Hearing Date and Time: June 28, 2012 at 10:00 a.m. (ET
Objection Deadline: June 27, 2012

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

NOTICE OF HEARING ON THE UNITED STATES OF AMERICA'S MOTION TO APPROVE ENVIRONMENTAL SETTLEMENT AGREEMENTS

PLEASE TAKE NOTICE that upon the annexed Memorandum of Law in Support of Motion to Approve Settlement Agreement Between the Debtors and the United States, dated June 13, 2012, of the United States of America (the "**United States**"), a hearing (the "**Hearing**") to consider the Motion will be held before the Honorable Robert E. Gerber, United States Bankruptcy Judge, in Room 621 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, on **June 28, 2012 at 10:00**

a.m. (Eastern Time), or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court (a) electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov) by registered users of the Bankruptcy Court's filing system, and (b) by all other parties in interest, on a CD-ROM or 3.5 inch disk, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399 and on (i) Weil, Gotshal & Manges LLP, attorneys for the GUC Trust, 767 Fifth Avenue, New York, New York 10153 (Attn: Harvey R. Miller, Esq., Stephen Karotkin, Esq., and Joseph H. Smolinsky, Esq.); (ii) the Debtors, c/o Motors Liquidation Company, 401 South Old Woodward Avenue, Suite 370, Birmingham, Michigan 48009 (Attn: Thomas Morrow); (iii) General Motors, LLC, 400 Renaissance Center, Detroit, Michigan 48265 (Attn: Lawrence S. Buonomo, Esq.); (iv) Cadwalader, Wickersham & Taft LLP, attorneys for the United States Department of the Treasury, One World Financial Center, New York, New York 10281 (Attn: John J. Rapisardi, Esq.); (v) the United States Department of the Treasury, 1500 Pennsylvania Avenue NW, Room 2312, Washington, D.C. 20220 (Attn: Joseph Samarias, Esq.); (vi) Vedder Price, P.C., attorneys for Export Development Canada, 1633 Broadway, 47th Floor, New York, New York 10019 (Attn: Michael J. Edelman, Esq. and Michael L. Schein, Esq.); (vii) Kramer Levin Naftalis & Frankel LLP, attorneys for the statutory committee of unsecured creditors, 1177 Avenue of the Americas, New York, New York 10036 (Attn: Thomas Moers Mayer, Esq.,

Robert Schmidt, Esq., Lauren Macksoud, Esq., and Jennifer Sharret, Esq.); (viii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall

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

Dated: New York, New York
June 13, 2012

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

By: */s/ Natalie N. Kuehler*
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U.S. Department of Justice

Hearing Date and Time: June 28, 2012 at 10:00 a.m. (ET)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

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

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I. PRELIMINARY STATEMENT

The United States of America (the "**United States**"), on behalf of the United States Environmental Protection Agency ("**EPA**"), respectfully submits this memorandum of law in support of its Motion for an Order Approving the Lower Ley Creek Non-Owned Site Consent Decree and Settlement Agreement (the "**Lower Ley Creek Settlement Agreement**") and the Onondaga Other Non-Owned Site Consent Decree and Settlement Agreement (the "**Onondaga Settlement Agreement**") (collectively, the "**Settlement Agreements**")[1]. The proposed Settlement Agreements resolve environmental liabilities of the Debtors asserted by the United States on behalf of EPA, under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("**CERCLA**"), 42 U.S.C. §§ 9601 – 9675, for response costs in connection with the Lower Ley Creek, Onondaga Lake Bottom, Salina Landfill, Inland Fisher Guide Facility and PCB Dredgings Subsites at the Onondaga Lake Superfund Site in New York (collectively, the "**Settled Subsites**"). Under the Lower Ley Creek Settlement Agreement, the United States, on behalf of EPA, will receive an allowed general unsecured claim in the total amount of $38,344,177, and the New York State Department of Environmental Conservation ("**NYSDEC**"), as support agency, will receive and allowed general unsecured claim of $859,257. Under the Onondaga Settlement Agreement, the United States on behalf of EPA will receive an allowed general unsecured claim of $896,566. The proposed Settlement Agreements are annexed as Exhibits 1 and 2, respectively.

Pursuant to federal environmental laws, public notice of the proposed Settlement Agreements was published in the Federal Register, 77 Fed. Reg. 88 at 26789-90 (May 7, 2012),

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[1] This memorandum of law contains an abbreviated summary of the terms and provisions of the Settlement Agreements. If there is any conflict between the description of the settlement contained in this memorandum and the terms and provisions of the Settlement Agreements, the terms and provisions of the Settlement Agreements are controlling.

(the "**Federal Register Notice**"). The United States received three comments concerning the Settlement Agreements, which are attached hereto as Exhibits 3 through 5.

Under prior orders of this Court, the Motors Liquidation GUC Trust and the Debtors' estates are authorized to enter these agreements without obtaining the Court's approval under Bankruptcy Rule 9019, because the resolved claim amounts are less than $50 million. *See In re Motors Liquidation Co.*, Ch. 11 Case No. 09-50026 (REG), Findings of Fact, Conclusions of Law, and Order Pursuant to Sections 1129(a) and (b) of the Bankruptcy Code and Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming Debtors' Second Amended Joint Chapter 11 Plan, dated March 29, 2011, Docket No. 9941 (Bankr. S.D.N.Y.). However, it is the practice of the United States to provide seek the Court's approval of bankruptcy settlements under federal environmental laws. Such approval is warranted here. As explained more fully below, the United States has determined that the proposed Settlement Agreements are fair, reasonable and consistent with environmental law. The Settlement Agreements were reached after lengthy negotiation of their terms among sophisticated counsel. In addition, the parties weighed the merits, costs, risks and delays that litigation would entail against the value of settlements.

The function of the Court in reviewing motions to approve environmental settlement agreements is not to substitute its judgment for that of the parties to the proposed Settlement Agreements but to confirm that the terms of the proposed Settlement Agreements 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) (citation omitted). The Court should also confirm that the proposed Settlement Agreements are consistent with CERCLA's goals. *United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1426 (6th Cir. 1991). Finally, in conducting its review, the Court should be

deferential to the United States' determination that the settlements are in the public interest. *United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990). Accordingly, for the reasons set forth herein, the United States respectfully requests that this Court approve and enter the proposed Settlement Agreements, which were lodged with this Court on April 30, 2012.

II. GENERAL STATUTORY/FACTUAL BACKGROUND

A. CERCLA's Statutory Background

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

The Hazardous Substance Superfund, commonly known as the Superfund, was established pursuant to 26 U.S.C. § 9507 to finance federal response actions undertaken pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). Although CERCLA authorizes cleanup of sites contaminated with hazardous substances using money provided by the Superfund, the Superfund is a limited source of funding intended for use only when responsible parties are not available to conduct or finance a site's cleanup. *See* S. Rep. No. 96-848, 96th Cong., 2d Sess. at 17-18 (1980), *reprinted in* 1 Sen. Comm. on Env't & Pub. Works, Legislative History of CERCLA 305, 324-25 (1983). The Superfund cannot finance cleanup of all of the many

contaminated sites nationwide, so replenishment of expended Superfund monies is crucial to the continuing availability of funds for future cleanups. Thus, the United States is tasked with seeking to ensure that potentially responsible parties ("**PRPs**") perform site cleanups, or, when Superfund monies are expended by the federal government in response to a release or threatened release of hazardous substances, that those monies are recovered from PRPs through the liability scheme set forth in Section 107 of CERCLA. 42 U.S.C. § 9607. *See B.F. Goodrich Co. v. Murtha*, 958 F.2d 1192, 1197-98 (2d Cir. 1992) (one statutory purpose of CERCLA is to hold responsible parties liable for the costs of the cleanup).

Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), permits the United States to recover its costs of responding to releases of hazardous substances from PRPs. Pursuant to section 107(a), PRPs include the owners and operators of Superfund sites at the time of the disposal of hazardous substances at the sites, the current owners and operators of Superfund sites, as well as those who arrange for disposal and transport of hazardous substances to Superfund sites. *See United States v. Alcan Aluminum Corp.*, 990 F.2d 711, 721-22 (2d Cir. 1993) (describing potential liability for generating hazardous wastes found at a Superfund site); *O'Neil v. Picillo*, 883 F.2d 176, 178 (1st Cir. 1989) (distinguishing waste generators from waste transporters); *United States v. Monsanto Co.*, 858 F.2d 160, 168-71 (4th Cir. 1988) (laying out the distinction between site owner liability and generator liability).

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

agree to perform the necessary cleanup of sites. *See* 42 U.S.C. §§ 9604, 9606, and 9622.

Having created the liability system and enforcement tools to allow EPA to pursue responsible parties for Superfund cleanups, Congress expressed a strong preference that the United States settle with responsible parties in order to avoid spending resources on litigation rather than on cleanup. 42 U.S.C. § 9622(a).[2] CERCLA encourages settlements, *inter alia*, by providing parties who settle with the United States protection from contribution claims for matters addressed in the settlement. 42 U.S.C. § 9613(f)(2). This provision was designed to provide settling parties with "a measure of finality in return for their willingness to settle."[3]

B. Procedural Background

On June 1, 2009, General Motors Corp. ("**Old GM**") and three wholly-owned direct or indirect subsidiaries (collectively the "**Debtors**") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, and on October 9, 2009, REALM and ENCORE each also filed voluntary chapter 11 petitions. On November 28, 2009, the United States timely filed proof of claim No. 64064, asserting environmental liabilities against the Debtors (the "**U.S. Proof of Claim**"). Most of the environmental liabilities asserted in the U.S. Proof of Claim were resolved through prior settlement agreements, and a revised proof of claim against the Debtors was filed on April 8, 2011 (the "**Second U.S. Proof of Claim**"). These Settlement Agreements address EPA's remaining claims in the Second U.S. Proof of Claim, all of which relate to the Onondaga Lake Superfund Site in New York (the "**Onondaga Lake Site**").

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

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

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

On April 30, 2012, the United States lodged the Settlement Agreements with this Court, and the proposed settlements were subject to a 30-day public comment period following their May 7, 2012, publication of in the *Federal Register*. *See* 77 Fed. Reg. 88 at 26789-90 (May 7, 2012). The public comment period concluded on June 6, 2012. A total of three public comments were received.

C. The Settlement Agreements

1. Allowed General Unsecured Claims

The Lower Ley Creek Settlement Agreement provides that the United States, on behalf of EPA, will receive an allowed general unsecured claim totaling $38,344,177 to resolve Debtors' liabilities for contamination at the Lower Ley Creek Subsite of the Onondaga Lake Superfund Site. In addition, NYSDEC, as support agency, will receive an allowed general unsecured claim

of $859,257 in settlement of the Debtors' liability to NYSDEC at the Lower Ley Creek Subsite. In conjunction with the Lower Ley Creek Settlement Agreement, the United States also entered into an Stipulation and Agreed Order Between the GUC Trust and the United States of America dated April 30, 2012, a copy of which is attached hereto as Exhibit 6 (the "**Tax Offset Stipulation**"). The Tax Offset Stipulation was lodged with the Court simultaneously with the Lower Ley Creek Settlement Agreement and allows the United States to offset up to $17,305,000 in its allowed general unsecured claim recovery for the Lower Ley Creek Subsite. In other words, in satisfaction of its allowed general unsecured claim of $38,344,177 for the Lower Ley Creek Subsite, EPA expects to receive a cash recovery of up to $17,305,000 and a *pro rata* payout in New GM stock and warrants for the remaining $21,039,177 of its allowed claim.

