplemental Claims were late and should be barred as a matter of law.

### **CONCLUSION**

For the reasons set forth above, this Court should enter an order expunging each of the Claims and granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
November 17, 2011

/s/ Stefanie Birbrower Greer  
Barry N. Seidel (BS-1945)  
Stefanie Birbrower Greer (SG-2898)

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Company GUC Trust

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

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| <b>In re</b>                               | : <b>Chapter 11 Case No.</b>    |
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| <b>MOTORS LIQUIDATION COMPANY, et al.,</b> | : <b>09-50026 (REG)</b>         |
| <b>f/k/a General Motors Corp., et al.</b>  | :                               |
|  | :                               |
| <b>Debtors.</b>                            | : <b>(Jointly Administered)</b> |
|  | :                               |
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**ORDER GRANTING OBJECTION TO CLAIM NUMBERS 70860 and 70869  
FILED BY TRACY WOODY AND MOTION REQUESTING ENFORCEMENT  
OF COURT ORDERS SETTING DEADLINES TO FILE PROOFS OF CLAIM**

Upon the objection to proofs of claim numbered 70860 and 70869 (the “**Claims**”) and motion requesting enforcement of court orders setting deadlines to file proofs of claim, dated November 17, 2011 (the “**Objection**”), of the Motors Liquidation Company GUC Trust, formed by the above-captioned debtors (collectively, the “**Debtors**”) in connection with the Debtors’ Second Amended Joint Chapter 11 Plan, dated March 18, 2011, pursuant to section 502(b) of title 11 of the United States Code (the “**Bankruptcy Code**”) and this Court’s order setting a deadline for Tracy Woody to file proofs of claim (ECF No. 8391), seeking entry of an order disallowing and expunging the Claims on the grounds that such claims were not timely filed, all as more fully described in the Objection; and due and proper notice of the Objection 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 Objection is in the best interests of the Debtors, their estates, creditors, and all parties in interest and that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the relief requested in the Objection is granted; and it is further

ORDERED that, pursuant to section 502(b) of the Bankruptcy Code, the Claims are disallowed and expunged; 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

\_\_\_\_\_  
United States Bankruptcy Judge

# **EXHIBIT A**

PRESENTMENT DATE AND TIME: December 21, 2010 at 12:00 noon (Eastern Time)

OBJECTION DEADLINE: December 21, 2010 at 11:30 a.m. (Eastern Time)

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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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)  
: :  
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**ORDER DENYING MOTION OF TRACY WOODY FOR RELIEF FROM STAY  
AND GRANTING SUPPLEMENTAL RELIEF**

Upon the motion, dated October 14, 2010 (the "**Motion**") of Tracy Woody ("**Movant**") for Relief of Stay and Objection to Debtor's Proposed Disclosure Statement with Respect to Debtor's Joint Chapter 11 Plan (ECF No. 7454), all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the requested relief in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion 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 Motors Liquidation Company and its affiliated debtors having filed their opposition to the Motion (ECF No. 7736) (the "**Opposition**"); and the Court having held a hearing to consider the requested relief on December 2, 2010 (the "**Hearing**"); and based upon the Motion, the Opposition, and the record of the Hearing, and all of the proceedings before the Court, it is

ORDERED that for the reasons set forth on the record of the Hearing, the Motion is DENIED; and it is further

ORDERED that Movant shall have thirty (30) days from the date of this Order to file a proof of claim in these chapter 11 cases, to the extent no proof of claim was previously timely filed, without prejudice to any other party's rights to be heard as to the allowance of that claim; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: New York, New York  
January 6, 2011

/s/ Robert E. Gerber  
United States Bankruptcy Judge



# **EXHIBIT B**

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
Case No. 09-50026 (REG)

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.  
f/k/a General Motors Corporation, et al.,  
Debtors.