The Onondaga Settlement Agreement provides that the United States, on behalf of EPA, will receive an allowed general unsecured claim totaling $896,566 to resolve the Debtors' liabilities to EPA as support agency for four other subsites of the Onondaga Lake Superfund Site as follows: (i) an allowed general unsecured claim of $438,448 for unreimbursed past costs and future costs at the Onondaga Lake Bottom Subsite; (ii) an allowed general unsecured claim of $113,248 for unreimbursed past costs and future costs at the Salina Landfill Subsite; (iii) an allowed general unsecured claim of $234,475 for unreimbursed past costs at the Inland Fisher Guide Facility Subsite (the Debtors' liabilities for future costs at this subsite were settled as part of a prior settlement agreement that resulted in the creation of RACER environmental response trust (the "**RACER Settlement Agreement**")); and (iv) an allowed general unsecured claim of $110,395 for unreimbursed past costs at the PCB Dredgings Subsite (the Debtors' liabilities for future costs at this subsite were also settled as part of the RACER Settlement Agreement).

The amount of EPA's allowed claim for contamination at each subsite was determined, for settlement purposes, by taking into account: (1) estimated total past and future response costs; (2) the Debtors' estimated percentage allocation or fair share of liability for the site; and (3) litigation considerations.

The Settlement Agreements further provide that the Debtors may reduce the distribution reserve amount to be used by the GUC Trust pursuant to Article VII of the Debtors' Plan of Liquidation (the "**Plan**") for the remaining unresolved general unsecured claim asserted against Debtors by the United States Department of the Interior in the Second U.S. Proof of Claim, (the "**Reserve**") to no less than $50 million.

2. Environmental Claims Not Resolved by the Agreements

These Settlement Agreements resolve the Debtors' remaining environmental liabilities to EPA that were asserted in EPA's proofs of claim. The United States, however, reserves all rights against Debtors' estates and the GUC Trust with respect to all matters not specifically settled by the Non-Owned Site Settlement Agreements, including: (i) any criminal liability; (ii) any liability for damages for injury to, destruction of, or loss of natural resources; and (iii) any action to enforce the Settlement Agreements.

3. Covenants Not to Sue and Contribution Protection

The Lower Ley Creek Settlement Agreement provides Debtors' estates and the GUC Trust with covenants not to sue from the United States and NYSDEC with respect to the Lower Ley Creek Subsite. The Lower Ley Creek Settlement Agreement also provides the United States and NYSDEC reciprocal covenants not to sue from Debtors' estates and the GUC Trust. Finally, the Lower Ley Creek Settlement Agreement provides the Debtors' estates and the GUC Trust with contribution protection for matters addressed therein as provided for by Section 113(f)(2) of

CERCLA, 42 U.S.C. § 9613(f)(2).

The Onondaga Settlement Agreement similarly provides Debtors' estates and the GUC Trust with covenants not to sue from the United States with respect to the Lake Bottom Salina Landfill, Inland Fisher Guide Facility and PCB Dredgings Subsites of the Onondaga Lake Superfund Site, and provides the United States with reciprocal covenants not to sue from the Debtors' estates and the GUC Trust. The Onondaga Settlement Agreement further provides the Debtors' estates and the GUC Trust with contribution protection for matters addressed therein therein as provided for by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2). With respect to the Onondaga Lake Bottom Subsite, where EPA is only the support agency, and NYSDEC, as lead agency and the only agency to have entered into a consent decree with various PRPs, did not file a proof of claim. The contribution protection provided in the Onondaga Settlement Agreement carves out claims for unreimbursed past and future response costs incurred by Honeywell International Inc. ("**Honeywell**") in its proof of claim number 45832. Moreover, because EPA is only the support agency at the Salina Landfill Subsite and NYSDEC as lead agency has filed a proof of claim in connection with the Debtors' environmental liabilities at that Subsite, the Onondaga Settlement Agreement only addresses – and the contribution protection provided therefore only extends to – EPA's unreimbursed past and future oversight costs at the Salina Landfill Subsite.

D. Public Comments and Objections

As set forth below, the United States received three written comments. Two of the comments received were from Onondaga County and the Town of Salina (collectively, the "**commenters**"), both of whom are PRPs at the Onondaga Lake Superfund Site. The third public comment, from New York State Assemblyman William B. Magnarelli, simply stated his support

for Onondaga County's public comment and reiterated the public comment he previously submitted in connection with the RACER Settlement Agreement, which was previously approved by this Court and is not at issue here. Generally speaking, the commenters felt that they had insufficient information to evaluate the substantive fairness of the Settlement Agreements because they do not know the total amount of cleanup costs or the Debtors' equitable share that EPA estimated for the Debtors at the settled subsites. The commenters also believe that the Settlement Agreements are procedurally unfair since they were not able to participate in the parties' settlement discussions. Finally, the commenters raise various specific concerns, including with respect to the contribution protection provided and the parties bound by the Settlement Agreements, and again reasserted their request – previously considered and denied by this Court in connection with the RACER Settlement Agreement – that the relevant subsites addressed in the Settlement Agreements be included in the RACER Trust.

1. Onondaga County

On June 4, 2012, Gordon J. Cuffy, County Attorney, submitted a written comment on behalf of Onondaga County, New York, attached hereto as Exhibit 3 and bearing bates numbers US 00485-95. Onondaga County, itself a PRP at the Lower Ley Creek Subsite, comments that it cannot opine on whether or not the Settlement Agreements are substantively fair because they do not know the total amount of cleanup costs EPA estimated for the various subsites, the information EPA took into account in arriving at the estimates, the method EPA used to calculate the estimates, and the arguments made by the Debtors' in the parties' settlement discussions. *Id.* US 00489-91. Onondaga County also argues that it can't evaluate the Settlement Agreements' substantive fairness because it does not know the equitable share of the cleanup costs allocated to the Debtors, the basis for the equitable share applied, and the arguments made by the Debtors' in

the parties' settlement discussions with respect to their allocation of the subsites' liabilities. *Id.* at US 00490-91. Moreover, Onondaga County states that since an amount of $70 million was included in the GUC Trust's Reserve to cover the Debtors' liabilities to the United States at the Lower Ley Creek Site, it cannot now assess whether the total settlement amount of $39.2 million for that Subsite is adequate and reasonable. *Id.* at US 00489.

Onondaga County also expressed dissatisfaction with the contribution protection being given to the Debtors and requested information on the likelihood of contributions from other PRPs to the subsites "given the potential for divisibility, the defenses of those parties and the United States' litigation risks in those matters." *Id.* at US 00491, US 00493-94. Specifically, Onondaga County does not agree that contribution protection should be extended to the Debtors "as may otherwise be provided by law," and argues that the Lower Ley Creek Settlement Agreement's contribution protection language could be read to preclude all claims relating to the Onondaga Lake Bottom Subsite, including EPA's claims in connection with that Subsite that are resolved in the simultaneously lodged Onondaga Settlement Agreement. *Id.* at US 00494.

Onondaga County speculates that the United States is a PRP at the Lower Ley Creek Subsite, and that this may have had an effect on the settlement reached. *Id.* at US 00491. In addition, Onondaga County raised various specific questions, such as what areas are included in the Lower Ley Creek Subsite definition, what portion of the settlement amount will be allocated to past and future oversight costs, why past costs incurred by EPA during the Debtors' bankruptcy proceedings were not pursued as "administrative claims," whether EPA is waiving "its RCRA claims," and what the factual and legal basis for NYSDEC's allowed general unsecured claim recovery is. *Id.* at US 00493-94. Onondaga County further reasserted its previous comment, which was addressed and dismissed by this Court in connection with the

RACER Settlement Agreement, that the Debtors' environmental liabilities relating to the Lower Ley Creek Subsite should be addressed through the RACER Trust. *Id.* at US 00491-92.

Finally, Onondaga County argues that the Settlement Agreements are procedurally unfair because the County was not able to participate in the settlement discussions leading up to Settlement Agreements. *Id.* at US 00489. Moreover, although Onondaga County argues that it should not be bound by the terms of the Settlement Agreements, it disagrees with the language in those Agreements that only the parties are bound by it because "[i]n reality that statement is not correct" since the Settlement Agreements "both benefit[] and penalize[] all other Creditors who are also potentially responsible parties by, for example, reducing potential liability by the dollars recovered by the United States, but simultaneously increasing the orphan share." *Id.* at *Id.* at US 00494-95.

2. Town of Salina

Mark A. Nicotra, the Supervisor of the Town of Salina (the "**Town**"), which is also a PRP at the Onondaga Lake Superfund Site, submitted written comments on behalf of the Town of Salina by letter dated May 30, 2012, a copy of which is attached hereto as Exhibit 4 and bears bates numbers US 00476 through US 00484. The Town of Salina's letter incorporates by reference all comments submitted by Onondaga County, and further requests that the contribution protection provided to the Debtors under the Lower Ley Creek Settlement Agreement expressly carve out the Town's claims against the Debtors at the Lower Ley Creek Subsite because they are "independent of EPA's claims, and relate to the response and remedial costs the Town has incurred in addressing contamination caused by [the Debtors]." *Id.* US 00477, US 00481. Similarly, with respect to the Onondaga Settlement Agreement, the Town objects to contribution protection being provided to the Debtors that does not expressly carve out

the Town's claims against the Debtors at the Salina Landfill Subsite. *Id.* at US 00479-80.

The Town further disagrees with the Settlement Agreements' provisions that only the ultimate recovery on allowed general unsecured claims, not the full amount of each claim, will be applied to site-specific Superfund accounts because doing so results in the creation of orphan shares. *Id.* at US 00479-80. Finally, the Town requests that language be added to the Settlement Agreements that "protects" the Town from the application of the remedial cost estimates used to negotiate the settlement amounts to itself and other PRPs at the Onondaga Lake Superfund Site. *Id*. at US 00480-81.

Finally, the Town's letter also requested the inclusion of specific language in the Tax Offset Stipulation that it is "without prejudice to the Town of Salina and other potentially responsible parties to dispute the amounts and allocation of environmental liabilities in any future litigation or proceedings, . . . whether in these bankruptcy cases or in any other appropriate forum." Ex. 4 at US 00482.

3. William B. Magnarelli, New York State Assembly Member

William B. Magnarelli ("**Magnarelli**"), a member of the New York State Assembly, 120th District, submitted written comments to the Settlement Agreements by letter dated May 25, 2012, which is attached hereto as Exhibit 5 and bears bates numbers US 00471-75. Magnarelli resubmitted comments he made in connection with the RACER Settlement Agreement, which this Court already approved. *Id* at US 00472. In addition, Mr. Magnarelli stated that he "continue[s] to strongly support Onondaga County's position" and that he "once again voice[s] [his] advocacy for an amended settlement that does not leave Onondaga County taxpayers liable for what is clearly and completely a corporate environmental irresponsibility." *Id.*

III. ARGUMENT

The Court Should Approve the Settlement Agreements Because They Are Fair, Reasonable, and Consistent With Environmental Law

A. Statement of Relief Requested

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

B. Jurisdiction

This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The Relief Requested Should Be Approved by the Court

Approval of a settlement agreement is a judicial act committed to the informed discretion of the court. *See In re Cuyahoga*, 980 F.2d at 118; *Hooker Chem.*, 540 F. Supp. at 1072; *United States v. Cannons Eng'g Corp.*, 720 F. Supp. 1027, 1035 (D. Mass 1989) *aff'd* 899 F.2d 79 (1st Cir. 1990). 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; *see also In re Cuyahoga*, 980 F.2d at 118

(noting the "usual deference given the EPA"); *New York v. Solvent Chem. Co.*, 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 and, as such, hearing requests are routinely and properly denied. *United States v. Charles George Trucking, Inc.*, 34 F.3d 1081, 1085 (1st Cir. 1994); *Cannons Eng'g*, 899 F.2d at 94. This "limited standard of review reflects a clear policy in favor of settlements." *Solvent Chem. Co.*, 984 F. Supp. at 165.

For the reasons discussed below, the Court should approve the Settlement Agreements because they are fair, reasonable, in the public interest, and further the goals of CERCLA. *See Charles George Trucking*, 34 F.3d at 1084; *Cannons Eng'g*, 899 F.2d at 85; *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."); *Solvent Chem. Co.*, 984 F. Supp. at 166.

1. The Settlement 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 attempt to gauge its candor, openness, and bargaining balance." *Id.* at 86. The negotiation of the Settlement Agreements was procedurally fair because they were negotiated at arm's length over more than two years, with

good faith participation by governmental actors and parties that were represented by experienced counsel and aided, on both sides, by technical experts who assisted on matters such as estimating the cost of future response actions. During these years of negotiations, the United States, the Debtors, and their respective environmental experts were also aided by the environmental expertise of NYSDEC, and were able to request and collect additional information from outside sources, including Onondaga County. *See id.* at 87 (finding a CERCLA settlement procedurally fair based on criteria including an arms-length negotiation, experienced counsel, and good faith participation by EPA).

To measure substantive fairness, the Court should consider whether the settlements are "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. Here, the proposed Settlement Agreements are substantively fair. Debtors' liability at the Subsites formed the backdrop for lengthy negotiations between the parties regarding the nature, extent and cost of the cleanup that will be required at the Subsites.

The resulting terms of the Lower Ley Creek Settlement Agreement provide for an allowed general unsecured claim for EPA in the amount of $38,344,177. *See* Ex. 1 ¶ 4(a). Moreover, the Tax Offset Stipulation lodged with the Court simultaneously with the Settlement Agreements provides that up to $17,305,000 of EPA's allowed general unsecured claim for the Lower Ley Creek Subsite will be offset and, therefore, paid out in cash rather than allowed general unsecured claim pro rata distributions in New GM stock and warrants. *See* Ex. 5 ¶ 2. In other words, while allowed general unsecured claims typically receive only *pro rata* distributions

of New GM stock and warrants under the Plan of Liquidation, due to the potential for a tax offset EPA may receive up to $17,305,000 in cash and only the remaining $21,039,177 in a *pro rata* distribution of New GM stock and warrants in satisfaction of its allowed general unsecured claim for the Lower Ley Creek Subsite. *See id.*

The terms of the Onondaga Settlement Agreement, in turn, provide EPA with an allowed general unsecured claim totaling $896,566 to resolve the Debtors' liabilities to EPA as support agency for four subsites of the Onondaga Lake Superfund Site. *See* Ex. 2 ¶ 4. This $896,566 allowed general unsecured claim is allocated as follows: (i) $438,448 for unreimbursed past costs and future costs at the Onondaga Lake Bottom Subsite; (ii) $113,248 for unreimbursed past costs and future costs at the Salina Landfill Subsite; (iii) $234,475 for unreimbursed past costs at the Inland Fisher Guide Facility Subsite (the Debtors' liabilities for future costs at this subsite were settled as part of the RACER Settlement Agreement; and (iv) $110,395 for unreimbursed past costs at the PCB Dredgings Subsite (the Debtors' liabilities for future costs at this subsite were also settled as part of the RACER Settlement Agreement). *Id.*

These settlement amounts were determined after years of extensive discussions that included environmental experts, and as discussed in more detail below represent a substantively fair resolution of the liabilities taking into account all available information as well as the uncertainties and litigation risks involved.

2. The Settlements Are Reasonable

Courts evaluating the reasonableness of CERCLA settlements have considered three factors: technical adequacy of the cleanup work to be performed; satisfactory compensation to the public for response costs; and the risks, costs, and delays inherent in litigation. *See Charles George Trucking*, 34 F.3d at 1085; *Cannons Eng'g*, 899 F.2d at 89-90. Although the first prong

of the reasonableness inquiry is not at issue in this settlement, as the Debtors are not performing any cleanup, the Settlement Agreements satisfy the other, necessarily intertwined, considerations relevant to reasonableness. As discussed above, the Lower Ley Creek Settlement Agreement provides EPA with an allowed general unsecured claim in the total amount of $38,344,177, and NYSDEC, as support agency, with allowed general unsecured claim of $859,257. The Onondaga Settlement Agreement provides EPA with an allowed general unsecured claim of $896,566 that will be allocated among the Onondaga Lake Bottom Subsite, the Salina Landfill Subsite, the Inland Fisher Guide Facility Subsite, and the PCB Dredgings Subsite as set out in the Settlement Agreement. The Settlement Agreements' terms satisfactorily compensate the public for unreimbursed past and future costs, while reasonably balancing the litigation risks for the estimated future cleanup costs and equitable share applied at the Settled Subsites, including the strength of the United States' and –in the case of the Lower Ley Creek Subsite – NYSDEC's case against the Debtors, the Debtors' bankruptcy, and the need to recover funds for cleanup and minimize the expense and potential delay of protracted litigation. Accordingly, the Settlement Agreements are reasonable.

3. The Settlements Are Consistent With the Goals of CERCLA

The primary goals of CERCLA are to "encourage prompt and effective responses to hazardous waste releases and to impose liability on responsible parties," and to "encourage settlements that would reduce the inefficient expenditure of public funds on lengthy litigation." *In re Cuyahoga*, 980 F.2d at 119. The Settlement Agreements further these statutory goals. As discussed above, the Lower Ley Creek Settlement Agreement obtains significant recoveries for unreimbursed past costs and future response costs at the Lower Ley Creek Subsite. The Onondaga Settlement Agreement obtains allowed general unsecured claim recoveries for the full

amount of the Debtors' remaining unsettled environmental liabilities at the Inland Fisher Guide Facility Subsite and the PCB Dredgings Subsite. It also obtains significant recoveries for EPA's unreimbursed past costs and future oversight costs at the Onondaga Lake Bottom Subsite and Salina Landfill Subsite, where EPA is only the support agency and future response costs and other unreimbursed past costs are being negotiated separately by, and will be directly distributable to, Honeywell and NYSDEC, respectively. Moreover, the Settlement Agreements serve 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. Co.*, 984 F. Supp. at 165-66; *Hooker Chem.*, 540 F. Supp. at 1072.

D. The Public Comments and Objections Do Not Indicate That the Settlement Agreements Are Inappropriate, Inadequate, or Improper

The United States has carefully considered the three public comments received and, as set forth below, has determined that none of them indicate that either of the Settlement Agreements is inappropriate, inadequate, or improper. The public comments received concerning the Settlement Agreements raise substantially identical issues and can be generally grouped into the following categories: (1) Onondaga County and the Town of Salina have insufficient information to determine whether the Settlement Agreements are substantively reasonable; (2) the Settlement Agreements are procedurally unfair because Onondaga County and the Town of Salina were not able to participate in the settlement discussions; (3) Onondaga County, the Town of Salina, and their taxpayers should not be required to pay for the cleanup of Lower Ley Creek or the Salina Landfill; (4) the contribution protection provisions of the Settlement Agreements should be amended; and (5) various other comments and questions.

1. The Terms of the Settlement Agreement are Substantively Fair and Reasonable Because They Are Based on the Best Information Currently Available to EPA Regarding the Extent of the Subsites' Environmental Contamination and the Debtors' Equitable Share

The Settlement Agreements are substantively fair and reasonable because, as described above, they are based on the Debtors' equitable share allocation of the various Subsites' unreimbursed past and future costs recoverable by EPA. *See Cannons Eng'g*, 899 F.2d at 87, 89-90. Onondaga County and the Town of Salina argue that they are unable to determine whether the Settlement Agreements are substantively fair because they do not know the total estimated cleanup costs at the Subsites and the basis for them, including the extent of the presumed contamination, the nature of the anticipated remedy, the method used for calculating remedial costs, and the arguments made by the Debtors in connection with these factors. Ex. 3 at US 00490-91. Moreover, Onondaga County and the Town of Salina argue that they also need information regarding the equitable share allocation EPA applied, including the basis for that equitable share and the arguments made by the Debtors' regarding their equitable share during the parties' settlement discussions. *Id*.

Absent this information, Onondaga County and the Town of Salina argue, they have "no basis by which [to] determine if the proposed settlement is proper, appropriate, adequate, and in the public interest." *Id.* US 00489. Nonetheless, neither Onondaga County nor the Town of Salina, both of whom have had long-standing involvement as PRPs in the Lower Ley Creek and Salina Landfill Subsites, have provided any evidence or information, documentary or otherwise, to establish that the terms of the Settlement Agreements are not substantively fair and reasonable.

a) Lower Ley Creek Subsite Cost Estimate, Equitable Share Allocation and Litigation Risk Adjustment

In fact, the Settlement Agreements are substantively fair and reasonable. As explained in the Declaration of Pam N Tames, P.E., dated June 13 2012, attached hereto as Exhibit 7 (the "**Tames Declaration**"), EPA estimated total unreimbursed past and future remedial costs at the Lower Ley Creek Subsite to be $45,679,146. *Id.* ¶ 16. To arrive at this estimate, EPA reviewed information that included maps, photographs, contractor documents related to the Ley Creek flood control project from the 1970s that were received from Onondaga County, historic information concerning releases of hazardous substances, data from a geographic information system analysis conducted by NYSDEC, and data collected as part of the remedial investigation at the subsite, including field samples of sediment and fish collected from the creek, the surrounding floodplains and the swale area. *Id.* ¶¶ 4, 6, 8, 9, 12-15.

EPA then divided the creek traversing the Lower Ley Creek Subsite into four separate segments, the width of which was estimated through a geographic information system data analysis conducted by NYSDEC. *Id.* ¶ 8. For the first creek segment, EPA estimated that the remedy would include partial dredging, with a cap designed to limit migration of the remaining PCBs, followed by an armor layer to keep the PCB cap in place and topped with a benthic layer to promote the regrowth of beneficial flora and fauna, as well as an uncapped buffer zone. *Id.* ¶ 9. For the second creek segment as well as a portion of the third creek segment, EPA similarly estimated that the remedy would include partial dredging, with a backfill and bank stabilization layer. *Id.* ¶¶ 10-11. For the remaining creek segments the remedial investigation did not show any samples with PCBs greater than 1 part per million, eliminating the need for any dredging to be conducted. *Id.* ¶ 12.

In addition to the creek itself, EPA also estimated that the surrounding floodplains and

swale area will need to be remediated. *Id.* ¶¶ 13-14. For the floodplains, EPA estimated a total of 67,271 cubic yards of soil will need to be excavated. *Id.* ¶ 13. For the swale area, EPA estimated 18,229 cubic yards of soil will need to be excavated. *Id.* ¶ 14. EPA also estimated that certain additional expenses would be incurred in connection with the remediation of the Lower Ley Creek Subsite, including investigation and design costs, access roads and pads, mobilization and demobilization costs, project construction and management costs, long-term operation and maintenance costs, and agency oversight costs. *Id.* ¶ 15.