- - - - -x

United States Bankruptcy Court  
One Bowling Green  
New York, New York

December 2, 2010  
9:52 AM

B E F O R E:  
HON. ROBERT E. GERBER  
U.S. BANKRUPTCY JUDGE

1 HEARING re Status Conference re: Disclosure  
2  
3 HEARING re Debtors' Ninety-Seventh Omnibus Objection to Claims  
4 (No Liability GMAC Debt Claims)  
5  
6 HEARING re Debtors' Ninety-eighth Omnibus Objection to Claims  
7 (Incorrectly Classified Claims)  
8  
9 HEARING re Debtors' 10erd Omnibus Objection to Claims (Welfare  
10 Benefits Claims of Retired and Former Salaried and Executive  
11 Employees)  
12  
13 HEARING re Motion for Relief from Stay filed by John F.  
14 Townsend III on behalf of Timothy Bynum  
15  
16 HEARING re Motion for Relief from Stay on behalf of Samuel  
17 Barrow  
18  
19  HEARING re Motion for Relief from Stay, Tracy Woody  
20  
21 HEARING re Motion of Debtors Authorizing Estimation of Debtors'  
22 Aggregate Liability for Asbestos Personal Injury Claims and  
23 Establishing Schedule for Estimation Proceeding  
24  
25 Transcribed by: Lisa Bar-Leib

1 and the rest of the objection could be marked off calendar as  
2 resolved.

3 THE COURT: Of course, sure.

4 MR. SMOLINSKY: And that, I believe, leaves with us  
5 Ms. Woody's motion.

6 THE COURT: All right. Ms. Woody, I'll hear your  
7 oral argument. It's your motion. I do have a few questions of  
8 both sides. First, I saw an indication in the debtor's  
9 response that there were settlement negotiations that were  
10 being considered or ongoing, and I'd like to know what happened  
11 to them, since I would've thought that the cost of litigating  
12 this motion could exceed the amount of the cost of repairs or  
13 damage to the vehicle.

14 I also did not see in this thick package, but I may  
15 have missed it, the actual ruling by the North Carolina state  
16 court, but Ms. Woody, I didn't see any reply by you that would  
17 cause me to quarrel with what the debtors said about the claim  
18 being found to be untimely, although the words that the debtor  
19 used struck me as odd. Certainly, I don't rule that way. Time  
20 barred and/or failed as a matter of law, I would've thought  
21 that most judges would be more specific in saying what they're  
22 ruling on and why.

23 Ms. Woody, you didn't deal with the Sonnax factors,  
24 which are the factors that a judge in my circuit, the 2nd  
25 Circuit, must take into account in deciding whether or not to

1 grant relief from the stay. And, of course, there are many,  
2 many precedents where I have ruled, principally by dictated  
3 decisions on others' requests for relief from the stay, which  
4 so far as I recall, I have denied in every instance, and I  
5 guess the question I have is why this case should be regarded  
6 as different than the others, and why the precedents of the  
7 others don't equally apply here.

8 So with that said, I'll hear first from you, Ms.  
9 Woody.

10 MS. WOODY: First of all, Your Honor, I would like to  
11 apologize. My daughter is actually sick and she was coughing.  
12 I was just trying to let her know I was on the phone with the  
13 Court.

14 But in any event, I believe that there are certain  
15 bankruptcy procedures that has to be followed regarding General  
16 Motors. I believe I was supposed to be sent a proof of claim  
17 and possibly a notice of creditor's meetings, because -- a  
18 meeting, because I know that they, General Motors, was aware of  
19 the lawsuit that I filed against them as the manufacturer.

20 I purchased a vehicle that was part of a lawsuit  
21 against General Motors, regarding some manufacturing defects in  
22 the vehicle, and I filed my case regarding this within the  
23 three-year period. And I did not receive a proof of claim from  
24 the attorney for General Motors. I didn't receive any notice  
25 of creditor's meetings.