EPA separately estimated the remedial costs for the Old Ley Creek Channel portion of the Lower Ley Creek Subsite. *Id.* ¶ 16. For this section, EPA estimated that 21,486 cubic yards of soil will need to be excavated, and other costs including for investigation and design, access roads and pads, mobilization and demobilization, engineering and administration, and long-term operation and maintenance will also be incurred. *Id.*

To determine the costs of the total remedial actions EPA estimated will be incurred at the Lower Ley Creek Subsite, EPA considered prevailing market rates as well as the response costs incurred or to be incurred at other sites with characteristics similar to those of the Lower Ley Creek Subsite, including the Geddes Brook/Nine Mile Creek subsite of the Onondaga Lake Superfund Site, the Hudson River PCBs Superfund Site, and the Reynolds Metals Superfund Site. *Id.*¶ 7. The specific estimates used for each remedial cost component are set forth in detail in the Tames Declaration. *See id.* ¶¶ 9-15. EPA then added a 15% contingency to its cost estimate to allow for additional remedial measures that may be required in the future. *Id.* ¶¶ 15-16. Finally, EPA added total unpaid past costs incurred by EPA and NYSDEC. *Id.* These estimates resulted in a total anticipated cost for the remediation of the Lower Ley Creek Subsite of $45,678,146. *Id.* ¶ 17. This amount incorporates an estimated $1,103,595 for NYSDEC's

past unreimbursed and future costs at the Lower Ley Creek Subsite, which were not included in EPA's settlement calculations or EPA's allowed general unsecured claim amount. The total estimated amount of liabilities to EPA in connection with the Lower Ley Creek Subsite is therefore $44,574,551.

Although the allocation of liability at the Lower Ley Creek Subsite is difficult to determine because the remedial investigation and feasibility study has not yet been completed and no remedy has been selected, EPA for purposes of the Lower Ley Creek Settlement Agreement estimated that the Debtors' equitable share allocation exceeded the 80% mentioned in Onondaga County's letter. *Id.* ¶ 6; Ex. 3 at US 00492. Onondaga County and the Town of Salina argue that the Debtors are "the only possible source of the [PCB] contamination" at the Lower Ley Creek Subsite and surrounding areas. Ex. 3 at US 00488. This self-serving statement, however, is patently incorrect. As the United States previously disclosed in connection with its motion seeking the approval of the RACER Settlement Agreement, other PRPs identified by EPA for the Lower Ley Creek Subsite and the Salina Landfill Subsite include not only Onondaga County and the Town of Salina, but also, Carrier Corporation, Crouse Hinds Division of Cooper Industries, Niagara Mohawk Power Corporation (d/b/a National Grid), Oberdorfer LLC, and Syracuse China Company. *Id.* EPA's equitable share allocation to Debtors in excess of 80% takes into account the existence of these other PRPs, while at the same time recognizing that the Debtors are responsible for the vast majority of the contamination at the Lower Ley Creek Subsite by directly discharging PCBs into Ley Creek from their Inland Fisher Guide Facility, which is located upstream from the Lower Ley Creek Subsite. *See id.*

Finally, EPA also applied a litigation risk adjustment to the $44,574,551 in total estimated liabilities to EPA at the Lower Ley Creek Subsite. This litigation risk adjustment

recognizes the difficulties and uncertainties in accurately estimating and proving future response costs at this subsite, particularly in light of the extensive remediation that is anticipated to be necessary and the fact that the remedial investigation and feasibility study has not yet been completed and no remedy has been selected. *Id.* ¶ 6.

After applying its equitable share estimate and litigation risk adjustment to the $44,574,551 in total estimated liabilities to EPA, EPA arrived at a settlement amount for the Debtors' liabilities to EPA of $38,344,177 at the Lower Ley Creek Subsite. Even in the absence of any litigation risk reduction, this settlement amount would reflect an equitable share allocation of 86%. The negotiated settlement amount of $38,344,177 is, therefore, a fair and equitable resolution of the Debtors' liabilities to EPA at the Lower Ley Creek Subsite.

b) Onondaga Settlement Agreement Cost Estimates, Equitable Share Allocations and Litigation Risk Adjustments

The Onondaga Settlement Agreement addresses the Debtors' liabilities to EPA at the Salina Landfill Subsite, the Onondaga Lake Bottom Subsite, the Inland Fisher Guide Facility Subsite, and the PCB Dredgings Subsite. In connection with the Salina Landfill Subsite, EPA will receive an allowed general unsecured claim of $113,248. As explained in the Declaration of Mark Granger, P.E., dated June 13 2012, attached hereto as Exhibit 8 (the "**Granger Declaration**"), EPA estimated that it will incur a total of $175,000 in future oversight costs at the Salina Landfill Subsite. *Id.* ¶ 4 At the time the Onondaga Settlement Agreement was entered into, EPA also had unreimbursed past costs at the Salina Landfill Subsite of $439,240. *Id.* ¶ 5 EPA is not the lead agency at this subsite, and therefore did not submit a claim for future response costs other than its anticipated oversight costs at the Salina Landfill Subsite. The total estimated liabilities to EPA in connection with the Salina Landfill Subsite, therefore, were $614,240.

Based on available information, EPA also estimated that the Debtors' equitable share at the Salina Landfill Subsite at 20%. *Id.* ¶ 6. This estimate recognizes that the Debtors were a significant - but by no means the sole – contributor of PCBs to the Salina Landfill. *See id*. It also recognizes that the owner and operator of the Salina Landfill, the Town of Salina, bears liability at this subsite. *See id*. Applying a 20% equitable share to EPA's total costs of $614,240 would result in a total liability of the Debtors to EPA of $122,848. *See id.* ¶ 6. This figure, however, does not yet take into account any litigation risk adjustment to reflect the uncertainties inherent in EPA's future oversight cost estimate and its equitable share allocation. After adjusting for this litigation risk, EPA arrived at an allowed general unsecured claim amount of $113,248 to settle the Debtors' liabilities to EPA at the Salina Landfill Subsite. Given the information available to EPA, this allowed general unsecured claim amount represents a fair and equitable resolution of the Debtors' liabilities to EPA at the Salina Landfill Subsite.

For the Onondaga Lake Bottom Subsite, EPA has negotiated a settlement of the Debtors' liabilities to EPA for an allowed general unsecured claim in the amount of $438,448. As explained in the Declaration of Robert Nunes, dated June 13, 2012, attached hereto as Exhibit 9 (the "**Nunes Declaration**"), EPA estimated that it will incur oversight costs in the amount of $4.5 million at the Onondaga Lake Bottom Subsite. *Id.* ¶ 4. This estimate is based on the remedy selected in the record of decision issued for the Onondaga Lake Bottom Subsite in 2005, which estimated total future cleanup costs at that subsite in the amount of $451 million. *Id.* At this Subsite, like at the Salina Landfill Subsite, EPA is not the lead agency and therefore did not submit a claim for future response costs other than EPA's anticipated oversight costs. *Id.* At the time the Onondaga Settlement Agreement was entered into, EPA also had unreimbursed past costs at the Onondaga Lake Bottom Subsite of $1,345,968. *Id.* ¶ 5. The total estimated

liabilities to EPA in connection with the Onondaga Lake Bottom Subsite, therefore, were $5,845,968.

Based on available information, EPA also estimated that the Debtors' equitable share at the Onondaga Lake Subsite at 7.5%. *Id.* ¶ 6. This estimate recognizes that the Debtors, through their PCB discharges into Ley Creek, which in turn discharged into Onondaga Lake, were a contributor of PCBs to the Lake Bottom Subsite. *See id*. It also recognizes, however, that other PRPs, including Honeywell, bear the vast majority of the responsibility for the contamination at the Onondaga Lake Bottom, and that Ley Creek was not the only tributary that discharged PCBs into the lake. *See id*. Applying a 7.5% equitable share to EPA's total costs of $5,845,968 results in a total liability of the Debtors to EPA of $438,448. *See id.* ¶ 6. EPA did not apply any litigation risk adjustment to this amount. Accordingly, EPA's allowed general unsecured claim in the amount of $438,448 represents a fair and equitable resolution of the Debtors' liabilities to EPA at the Onondaga Lake Bottom Subsite.

Finally, the Onondaga Settlement Agreement provides EPA with allowed general unsecured claims covering the full amount of EPA's remaining unreimbursed past costs at the Inland Fisher Guide Facility and the PCB Dredgings Subsites, at which Debtors were the sole identified PRPs and at which EPA's claims for future response costs were previously settled as part of the RACER Settlement Agreement. Accordingly, there can be no doubt that the Settlement Agreements' terms for these Settled Subsites are substantively fair and reasonable.

c) The Settlement Agreements' Cost and Equitable Share Estimates Are Reasonable

While uncertainties remain with respect to EPA's future oversight costs at the Onondaga Lake Bottom and Salina Landfill Subsites, the recoveries from the Debtors to EPA under Onondaga Settlement Agreement are based on all currently available information regarding those

Subsites. Similarly, although investigative work at the Lower Ley Creek Subsite is ongoing, EPA's recovery for unreimbursed past and future response costs at that subsite under the Lower Ley Creek Settlement Agreement is based on currently available information and EPA's reasonable expectations of the nature and costs of future remedial work based on that information. Although the actual remedial costs and the Debtors' equitable share at the Lower Ley Creek Subsite may ultimately be higher or lower than estimated, it is simply not possible in the bankruptcy context to delay resolution of a settlement amount until after all investigative work is complete and a remedy has been selected and implemented. The United States utilized the best information available at the time to arrive at a settlement amount for each subsite that is fair, reasonable, and consistent with CERCLA's goals.

The purpose of CERCLA is to "promote the timely cleanup of hazardous waste sites and to ensure that the costs of such cleanup efforts are borne by those responsible for the contamination." *Burlington Northern & Santa Fe Ry. Co. v. United States*, 556 U.S. 559, 602 (2009) (quoting *Consol. Edison Co. of N.Y. v. UGI Util., Inc.*, 423 F.3d 90, 94 (2d Cir. 2005)). In addition, CERCLA aims to "encourage settlements that would reduce the inefficient expenditure of public funds on lengthy litigation." *In re Cuyahoga*, 980 F.2d at 119. To facilitate settlement, CERCLA allows for settlement amounts that are based not on joint and several liability, but rather "some acceptable measure of comparative fault, apportioning liability . . . according to rational (if necessarily imprecise) estimates of how much harm each PRP has done." *Cannons Eng'g*, 899 F.2d at 87.

The United States here has negotiated settlements that seek to further CERCLA's goals by securing substantial settlement awards that reflect the Debtors' proportionate share of liability and efficiently and expeditiously resolve the United States' proofs of claim. In so doing, the

United States took into account, for every subsite: the nature of the United States' claims in the bankruptcy; total past and estimated future response costs; the applicable Debtor's equitable share or allocation of fault or liability; the existence of other PRPs who can perform cleanup and/or reimburse the United States' costs; litigation risk, including defending cleanup costs and equitable share through an estimation proceeding; and considerations of preserving resources through settlement without protracted litigation. The resulting settlement terms are substantively fair and reasonable.[4]

2. The Terms of the Settlement Agreements are Procedurally Fair and Reasonable Because Other PRPs are Not Entitled to Participate in Settlement Discussions

Onondaga County and the Town of Salina's complaint that they were not permitted to participate in the settlement process leading up to the Lower Ley Creek and Onondaga Settlement Agreements is misplaced and inaccurate. Counsel for the United States had telephone calls and meetings with counsel for Onondaga County and the Town of Salina concerning a potential settlement with the Debtors. At one meeting, which also included representatives of EPA, experts hired by Onondaga County and the Town of Salina made a lengthy presentation regarding the Lower Ley Creek Subsite. Moreover, counsel for the United States on multiple occasions reached out to counsel for Onondaga County and the Town of Salina to solicit any additional information regarding the extent of the contamination and the equitable share of various PRPs at the Lower Ley Creek Subsite. In response, Onondaga County submitted additional materials to EPA that were taken into account in arriving at the settlement amounts.

[4] Onondaga County and the Town of Salina also requested information concerning the likelihood of contribution from other PRPs to the response costs at the Settled Subsites "given the potential for divisibility, the defenses of those parties and the United States' litigation risks in those matters." Ex. 3 at US 00491. As discussed above, EPA has identified multiple PRPs other than the Debtors at each of the Settled Subsites, including Onondaga County and the Town of Salina. The commenters have presented no information to suggest that the equitable share allocations by EPA to the Debtors at the various Settled Subsites were incorrect or insufficient.

In any event, the law is clear that non-settling PRPs such as Onondaga County and the Town of Salina have no right to participate in, or even be kept aware of, the United States' settlement negotiations with other parties. *See, e.g., Gen. Time Corp. v. Bulk Materials, Inc.*, 826 F. Supp. 471, 477 (M.D. Ga. 1993); *United States v. Serafini*, 781 F. Supp. 336, 339 (M.D. Pa. 1992); s*ee also City of Bangor v. Citizens Comm'ns Co.*, 532 F.3d 70, 96 (1st Cir. 2008) ("The EPA . . . does not need to open settlement offers to all PRPs."); *Cannons Eng'g*, 899 F.2d at 93 ("In the CERCLA context, the government is under no obligation to telegraph its settlement offers, divulge its negotiating strategy in advance, or surrender the normal prerogatives of strategic flexibility which any negotiator cherishes."); *United States v. Brook Village Assocs.*, No. Civ. A. 05-195, 2006 WL 3227769, at *5 (D.R.I. Nov. 6, 2006) (settlement not procedurally unfair to a non-party that had opportunity to comment on the proposed settlement during public comment period); *United States v. BP Exploration & Oil Co.*, 167 F. Supp. 2d 1045, 1052 (N.D. Ind. 2001) ("There is no requirement that the Government allow third parties to participate in settlement negotiations."); *United States v. Grand Rapids, Mich.*, 166 F. Supp. 2d 1213, 1221-22 (W.D. Mich. 2000) (exclusion of PRPs from a settlement with another under CERCLA does not indicate procedural unfairness.). Accordingly, the Settlement Agreements are procedurally fair even though other PRPs, including Onondaga County and the Town of Salina, did not participate directly in the settlement negotiations.[5]

3. The Terms of the Settlement Agreements Are Not Unfair to the Other PRPs, Including Onondaga County and the Town of Salina

All three commenters also state that the Settlement Agreements should not be approved because their taxpayers should not be required to pay for the cleanup of the Lower Ley Creek

[5] Onondaga County and the Town of Salina also argue that the Lower Ley Creek Settlement Agreement may be procedurally unfair given the United States' liabilities at that Subsite. EPA is not aware of any liabilities of the United States in connection with the Lower Ley Creek Subsite.

and Salina Subsites. Specifically, the commenters argue that the Subsites should be credited in the full amount of the allowed general unsecured claims rather than the recovery on those claims, to avoid the creation of a so-called "orphan share" for which the remaining PRPs will be jointly and severably liable. Moreover, the commenters argue that the Lower Ley Creek Subsite should be included in the RACER Trust and have access to the Trust's cleanup funds rather than be subject to a stand-alone allowed general unsecured claim settlement. These arguments are misplaced.

As previously discussed, Onondaga County and the Town of Salina have long been identified as PRPs at the Lower Ley Creek and Salina Subsites, and their comments here reflect a desire to limit their own liability rather than ensure a fair and reasonable settlement of the Debtors' liability. Their argument that their potential joint and several liability should be reduced by the amount of the allowed claim, even though, under the settlement, the United States will receive significantly less than the allowed claim amount due to the Debtors' bankruptcy is inconsistent with the express language of CERCLA and with Congress' intent that liable parties rather than ordinary taxpayers should bear the burden of cleanup costs. This very argument was addressed and overruled by the court in *In re Eagle-Picher Industries, Inc.*, 197 B.R. 260 (Bankr. S. D. Ohio 1996), *aff'd* 1997 U.S. Dist. LEXIS 15436 (July 14, 1997 S.D. Ohio). The *Eagle-Picher* court held that the United States properly credited other PRPs only with the actual cash recovery received in a bankruptcy settlement because (i) those PRPs are jointly and severally liable for the contamination; (ii) crediting PRPs with more than the actual cash received by the United States "would tend to cause the U.S. not to proceed settlements with bankrupt debtors" because "[s]imply ignoring bankrupt debtors would be more productive for the U.S."; and (iii) the United States retains the ability to negotiate a settlement with the remaining PRPs that

forgives some of the cleanup costs for which they would otherwise be liable." *Id.* at 272. This rationale applies with equal force here.

The Settlement Agreements' terms limiting any credit to a subsite to the actual recovery received from the relevant allowed general unsecured claim, by contrast, are consistent with Section 113(f)(2), (3) of CERCLA, 42 U.S.C. § 9613(f)(2), (3). Section 113(f)(2) provides: "[A] settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement." 42 U.S.C. § 9613(f)(2). In bankruptcy settlement such as these, the terms of the settlements include a payout amount or value that is determined in accordance with a Plan of Reorganization. *See* Ex. 1 ¶ 10 ("The allowed claims provided for herein shall be treated as provided under Section 4.3 of the Plan of Liquidation"); Ex. 2 ¶ 9 (same). The "amount of the settlement" under the Settlement Agreements therefore is the amount or value that is received under the Plan.

These terms' consistency with CERCLA is further confirmed by the fact that section 113(f)(3) of CERCLA, 42 U.S.C. § 9613(f)(3), plainly contemplates that the United States can pursue non-settlors whenever it obtains "less than complete relief" from settlors.[6] Congress thus made clear that the United States could pursue non-settlors if settling parties have not made the United States whole, as will frequently be the case where, for example, PRPs file for bankruptcy or have an inability to pay. As the legislative history indicates, nonsettling persons "remain potentially liable for the amounts not *received* by the government through the settlement." 131 Cong. Rec. 34,646 (Dec. 5, 1985) (remarks of Rep. Glickman incorporating House Judiciary Committee explanations of amendments to CERCLA); H.R. Rep. No. 253, 99th Cong., 1st Sess.,

[6] "If the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in an administrative or judicially approved settlement, the United States or the State may bring an action against any person who has not so resolved its liability." 42 U.S.C. § 9613(f)(3)(A).

pt. 3, at 19 (1985), *reprinted in* 1986 U.S. Code Cong. & Ad. News 3042 (emphasis added.); *see also United Techs. Corp.*, 33 F.3d 96, 103 (1st Cir. 1994) ("Because only the amount of the settlement, not the *pro rata* share attributable to the settling party, is subtracted from the aggregate liability of the nonsettling parties . . . [CERCLA] envisions that nonsettling parties may bear disproportionate liability. This paradigm is not a scrivener's accident."); *Grand Rapids*, 166 F. Supp. at 1222 (settlement with PRP not substantively unfair to other PRPs even if it results in disproportionate liability, as Congress intended to create disproportionate liability as an incentive to settle); *United States v. Rohm & Haas Co.*, 721 F. Supp. 666, 676 & n.10 (D.N.J. 1989) (where settling party does not fully compensate the United States, Congress intended other PRPs to make the United States whole); *In re Acushnet River & New Bedford Harbor*, 712 F. Supp. 1019, 1027 (D. Mass. 1989) (same).

Not only is this result consistent with CERCLA and Congressional intent, it is also in no way unfair to the non-settling PRPs. Those PRPs, which here include Onondaga County and the Town of Salina, are already potentially jointly and severally liable under CERCLA, and could be required to pay all of the United States' response costs. *See Niagara Mohawk Power Corp. v. Chevron U.S.A., Inc.*, 596 F.3d 112, 121 (2d Cir. 2010) ("[CERCLA] allows for complete cost recovery under a joint and several liability scheme; one PRP can potentially be accountable for the entire amount expended to remove or remediate hazardous materials."); *Fireman's Fund Ins. Co. v. City of Lodi, Cal.*, 302 F.3d 928, 945 (9th Cir. 2002) ("[B]ecause liability is joint and several, a . . . PRP . . . may be held fully liable for the entire clean-up costs at a site, despite the fact that the defendant PRP was in fact responsible for only a fraction of the contamination."); *Alcan Aluminum*, 990 F.2d at 721-22 (concluding that, under CERCLA, where "each [PRP] causes a single indivisible harm, then damages are not apportioned and each is liable in damages

for the entire harm."); *United States v. R.W. Meyer, Inc.*, 889 F.2d 1497, 1508 (6th Cir. 1989).

Moreover, even in the absence of the Settlement Agreements, Onondaga County, the Town of Salina and the other PRPs would only be able to recover a percentage of their claims by operation of the Plan of Liquidation and the *pro rata* payout in New GM stock and warrants provided under that Plan for creditors holding allowed general unsecured claims. Without the Settlement Agreements, these PRPs therefore could at most recover the same *pro rata* distribution of New GM stock and warrants that are being recovered under the Settlement Agreements for the Debtors' fair share at each Settled Subsite.

Under the terms of the Settlement Agreements, however, they will be benefited through a reduction in their liability to the United States in the amount of EPA's credit to the various subsites, which will be EPA's full cash recovery upon the liquidation of the New GM stock and warrants received for each allowed general unsecured claim. The shortfall that the Onondaga County and the Town of Salina complain about, therefore, results from the operation of the bankruptcy laws, not from the terms of the Settlement Agreements. It would be neither fair nor reasonable for the United States to pursue a larger-than-equitable share against Debtors simply because, as a function of the bankruptcy, allowed general unsecured claims will receive recoveries at a reduced rate. Onondaga County and the Town of Salina's request to amend the Settlement Agreements to credit each Subsite with the allowed general unsecured claim amount rather than the recovery on those unsecured claims are, therefore, misplaced.

In any event, a discussion of so-called orphan shares as they pertain to the Settled Subsites is premature. To the extent that EPA in the future enters into settlements with other PRPs at the Settled Subsites, it will at that time be able to determine whether and how to consider any orphan share that may be attributable to the Debtors as a result of this settlement.

Under applicable EPA policy, the particular formula used to determine the orphan share would depend, in part, on the nature the liabilities being resolved in such a settlement with other PRPs at the site (e.g., past costs, future costs, and/or performance of remedial work). *See* generally EPA Orphan Share Superfund Reform Questions and Answers, (Jan. 2001), (*available at* http://www.epa.gov/compliance/resources/policies/cleanup/superfund/orph-sh-ref-qa.pdf). Onondaga County and the Town of Salina's comments, therefore, provide no basis for the United States to withdraw its consent to the Settlement Agreements.