1           The only thing I received was this Chapter 11  
2           confirmation and a letter previously telling me that GM was in  
3           bankruptcy, and that I should dismiss my case, or sanctions may  
4           be imposed upon me. That's the letter I received from the  
5           attorney's office for GM.

6           So I wasn't aware of the deadline, of any deadline  
7           for a claim, but at this point, I'm still an interested party.  
8           I still have a Wayne County court -- district court case  
9           against which General Motors is one of the parties, that I'm  
10          going to get in against because of manufacturing defects to the  
11          vehicle and the damages and so forth that pursued (sic).

12          And as far as the bankruptcy, it is not set up to  
13          protect any misrepresentation of a product or any type of -- I  
14          mean, I was sold the product saying that the vehicle was in  
15          good shape, that it had been tested, there was no problem with  
16          it.

17          When I took the vehicle to a car mechanic, as a  
18          matter of fact, General Motors is the one that sent this  
19          litigation or lawsuit information a year after the warranty was  
20          over, and it mentioned as long as -- well, the mechanic  
21          mentioned that was working on my car, mentioned that the  
22          speedometer defect had to be repaired by the manufacturer, and  
23          the vehicle I had was down for several months.

24          And he mentioned -- we had a long conversation, the  
25          mechanic and I, and there were some issues with the

1 manufacturer, it was some manufacturer defects. And what  
2 concerned me is that the vehicle stopped while I was driving,  
3 and I had my children in the car, and my elderly mother. And  
4 we stopped, actually it stopped while we were driving, and we  
5 were right there in a dead curve where somebody could've really  
6 hit us, and we could've had a horrible accident.

7 But in any event, the ruling for the Wayne County  
8 District Court was -- the attorneys had mentioned that I had  
9 not filed the claim or the cases -- I should say the case, I  
10 didn't file to serve it or serve it with the proper subpoenas  
11 and so forth, which I'm not sure what happened to those  
12 subpoenas, but I -- as far as everything was filed and even  
13 served a second time around to the attorneys that these  
14 defendants, including General Motors. And I don't know how  
15 that paperwork got missing. I guess it was just a clerical  
16 error. But I had sent copies of all of the subpoenas. I  
17 reissued those subpoenas from the courthouse, from the clerk,  
18 who signed off on them, and they received those as well.

19 So actually the order, as far as the Court, and I  
20 have a jurisdiction was not appropriately -- filed. So I filed  
21 the motion to set that order aside, and that's where we're at  
22 at this point.

23 And I listed the specific information about General  
24 Motors and why the liability is still an issue, and it really  
25 stems from a letter that -- also it kind of came from them,

1 which says that -- and I filed this with my proof of claim as  
2 an interested party, which states that General Motors -- the  
3 description of the lawsuit was it was a class action lawsuit,  
4 and my vehicle is one of the vehicles that's listed in here, a  
5 2003 Chevrolet Suburban, and it mentions --

6 THE COURT: Pause, please, Ms. Woody. Your lawsuit  
7 was not a class action lawsuit, right?

8 MS. WOODY: No, it wasn't. It wasn't part of the  
9 class action lawsuit, no, sir, it wasn't.

10 THE COURT: No, I don't understand. You're saying  
11 you were a member of a class, of somebody else's class action  
12 lawsuit?

13 MS. WOODY: Oh, no, sir. I'm saying that I'm  
14 referencing that there was other plaintiffs that have filed a  
15 lawsuit against General Motors regarding the same issues that I  
16 had filed a lawsuit against.

17 THE COURT: What does that have to do with you?

18 MS. WOODY: Well, it's just that there are other  
19 cases out there with the same type of problem, or there were  
20 other cases out there with the same type of problems that I had  
21 with my vehicle, with the manufactured defects.

22 THE COURT: Okay. Do you want to talk about the  
23 Sonnax factors?

24 MS. WOODY: I'm sorry?

25 THE COURT: Do you want to be heard on what GM said



1 about the Sonnax factors?

2 MS. WOODY: Sonnax factors?

3 THE COURT: Yes. If you don't know what they are --

4 MS. WOODY: No.

5 THE COURT: -- then I'll rule on them based --

6 because I know what they are. But you don't want to speak to

7 that; am I correct?

8 MS. WOODY: I'm not aware of what the Sonnax factors

9 are at this point.

10 THE COURT: Okay. Fair enough.

11 MS. WOODY: Uh-huh.

12 THE COURT: Do you have a copy -- well, I'll ask

13 Mr. Smolinsky. Did the North Carolina court issue its ruling

14 in writing? Hello? Are you still with me, Ms. Woody?

15 MS. WOODY: Oh, yes, I'm sorry. I didn't know if you

16 were talking to an attorney. There was a ruling about the

17 court not having subject matter. It was an issue with the

18 subpoenas, but as I mentioned, I have asked that that motion be

19 set aside, so that's going to be scheduled for court, but

20 before I can schedule that, I needed to have a motion for

21 relief so I can continue showing the judge that in the file,

22 all the subpoenas, and they were all issued. I've sent

23 certified copies and so forth of all the information. So that

24 order, you know, is not correct.

25 THE COURT: Okay. Thank you. All right. I'll hear

1 from Mr. Smolinsky now. Mr. Smolinsky, start with, did the  
2 North Carolina court issue its ruling in writing?

3 MR. SMOLINSKY: It did, Your Honor, and I'm just --  
4 through my investigation from my office. The reason why it  
5 wasn't -- we didn't attach it to the papers, was that it didn't  
6 say anything substantive. It merely stated that GM's motion  
7 for summary judgment is granted in its entirety, and  
8 plaintiff's complaint is dismissed.

9 THE COURT: When it said GM, did it make a  
10 distinction between Old GM and New GM?

11 MR. SMOLINSKY: I would have to say they were talking  
12 about New GM, because that's the one who filed the motion for  
13 summary judgment, and we had already worked out with Ms. Woody  
14 that we were severed from that case. So I wouldn't --  
15 certainly wouldn't assume that the judge was dismissing the  
16 case as to us.

17 THE COURT: All right. Continue.

18 MR. SMOLINSKY: And plaintiff's complaint is  
19 dismissed in its entirety, as asserted against General Motors  
20 LLC f/k/a General Motors Company, s/h/a General Motors  
21 Company/severally a division of GM/General Motors Corp., and  
22 that's all it said.

23 So we paraphrased, based on what the motion for  
24 summary judgment was, which was based on a timeliness --

25 THE COURT: I don't quarrel with your paraphrase, Mr.

1 Smolinsky, but without being critical of another judge, without  
2 understanding the basis upon which the other judge ruled, I  
3 have some difficulty applying res judicata or collateral  
4 estoppel.

5 MR. SMOLINSKY: I don't dispute that, Your Honor, and  
6 I don't think that we're arguing that the judge has already  
7 dismissed the case as to us.

8 THE COURT: Okay. You don't need to repeat yourself  
9 on the Sonnax factors. Ms. Woody says she never got a proof of  
10 claim form or got timely notice of the need to file a claim,  
11 even though there was apparently ongoing communications between  
12 her and GM's counsel down in North Carolina. Do you have any  
13 facts relevant to that?

14 MR. SMOLINSKY: I don't, Your Honor, other than the  
15 fact that we did our best to notify parties to actions and  
16 threatened actions, using information that was provided by, at  
17 that time, New GM. I can't confirm or deny today whether Ms.  
18 Woody was on that list.

19 I did hear her say that she knew that the bankruptcy  
20 was filed at the time, but other than that, I would have to do  
21 some further investigation.

22 THE COURT: Okay. Well, again, I don't have a  
23 problem with you or your firm, Mr. Smolinsky, but other people  
24 who have gotten involved in one way or another in this  
25 controversy may not have done all the things that -- let's just

1 say that best practices would've suggested that they could've  
2 or should've done.