Similarly, the commenters' suggestion that the Lower Ley Creek Settlement Agreement not be approved and the Debtors' liabilities at that Subsite instead be included in the RACER Trust are inapposite. In fact, these very arguments were previously addressed by the United States and overruled by the Court in connection with approval of the RACER Settlement Agreement. *See United States' Statement in Support of Environmental Provisions of debtors' Plan of Liquidation*, dated February 18, 2011, Docket No. 9311; *see also* audio file of Court hearing held on March 3, 2011, Docket Nos. 9570 and 9571. As more fully discussed in the United States' moving papers and the transcript of the Court's oral ruling approving the RACER Settlement Agreement, the Lower Ley Creek Subsite was appropriately not included in the RACER Trust because, contrary to the sites addressed by that Trust, the Lower Ley Creek Subsite was not owned by the Debtors or immediately adjacent to property owned by the Debtors, no cleanup order has been issued, and there are other viable PRPs.

Moreover, in connection with the Lower Ley Creek Settlement Agreement, EPA has already recognized the unique circumstances presented by the Debtors' large equitable share, the high future response costs estimated, and the fact that two of the remaining viable PRPs are public entities, and entered into a simultaneously lodged Tax Offset Stipulation with the GUC

Trust pursuant to which up to $17,305,000 of the allowed general unsecured claim recovery for the Lower Ley Creek Subsite will be offset by an anticipated tax settlement in an unrelated action. *See* Ex.6 ¶ 3-4. In other words, EPA has already made arrangements to ensure that up to $17,305,000 of its recovery for the Lower Ley Creek Subsite could come in form of a cash recovery, rather than as an allowed general unsecured claim distribution. *See id*. The commenters' statements that the Settlement Agreements unduly burden the taxpayers of Onondaga County and the Town of Salina are therefore counterfactual and fail to provide any basis for the United States to withdraw its consent to the Settlement Agreements.

4. The Settlement Agreements' Contribution Protection Provisions Are Appropriate

Onondaga County and the Town of Salina also submitted comments requesting that the Settlement Agreements' paragraphs providing for contribution protection be amended. Specifically, they request that the language allowing for contribution protection "as may be otherwise permitted by law" be stricken in both Settlement Agreements. Ex. 3 at US 00494. They also request to strike the language in the Lower Ley Creek Settlement that extends contribution protection to "claims related to releases of hazardous substances from any portion of the Lower Ley Creek Site and all areas affected by migration of hazardous substances emanating from the Lower Ley Creek Site" because this language could be misconstrued as extinguishing all claims relating to the Onondaga Lake Bottom Subsite. *Id*. Finally, the Town of Salina requested specific carve-outs of its claims from the contribution protection provisions of both Settlement Agreements, arguing that its claims are "independent of EPA's claims, and relate to the response and remedial costs the Town has incurred in addressing contamination caused by [the Debtors]." Ex. 4 at US 00481.

Onondaga County and the Town of Salina have not expressed any rationale or pointed to

any authority in support of their request that the Settlement Agreements' terms recognizing that contribution protection was extended "as may be otherwise permitted by law" be struck. The Government is not aware of any circumstance that would require that contribution protection in this case be limited beyond what is otherwise permitted by law. Indeed, this language is standard language in the Government's CERCLA settlements, *see, e.g.*, RACER Settlement Agreement, and is intended to capture specific state law provisions relating to contribution protection, such as provisions under New York law. In any event, because Onondaga County and the Town of Salina have provided no rationale for their request that this language be struck, the Government has no basis for departing from its common practice for purposes of the Settlement Agreements.

Onondaga County and the Town of Salina have also requested that language in the Lower Ley Creek Settlement Agreement extending contribution protection to "claims related to releases of hazardous substances from any portion of the Lower Ley Creek Site and all areas affected by migration of hazardous substances emanating from the Lower Ley Creek Site" be struck because this language could be misconstrued as extinguishing all claims relating to the Onondaga Lake Bottom Subsite. *Id.*; *see also* Ex. 3 at US 00494. This concern is misplaced, as is demonstrated by the simultaneously filed Onondaga Settlement Agreement, which separately settles EPA's claims at the Onondaga Lake Bottom Subsite and exempts from that Agreement's contribution protection provision claims relating to the Onondaga Lake Bottom Subsite made by Honeywell. *See* Ex. 2. The commenters also argue that this language would extinguish any separate claims by NYSDEC with respect to the Onondaga Lake Bottom Subsite, but this argument ignores the fact that NYSDEC has submitted no claim in connection with that Subsite. In any event, as the Onondaga Settlement Agreement settles only EPA's claims for unreimbursed past and future oversight costs incurred at the Onondaga Lake Bottom Subsite, the "matters addressed" by the

Onondaga Settlement Agreement do not include, and the contribution protection it provides therefore does not extend to, unreimbursed past and future response costs relating to the Onondaga Lake Bottom and Salina Landfill Subsites other than EPA's oversight costs.[7] Onondaga County and the Town of Salina's comments, therefore, do not warrant any changes to the contribution protection provisions of the Lower Ley Creek Settlement Agreement.

The Town of Salina similarly misconstrues the extent of the contribution protection extended by the Settlement Agreements in requesting the addition of specific language carving out its claims relating to response and remedial costs the Town already incurred. Both Settlement Agreements expressly limit the contribution protection provided and do not extend it to "claims against the Debtors or the GUC Trust for past response costs incurred by potentially responsible parties prior to the date of lodging this Settlement Agreement with the Bankruptcy Court." Ex. 1 ¶ 22; Ex. 2 ¶ 22. Moreover, because the Onondaga Settlement Agreement addresses only EPA's unreimbursed past and future oversight costs incurred at the Salina Landfill and Onondaga Lake Bottom Subsites, contribution protection at those subsites does not extend to other future response costs – including cleanup costs – for which NYSDEC and other PRPs or, in the case of the Onondaga Lake Bottom Subsite, Honeywell, have submitted claims. The Town of Salina's concerns, therefore, are already addressed by the specific language of the Settlement Agreements, and no further changes to those Agreements are warranted.

5. The Other Comments Similarly Do Not Indicate That the Settlement Agreements Are Unreasonable, Unfair or Contrary to CERCLA

In addition to the comments addressed above, Onondaga County and the Town of Salina also submitted several questions regarding the terms of the Settlement Agreements. First, they

[7] For the sake of clarity, the Government contends that the Lower Ley Creek Settlement Agreements' contribution protection language does not bar claims against the Debtors relating to the Onondaga Lake Bottom Subsite.

request confirmation whether the Lower Ley Creek Subsite includes "that portion of Ley Creek that was abandoned and filled in the early1970s, the banks of the Creek including any dredged spoils, and the historic floodplain of the Creek. . . ." Ex.3 at US 00493. The Government confirms that these areas are included in the Lower Ley Creek Settlement Agreement's definition of the Lower Ley Creek Subsite.

Next, Onondaga County and the Town of Salina seek information as to what portion of the Lower Ley Creek Settlement Agreement's recovery is being allocated to past and future oversight costs. *Id.* Although the Tames Declaration describes the unreimbursed past oversight cost and estimated future oversight costs that were used to arrive at the Lower Ley Creek Subsite's settlement amount, actual allocation of the settlement recoveries to EPA's oversight costs will depend on the amount of oversight costs that are in fact incurred over time, rather than the amount estimated to be incurred for purposes of arriving at a settlement amount. This question, therefore, cannot be answered at this time.[8]

The Town of Salina also asks why EPA did not pursue costs it incurred in connection with the Settled Subsites during the pendency of these bankruptcy proceedings as administrative claims. Ex. 4 at US 00482. The Town of Salina, however, identify no legal basis for treating any portion of EPA's past costs as administrative claims, nor is the Government aware of any such basis under the facts presented here. Moreover, the Town of Salina have not put forward any rationale that would allow these non-owned site to be settled in a manner that differs from the treatment provided to similarly situated non-owned sites that EPA has settled in this bankruptcy proceeding in the past. In any event, the deadline for submitting administrative claims in this bankruptcy proceeding has long expired and treating any portion of EPA's past

[8] In any event, EPA expects to make the full amount of its recovery from the Lower Ley Creek Settlement available for future responses costs at that Subsite.

costs as administrative expenses is, therefore, simply not possible.

Onondaga County and the Town of Salina further request information on whether EPA is waiving its claims under the Resource Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. §§ 6901–6992. Ex. 3 at US 00493. The Government notes, however, that EPA did not assert any obligations under RCRA against the Debtors in connection with the Settled Subsites, nor is it aware of any such RCRA obligations EPA could otherwise assert – and therefore could have waived – against the Debtors at these sites.

Next, Onondaga County and the Town of Salina request information regarding the legal and factual basis for New York's recovery under the Lower Ley Creek Settlement Agreement. *Id*. The Government respectfully refers the commenters to NYSDEC in connection with this request, but notes that NYSDEC has not itself submitted the Lower Ley Creek Settlement Agreement for public comment.

Finally, Onondaga County and the Town of Salina object to the fact that the Settlement Agreements' definition of the parties bound by the Agreements do not include the PRPs, because the Agreements "certainly appl[y] to and both benefit[] and penalize[] all other Creditors who are also potentially responsible parties by, for example, reducing potential liability by the dollars recovered by the United States, but simultaneously increasing the orphan share." *Id.* at US 00494-95. At the same time, the Town of Salina requests that language be added to the Settlement Agreements to establish that the future response cost estimates the settlement amounts are based on are not binding on the Town or other PRPs, and that the Settlement Agreements are therefore "without prejudice to the Town of Salina and other potentially responsible parties to dispute the amounts and allocation of environmental liabilities in any future litigation or proceedings, . . . whether in these bankruptcy cases or in any other

appropriate forum." Ex. 4 at US 00480 and US 00482. The Government notes that these two comments are internally inconsistent. Moreover, although the other PRPs at the Settled Subsites, as well as the public at large, are certainly affected by the Settlement Agreements, since they have not executed those Agreements they are not – and cannot be – bound by their terms. The remaining PRPs' liabilities in connection with the Settled Subsites will be based on the information available at the time their liabilities are settled or on the actual response costs incurred at the sites, rather than the estimates used to arrive at the settlement amounts negotiated to resolve the Debtors' environmental liabilities in the context of this bankruptcy proceeding. Accordingly, the Settlement Agreements accurately reflect that the remaining PRPs are not bound by the Agreements' terms, and for the same reason no additional language is required to establish that same point.

CONCLUSION

For the reasons stated above, the Court should approve and enter the proposed Lower Ley Creek Settlement Agreement and Onondaga Settlement Agreement.

Dated: New York, New York
June 13, 2012

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

By: _____*/s/ Natalie N. Kuehler*_____
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

ORDER APPROVING THE LOWER LEY CREEK AND ONONDAGA NON-OWNED SITE ENVIRONMENTAL SETTLEMENT AGREEMENTS AND ENTERING THE STIPULATION AND AGREED ORDER BETWEEN THE GUC TRUST AND THE UNITED STATES OF AMERICA

Upon the Motion (the "**Approval Motion**")[1] of the United States of America (the "**United States**") for entry of an order approving (i) Lower Ley Creek Non-Owned Site Consent Decree and Settlement Agreement (the "**Lower Ley Creek Settlement Agreement**"), and (ii) the Onondaga Other Non-Owned Site Consent Decree and Settlement Agreement (the "**Onondaga Settlement Agreement**") (collectively, the "**Settlement Agreements**"); and it appearing that the relief requested is in the best interests of Debtors' estates, its creditors and other parties in interest; and the Court having jurisdiction to consider the Approval Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Approval Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and after lodging of the Settlement Agreements with this Court on April 30, 2012, and publication of the Settlement Agreement in the *Federal Register* for public comment; and notice of the

[1] Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Approval Motion.