3 You don't need to repeat yourself on Sonnax factors.  
4 Is there anything else you want to talk about, Mr. Smolinsky?

5 MR. SMOLINSKY: Other than to just, you know, confirm  
6 for the record that this action was filed after our bankruptcy  
7 was filed, and so when you look at the first Sonnax factor,  
8 there are several matters that are not North Carolina state  
9 court issues, but would have to come back to the bankruptcy  
10 court for, such as whether the North Carolina action is voided  
11 as a matter of law for violating the stay, whether any judgment  
12 is unenforceable for the failure to file a proof of claim, or  
13 whether any claims, an expressed warranty claim that would be  
14 assumed by New GM, or a retained liability under the master  
15 sale and purchase agreement.

16 With respect to the settlement, you know, we have  
17 tried to take a very practical approach in this case. We have  
18 resolved a number of cases in similar situations where there  
19 hasn't been proofs of claim. We think that the bankruptcy  
20 environment is the best way to do that in. I think we made --  
21 we spoke to Ms. Woody twice, and offered at each time a  
22 settlement offer, which I think was very generous, relative to  
23 I think the amount of her repairs, and those offers were  
24 rejected.

25 I don't want to violate Rule 408, I'm happy to

1 disclose what the offer was, if Your Honor is interested, but  
2 so far we have not been able to resolve it. I think the  
3 practicality and the efficiency of this case is the important  
4 issue here. I think that we can deal with this claim here in  
5 the bankruptcy court. I fear very much that to the extent that  
6 this moves back to North Carolina, that we're going to be mired  
7 in litigation for a long time over a claim of a very small  
8 amount.

9 THE COURT: All right. Everybody, have a seat,  
10 please. Mr. Smolinsky and Ms. Woody, I'm now going to rule.

11 Ladies and gentlemen, I am denying relief from the  
12 stay. Which means, Ms. Woody, that I am denying permission for  
13 you to proceed in North Carolina, but will also be issuing a  
14 supplemental order in the interest of justice, which I will  
15 describe in a moment.

16 The narrowest issue before me is whether you, Ms.  
17 Woody, should be allowed to proceed with further litigation in  
18 North Carolina; and a motion of that character is governed by  
19 twelve factors that I am directed by the 2nd Circuit Court of  
20 Appeals to consider, which are known as the Sonnax factors,  
21 S-o-n-n-a-x, as described in a case reported at 907 F2d 1280.

22 Those factors overwhelmingly weigh in favor of me  
23 exercising my discretion, which the case law permits me to do,  
24 to deny relief from the stay.

25 The first Sonnax factor is whether relief would

1 result in a partial or complete resolution of the issues. Here  
2 that depends on how you would define it. It appears that the  
3 -- a decision was issued insofar as General Motors LLC, what I  
4 call New GM, would be concerned. Here the litigation would  
5 proceed, presumably it could result in a resolution of the  
6 issues with respect to Old GM, but at the same time, the North  
7 Carolina state court judge might rule that the same reasons  
8 that he gave for ruling in favor of New GM would also apply to  
9 Old GM, if in fact, he didn't have that in mind already. I  
10 can't be sure.

11 So this factor, when it's present in a clear way,  
12 normally weighs in favor of granting relief from the stay, but  
13 here it either is a wash or tilts against it. Lack of any  
14 connection with or interference with the bankruptcy case is the  
15 second factor, and that weighs materially in favor of Old GM  
16 here.

17 There have been many, I don't remember how many  
18 similar motions that we've dealt with before where people want  
19 to proceed with litigation against Old GM all around the  
20 country, and the cost of defending these is a burden upon all  
21 of GM's creditors, and creates both interference and burden on  
22 that.