Approval Motion having been filed by the United States on June 13, 2012; and the Court having reviewed the United States' memorandum of law in support of the Approval Motion; and the Court having determined that the legal and factual bases set forth in the Approval Motion establish just cause for the relief granted herein; and upon all of the proceedings before the Court and after due deliberation and sufficient cause appearing therefore, it is hereby

1. **ORDERED** that the Approval Motion is granted;

2. **ORDERED** that the Lower Ley Creek Site Settlement Agreement (Docket No. 11655) is hereby amended in paragraph 4 to reflect a joint Allowed General Unsecured Claim for the United States, on behalf of EPA, and the State of New York, on behalf of NYSDEC, in the amount of $39,203,434, and approved as fair, reasonable and consistent with environmental law;

3. **ORDERED** that the Onondaga Settlement Agreement (Docket No. 11657) is hereby approved as fair, reasonable and consistent with environmental law;

4. **ORDERED** that the Stipulation and Agreed Order between the GUC Trust and the United States of America (Docket No. 11656) is hereby entered;

5. **ORDERED** that the parties to the Settlement Agreements are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order;

6. **ORDERED** that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and

7. **ORDERED** that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

New York, New York
Date: June _____, 2012

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

CONSENT DECREE AND SETTLEMENT AGREEMENT
BETWEEN THE GUC TRUST, THE UNITED STATES OF AMERICA,
AND THE STATE OF NEW YORK

I. BACKGROUND

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

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

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

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

Debtors are potentially responsible or liable parties with respect to the Lower Ley Creek subsite of the Onondaga Lake Superfund Site in New York, which includes Old Ley Creek Channel (the "**Lower Ley Creek Site**");

WHEREAS, the State of New York, by its attorney Eric T. Schneiderman, Attorney General for the State of New York, on behalf of the New York State Department of Environmental Conservation ("**NYSDEC**") has also alleged that MLC and/or affiliated Debtors are potentially responsible or liable parties with respect to the Lower Ley Creek Site;

WHEREAS, the United States on behalf of EPA and the State of New York on behalf of NYSDEC have alleged that the Debtors are liable under the Comprehensive Environmental Response, Compensation, and Liability Act ("**CERCLA**"), 42 U.S.C. §§ 9601-9675, for costs EPA and NYSDEC have incurred or will incur in response to releases and threats of releases of hazardous substances at or in connection with the Lower Ley Creek Site;

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

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

WHEREAS, (i) on November 28, 2009, the United States timely filed duplicate copies of its proof of claim against MLC both in the Bankruptcy Court and directly with

the Debtors' claims agent, and the two copies of the identical proof of claim were assigned Nos. 67362 and 64064, and (ii) on April 16, 2010, the United States filed proofs of claim against REALM and ENCORE which were assigned Nos. 70254 and 70255, respectively, (collectively, the "**First U.S. Proof of Claim**");

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

WHEREAS, on November 24, 2009, the State of New York timely filed proofs of claim numbers 50587 (the "**New York Proof of Claim**") against MLC and REALM in the Bankruptcy Court;

WHEREAS, on March 29, 2011, the Bankruptcy Court entered a previous Consent Decree and Settlement Agreement between the Debtors, the United States, several States, including the State of New York, and a Tribe, which provided for the creation of an environmental response trust to remediate MLC-owned properties, including the Inland Fisher Guide and Deferred Media subsite of the Onondaga Lake Site and the PCB Dredgings subsite of the Onondaga Lake Site;

WHEREAS, on March 29, 2011, June 17, 2011, and March 29, 2012, the Bankruptcy Court entered a total of nine other previous Consent Decrees and Settlement Agreements between the Debtors and the United States resolving certain claims of the United States for various Sites other than the Lower Ley Creek Site;

WHEREAS, on September 16, 2011, the MLC GUC Trust and the State of New York entered into a Stipulation and Agreement resolving certain claims of the State of New York for various sites other than the Lower Ley Creek Site;

WHEREAS, on or about December 15, 2011, MLC dissolved pursuant to the terms and provisions of the Plan of Liquidation;

WHEREAS, the GUC Trust, the United States and the State of New York (collectively, the "**Parties**") have differences of opinion with respect to the claims asserted by the United States regarding the Lower Ley Creek Site in the Second U.S. Proof of Claim and the New York Proof of Claim and wish to resolve their differences with respect to the Lower Ley Creek Site in the Second U.S. Proof of Claim and New York Proof of Claim as provided herein;

WHEREAS, with respect to the Lower Ley Creek Site, the Second U.S. Proof of Claim and the New York Proof of Claim are being settled as provided herein in recognition that EPA is the lead agency and NYSDEC is the support agency at the Lower Ley Creek Site, and that distributions and proceeds for the Lower Ley Creek Site under this Consent Decree and Settlement Agreement shall be deposited 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 Consent Decree and Settlement Agreement is in the public interest and is an appropriate means of resolving these matters;

WHEREAS the claims set forth in the Second U.S. Proof of Claim for all sites other than the Lower Ley Creek Site which have not been otherwise settled (the "**Surviving Claims**") shall survive and in no way be affected by this settlement, and the GUC Trust retains all existing rights to object to or settle all or some of the Surviving Claims;

NOW, THEREFORE, without the admission of liability or the adjudication of any issue of fact or law, and upon the consent and agreement of the parties to this Consent Decree and 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 Consent Decree and 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 Consent Decree and Settlement Agreement, the following definitions shall apply:

a. "**Allowed General Unsecured Claim**" has the meaning set forth in the Plan of Liquidation.

b. "**Bankruptcy**" has the meaning set forth in the recitals.

c. "**Bankruptcy Code**" has the meaning set forth in the recitals.

d. "**Bankruptcy Court**" or the "**Court**" has the meaning set forth in the recitals.

e. "**CERCLA**" has the meaning set forth in the recitals.

f. "**Claim**" has the meaning provided in section 101(5) of the Bankruptcy Code.

g. "**Distribution**" has the meaning set forth in the Plan.

h. "**Effective Date**" means the date an order is entered by the Bankruptcy Court approving this Consent Decree and Settlement Agreement.

i. "**EPA**" has the meaning set forth in the recitals.

j. "**EPA Allowed Claim**" means the total amount of Allowed General Unsecured Claims by EPA in settlement and satisfaction of its claims concerning the Lower Ley Creek Site.

k. "**Lower Ley Creek Site**" means the entire portion of Ley Creek from the Route 11 Bridge to the mouth of Ley Creek at Onondaga Lake, including Old Ley Creek Channel, a tributary of Ley Creek formed when Ley Creek was rerouted in the early 1970s. The Lower Ley Creek Site does not include the Onondaga Lake Bottom, Salina Landfill, Inland Fisher Guide and Deferred Media, and PCB Dredgings subsites of the Onondaga Lake Superfund Site in New York.

l. "**Motors Liquidation Company GUC Trust**" has the meaning set forth in the Plan.

m. "**Hazardous Substance Superfund**" means the Hazardous Substance Superfund established by 26 U.S.C. § 9507.

n. "**MLC**" means Motors Liquidation Company (f/k/a General Motors Corporation), a debtor in this Chapter 11 liquidation.

o. "**New York Proof of Claim**" has the meaning set forth in the recitals;

p. "**NPL**" means the National Priorities List, 42 U.S.C. § 9605.

q. "**NYSDEC**" has the meaning set forth in the recitals;

r. "**Parties**" has the meaning set forth in the recitals.

s. "**Petition Date**" means June 1, 2009, in the case of the Initial Debtors, and October 9, 2009, in the case of REALM and ENCORE.

t. "**Plan of Liquidation**" or "**Plan**" has the meaning set forth in the recitals.

u. "**Second U.S. Proof of Claim**" has the meaning set forth in the recitals.

v. "**Consent Decree and Settlement Agreement**" means this Consent Decree and Settlement Agreement between the Debtors, the United States of America, and the State of New York.

w. "**United States**" means the United States of America and all of its agencies, departments, and instrumentalities, including EPA.

III. JURISDICTION

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

IV. PARTIES BOUND; SUCCESSION AND ASSIGNMENT

3. This Consent Decree and Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the United States, the State of New York, the Debtors' estates, the GUC Trust, their legal successors and assigns, and any trustee, examiner, or receiver appointed in the Bankruptcy.

V. ALLOWED CLAIMS

4. In full settlement and satisfaction of the Second U.S. Proof of Claim with respect to the Lower Ley Creek Site and the New York Proof of Claim with respect to the Lower Ley Creek Site, the United States, on behalf of EPA, and the State of New York, on behalf of NYSDEC, jointly shall have an Allowed General Unsecured Claim in the amount of $39,103,434, classified in Class 3 under the Plan of Liquidation, which the GUC Trust shall distribute as follows:

a. The United States, on behalf of EPA, shall have an Allowed General Unsecured Claim of $38,344,177, the recovery for which shall be deposited in the Lower Ley Creek Special Account and shall be used to conduct or finance response actions at or in connection with the Lower Ley Creek Site or, if funds remain in

the Special Account at the completion of the response actions, transferred by EPA to the Hazardous Substance Superfund. The manner and timing of use of the funds in the Lower Ley Creek Special Account will be left to the sole discretion of EPA. Nothing herein shall affect any authority of the State of New York under CERCLA, the underlying regulations set forth in the National Contingency Plan, 40 C.F.R. Part 300, and any memorandum of agreement between EPA and the State of New York.

b. The State of New York, on behalf of NYSDEC, shall have an Allowed General Unsecured Claim of $859,257.

5. Upon the completion of all distributions and payments for the foregoing allowed general unsecured claims, the Second U.S. Proof of Claim and New York Proof of Claim shall be deemed fully settled and satisfied as to the Lower Ley Creek Site only, and the claims agent shall be authorized and empowered to adjust the claims register accordingly.

6. The Second U.S. Proof of Claim and New York Proof of Claim shall be deemed allowed in the respective amounts set forth herein as to the Lower Ley Creek Site for purposes of distributions under the Plan of Liquidation, and shall be entitled to receive payment in the next distribution under the Plan, provided, however, that distributions to the United States shall be in accordance with the provisions of the separate tax setoff stipulation and agreed order between the Debtors and the United States filed simultaneously herewith (the "**Setoff Stipulation**").

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

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

9. The GUC Trust shall reduce the distribution reserve amount to be used by the GUC Trust pursuant to Article VII of the Plan for the remaining unresolved general unsecured claims against Debtors asserted in the Second U.S. Proof of Claim by no more than $100 million.

10. The allowed claims provided for herein shall be treated as provided under Section 4.3 of the Plan of Liquidation and the Setoff Stipulation 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.

11. Only the amount of cash received by EPA (and net cash received upon sale of any non-cash distributions) pursuant to this Consent Decree and Settlement Agreement for any Allowed General Unsecured Claim, and not the total amount of any Allowed General Unsecured Claim, shall be credited by EPA to its account for the Settled Non-Owned Site for which it received an Allowed General Unsecured Claim, and shall reduce the liability of non-settling potentially responsible parties for that site by the amount of the credit.

VI. PAYMENT INSTRUCTIONS

12. Cash distributions to the United States pursuant to this Consent Decree and 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.