23 We do have a claims process for dealing with this  
24 type of stuff. I'm going to come back to the claims process  
25 later. But that's the way that a claim of this character

1 should be dealt with, not by litigating in North Carolina.

2 Whether the other proceeding involves the debtor as a  
3 fiduciary weighs in favor of relief from the stay when it's  
4 applicable, but here it's not applicable.

5 Factor number four is whether a specialized tribunal  
6 with the necessary expertise has been established to hear the  
7 cause of action, and that factor weighs in favor of granting  
8 relief from the stay when it applies. But when it doesn't  
9 apply, it's either a wash or tilts against it.

10 The fifth factor is whether the debtor's insurer has  
11 assumed full responsibility for defending it, and like some of  
12 the predecessors, it weighs in favor of granting relief from  
13 the stay when it's applicable, but here it does not apply. So  
14 it is either a wash or tends to weigh against relief from the  
15 stay.

16 Whether the action primarily involves third parties;  
17 well, again when this factor is present, it tends to weigh in  
18 favor of granting relief from the stay. There obviously here  
19 is one third party, which is New GM, but which is no longer in  
20 the case, and now as a practical matter, all we're talking  
21 about is whether these claims should be heard in the claims  
22 process or down in North Carolina. So this factor is at most a  
23 wash or alternatively, weighs against relief from the stay.

24 Factor number seven is whether litigation in another  
25 forum would prejudice the interests of other creditors, and in

1 a different context I talked about this. This is indeed  
2 prejudicial to the other creditors because they would have to  
3 bear the cost of litigation by Old GM in North Carolina, which  
4 is unfair to them. Those factors weighs materially in favor of  
5 denying relief from the stay.

6 Whether the judgment claim arising from the other  
7 action is subject to equitable subordination is factor number  
8 eight. And here, under the facts, this factor doesn't apply at  
9 all or alternatively is regarded as a wash. It just doesn't  
10 apply.

11 Factor number nine is whether movant's success in the  
12 other proceeding would result in a judicial lien avoidable by  
13 the debtor. This too doesn't apply.

14 Factor number ten, which is one of the most  
15 important, is the interests of judicial economy and the  
16 expeditious and economical resolution of litigation. This  
17 relates to a couple of the others and this weighs heavily  
18 against granting relief from the stay.

19 I can deal with the matters of judicial economy much  
20 more quickly and easily in the claims process, and going back  
21 to start up a whole new litigation in North Carolina is going  
22 to be exactly the opposite of being expeditious or economical,  
23 and is exactly the kind of thing that the interests of judicial  
24 economy say that I would be nuts to do.

25 Factor number eleven, whether the parties are ready



1 for trial in the other proceeding is a factor that when it  
2 applies weighs in favor of granting relief from the stay, but  
3 here it doesn't apply. So once more, it's either a wash or  
4 tends to vote or weigh against granting relief from the stay.

5 Impact of the stay on the parties and the balance of  
6 harms, is here essentially a wash. I can grant whatever relief  
7 is in the interest of justice as well, and most likely quicker  
8 than the North Carolina court could.

9 So for the foregoing reasons, I'm exercising my  
10 discretion to deny relief from the stay. With that said, I  
11 take Ms. Woody at her word when she said she didn't get notice  
12 of a deadline for filing claims. And I wasn't a fly on the  
13 wall, so I don't know what Ms. Woody was told by the lawyers  
14 for New GM, who were defending that lawsuit down in North  
15 Carolina, but if it is true, as Ms. Woody alleges, that she had  
16 all these conversations with these guys and they never told her  
17 about the fact that she'd need to file a claim and the deadline  
18 for doing that, that's a matter of concern to me.

19 So what I'm going to do is, Ms. Woody, I'm going to  
20 give you thirty days from the date that GM gives you service of  
21 the order denying your motion for relief from the stay, to file  
22 a proof of claim for the costs that you claim that you were  
23 suffered. And if you file a proof of claim, then you will get  
24 the same distributions as other creditors of GM with  
25 prepetition claims get, to the extent that there is either

1 agreement on what your damages should be or I, as a judge,  
2 resolve it.

3 That does not mean that if by way of example, you  
4 file a proof of claim for nine thousand dollars, you're going  
5 to get a check for nine thousand dollars. First of all, it's  
6 only what your damages actually are, and second, you're going  
7 to get the same amount on a claim that other creditors get.  
8 And I don't know exactly what a claim is worth in this case,  
9 but let's say it's fifteen or twenty cents on the dollar,  
10 that's what we're talking about, and it might be less for that  
11 matter. I just don't know, I don't know what the value of the  
12 stock that is going to ultimately go to creditors is, but  
13 that's the way it's going to be.

14 This ruling is, of course, without prejudice to the  
15 rights of Old GM or its creditor's committee to object to the  
16 proof of claim if one is filed, and I would encourage you,  
17 Ms. Woody, considering how little a claim may be worth, to  
18 seriously consider any settlement that GM might offer you, but  
19 ultimately that's your decision, not mine.

20 Mr. Smolinsky, you're to settle an order in  
21 accordance with this dictated ruling, saying in substance that  
22 for the reasons set forth on the record, the motion for relief  
23 from the stay is denied, but also providing that Ms. Woody will  
24 have thirty days to file a proof of claim, and if she does file  
25 a proof of claim that this ruling is without prejudice to

1 everybody's rights on whether or not that proof of claim should  
2 be allowed.

3 The time to appeal from this determination will run  
4 from the date of entry of the order, and not from today, and  
5 the usual fourteen-day stay of effectiveness of the order under  
6 Bankruptcy Rule 4001 will remain in effect.

7 All right. I believe we're done, folks.

8 Mr. Smolinsky?

9 MR. SMOLINSKY: Your Honor, I would just note that  
10 Ms. Woody is free to contact me at the number on the papers or  
11 Breanna Benefield (ph) who she spoke to several times, if she  
12 wants to bypass the proof of claim process and see if we can  
13 just reach agreement.

14 MS. WOODY: I can barely hear, I'm sorry.

15 THE COURT: All right. Mr. Smolinsky, pull the  
16 microphone real close to you and just repeat to her so she can  
17 hear what you just told me.

18 MR. SMOLINSKY: Your Honor, I was just making the  
19 offer that if Ms. Woody wanted to try to bypass the proof of  
20 claim process, that she's free to call me at the number on our  
21 papers or Breanna Benefield who she has spoken to on several  
22 occasions.

23 THE COURT: Okay. Did you follow that, Ms. Woody?

24 MS. WOODY: I did, and thank you very much.

25 THE COURT: Okay. Have a nice day. We're adjourned.

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(Whereupon these proceedings were concluded at 11:06 a.m.)

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I N D E X

RULINGS

|                             | Page | Line |
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| Motion for Relief From Stay |      |      |
| Tracy Woody                 |      |      |
| Denied                      | 49   | 13   |

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

**Lisa Bar-Leib**

Digitally signed by Lisa Bar-Leib  
DN: cn=Lisa Bar-Leib, c=US  
Reason: I am the author of this document  
Date: 2010.12.03 14:29:49 -05'00'

LISA BAR-LEIB

AAERT Certified Electronic Transcriber (CET\*\*D-486)

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: December 3, 2010

# **EXHIBIT C**





- Notice of Settlement of Order Denying Motion of Tracy Woody for Relief from Stay and Granting Supplemental Relief [Docket No. 8149].

Dated: December 20, 2010  
Melville, New York

/s/ Radha S. Rai  
Radha S. Rai

Sworn to before me this 20<sup>th</sup> day of December, 2010

/s/ Jodi Pujols

Jodi Pujols

Notary Public, State of New York

No. 01PU6175916

Qualified in Nassau County

Commission Expires: October 22, 2011