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

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

14. Distributions to the State of New York shall be made to:

JP Morgan Chase, Key Bank Type B Escrow Acct No. 99112
Attention: Daniel F. Murphy
Worldwide Securities Services
4 New York Plaza,12th Floor
New York, NY 10004

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

The United States:

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

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

EPA:

CRAIG KAUFMAN
Attorney-Advisor

U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

The State of New York:

GARY HARPER
Office of the New York State Comptroller
State Street
Albany, NY 12207

MAUREEN F. LEARY
Assistant Attorney General
Office of the New York State Attorney General
Environmental Protection Bureau
Albany, NY 12224-0341

NYSDEC:

BENJAMIN CONLON
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12232

VII. COVENANTS NOT TO SUE AND RESERVATION OF RIGHTS

16. In consideration of all of the payments and/or distributions that will be made under the terms of this Consent Decree and Settlement Agreement and as required under the Plan and the GUC Trust Agreement, and except as specifically provided in Paragraphs 18 through 20, the United States on behalf of EPA and the State of New York on behalf of NYSDEC covenant not to file a civil action or to take any administrative or other civil action against the post-effective date Debtors or the GUC Trust pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to the Lower Ley Creek Site.

17. These covenants not to sue (and any reservations thereto) shall also apply to the post-effective date Debtors and the GUC Trust's successors, assigns, officers, directors, employees,

and trustees, but only to the extent that the alleged liability of the successor or assign, officer, director, employee, or trustee of the GUC Trust or the post-effective date Debtors is based solely on its status as and in its capacity as a successor or assign, officer, director, employee, or trustee of the GUC Trust or the post-effective date Debtors. For purposes of this Paragraph, New GM shall not be considered a successor or assign of the GUC Trust.

18. The covenants not to sue set forth in this Consent Decree and Settlement Agreement shall extend only to the post-effective date Debtors, the GUC Trust and the persons described in Paragraph 17 above and do not extend to any other person. Nothing in this Consent Decree and Settlement Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than the GUC Trust, the United States, the State of New York, and the persons or entities described in Paragraph 17 above. The United States, the State of New York, and the GUC Trust expressly reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which they may have against all other persons, firms, corporations, entities, or predecessors of the GUC Trust for any matter arising at or relating in any manner to the Lower Ley Creek Site.

19. The covenants not to sue set forth in Paragraph 16 do not pertain to any matters other than those expressly specified therein.

20. The United States and the State of New York expressly reserve, and this Consent Decree and Settlement Agreement is without prejudice to, all rights against the GUC Trust and the post-effective date Debtors with respect to all matters other than those set forth in Paragraph 16. The United States and the State of New York also specifically reserve, and this Consent Decree and Settlement Agreement is without prejudice to, any action based on (i) a failure to meet a requirement of this Consent Decree and Settlement Agreement; (ii) criminal liability; (iii) liability

for damages for injury to, destruction of, or loss of natural resources; (iv) liability for response costs that have been or may be incurred by federal agencies which are trustees for natural resources; and (v) liability with respect to any site other than Lower Ley Creek Site. In addition, the United States and the State of New York reserve, and this Consent Decree and Settlement Agreement is without prejudice to, all rights against the GUC Trust with respect to the Lower Ley Creek Site for liability under federal or state law for acts by the GUC Trust, or their respective successors, or assigns that occur after the date of lodging of this Consent Decree and Settlement Agreement. Nothing in this Consent Decree and Settlement Agreement shall be deemed to limit the authority of the United States or the State of New York 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 or the State of New York pursuant to such authority. Nothing in this Consent Decree and Settlement Agreement shall be deemed to limit the information-gathering authority of the United States or the State of New York under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable law or regulation, or to excuse the Debtors or the GUC Trust from any disclosure or notification requirements imposed by CERCLA or any other applicable law or regulation.

21. Entry of an order approving this Settlement Agreement by the Court shall bar the post-effective date Debtors from asserting or pursuing, and the GUC Trust hereby covenants not to sue and agrees not to assert or pursue, any claims or causes of action against the United States and the State of New York, including any department, agency, or instrumentality of the United States and the State of New York, with respect to the Lower Ley Creek Site, 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 and

the State of New York under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613; or (iii) any claims arising out of response activities at the Lower Ley Creek Site. Nothing in this Consent Decree and Settlement Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

VIII. CONTRIBUTION PROTECTION

22. The Parties agree, and by entering this Consent Decree and Settlement Agreement the Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the GUC Trust and the post-effective date 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 Consent Decree and Settlement Agreement. Subject to the last sentence of this Paragraph, the "matters addressed" in this Consent Decree and Settlement Agreement, as that phrase is used in Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), include, without limitation, claims by EPA, NYSDEC, or potentially responsible parties for response costs at or in connection with the Lower Ley Creek Site, including claims related to releases of hazardous substances from any portion of the Lower Ley Creek Site and all areas affected by migration of hazardous substances emanating from the Lower Ley Creek Site. The "matters addressed" in this Consent Decree and Settlement Agreement do not include claims against the Debtors or the GUC Trust for past response costs incurred by potentially responsible parties prior to the date of lodging this Consent Decree and Settlement Agreement with the Bankruptcy Court and included in proofs of claim filed in the Bankruptcy by potentially responsible parties with respect to the Lower Ley Creek Site, nor do such "matters

addressed" include any claim for natural resource damages, assessment costs, or restoration costs filed by or on behalf of the United States Department of Interior, the United States National Oceanic and Atmospheric Administration, and/or the State of New York.

23. The GUC Trust agrees that, with respect to any suit for contribution brought against it or the post-effective date Debtors after the Effective Date for matters related to this Consent Decree and Settlement Agreement, the GUC Trust will notify the United States and the State of New York within fifteen business days of service of the complaint upon them. In addition, in connection with such suit, the GUC Trust, on behalf of itself or the post-effective date Debtors, shall notify the United States and the State of New York 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 and the State of New York pursuant to this Paragraph shall not in any way affect the protections afforded under Section VIII of this Consent Decree and Settlement Agreement and shall not require the United States or the State of New York to perform any action).

IX. JUDICIAL APPROVAL AND PUBLIC COMMENT

24. The GUC Trust shall promptly seek approval of this Consent Decree and Settlement Agreement under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code, if necessary.

25. This Consent Decree and 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 Consent Decree and 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 Consent Decree and Settlement Agreement. The United States, or the State of New York if it takes public comment, reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree and Settlement Agreement disclose facts or considerations which indicate that the Consent Decree and Settlement Agreement is not in the public interest.

26. If for any reason (i) the Consent Decree and Settlement Agreement is withdrawn by the United States or the State of New York as provided in Paragraph 25, or (ii) the Consent Decree and Settlement Agreement is not approved by the Bankruptcy Court: (a) this Consent Decree and Settlement Agreement shall be null and void and the parties hereto shall not be bound under the Consent Decree and 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 Consent Decree and Settlement Agreement or under any documents executed in connection herewith; and (c) this Consent Decree and Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

X. NOTICES

27. Whenever, under the terms of this Consent Decree and 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 Consent Decree and Settlement Agreement, written notice as specified herein shall constitute complete satisfaction of any written

notice requirement in the Consent Decree and Settlement Agreement with respect to the United States and the GUC Trust or the Debtors' estates, respectively.

As to the United States:

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

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

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

As to the State of New York:

Maureen Leary
Assistant Attorney General
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

BENJAMIN CONLON
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12232

As to the GUC Trust:

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

XI. INTEGRATION, AMENDMENTS, AND EXECUTION

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

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

XII. RETENTION OF JURISDICTION

30. The Bankruptcy Court shall retain jurisdiction over the subject matter of this Consent Decree and Settlement Agreement and the parties hereto for the duration of the performance of the terms and provisions of this Consent Decree and 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 Consent Decree and Settlement Agreement or to effectuate or enforce compliance with its terms.

[SIGNATURE PAGES FOLLOW]

THE UNDERSIGNED PARTIES ENTER INTO THIS CONSENT DECREE AND SETTLEMENT AGREEMENT:

FOR THE UNITED STATES:

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

Date: 4/27/12

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

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

Date: 4/30/12

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

Date: 4/30/12

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

Date: _____

THE UNDERSIGNED PARTIES ENTER INTO THIS CONSENT DECREE AND 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

Date: _____

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Assistant U.S. Attorneys
86 Chambers St., 3rd Floor
New York, NY 10007

Date: _____

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

Date: _____

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

Date: 4/27/12

FOR THE STATE OF NEW YORK

ERIC T. SCHNEIDERMAN
Attorney General

Date: April 30, 2012

By: Maureen Leary

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 GUC TRUST BY WILMINGTON TRUST COMPANY AS GUC TRUST ADMINISTRATOR:

Date: 4/30/12

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

Date: 4/30/12

David R. Berz
Weil, Gotshal & Manges LLP
Attorneys for the post-effective date Debtors and the GUC Trust
1300 Eye Street, NW, Suite 900
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Tel.: (202) 682-7000
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Email: natalie.kuehler@usdoj.gov

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

NOTICE OF LODGING OF PROPOSED NON-OWED SITE CONSENT DECREE AND SETTLEMENT AGREEMENT BETWEEN THE GUC TRUST AND THE UNITED STATES OF AMERICA

The United States of America hereby lodges with the Court the proposed Onondaga Non-Owned Site Consent Decree and Settlement Agreement (the "Onondaga Settlement Agreement") attached hereto as Exhibit 1. The Onondaga Settlement Agreement has been executed by all parties.

The United States requests that the Court not approve the proposed Onondaga Settlement Agreement at this time. Notice of the lodging of the proposed Onondaga Settlement Agreement will be published in the *Federal Register*, following which the United States Department of Justice will accept public comments on the proposed Onondaga 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 Onondaga Settlement Agreement.

Dated: New York, New York
April 30, 2012

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

By: */s/ Natalie N. Kuehler*
DAVID S. JONES
NATALIE N. KUEHLER
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2741
Facsimile: (212) 637-2750
Email: natalie.kuehler@usdoj.gov

COUNTY OF ONONDAGA

JOANNE M. MAHONEY
County Executive

DEPARTMENT OF LAW

GORDON J. CUFFY
County Attorney

John H. Mulroy Civic Center, 10th Floor
421 Montgomery Street
Syracuse, New York 13202
(315) 435-2170 • Fax (315) 435-5729
www.ongov.net

June 4, 2012

Via E-Mail and U.S. Mail

Ignacia S. Moreno, Esq.
Assistant Attorney General
Environment and Natural Resources Division
P.O. Box 7611
U. S. Department of Justice
Washington, D.C. 20044-7611

Re: *In re Motors Liquidation Corp., et al.*, D.J. Ref. 90-11-3-09754

Onondaga County, New York Comments on Proposed
Non-Owned Sites Settlement Agreements:
(1) Lower Ley Creek; and
(2) Onondaga Non-Owned Sites:
(a) Onondaga Lake Bottom,
(b) Salina Landfill,
(c) Inland Fisher Guide Facility, and
(d) PCB Dredgings Area

Assistant Attorney General Moreno:

Onondaga County submits these comments in response to the proposed Non-Owned Sites Lower Ley Creek and Onondaga Non-Owned Sites Consent Decrees and CERCLA Settlement Agreements (the "Settlement Agreements") that were separately lodged with the United States Bankruptcy Court for the Southern District of New York on April 30, 2001 and thereafter, separately noticed in the Federal Register on Monday, May 7, 2012.

The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 6901, *et seq.*, was enacted in 1980 to address the "serious environmental and health risks posed by industrial pollution." *Burlington Northern & Santa Fe Ry. Co. v. United States,* 556 U.S. 599, 129 S.Ct. 1870, 1874, 173 L.Ed.2d 812 (2009). Its purpose is to "promote the timely cleanup of hazardous waste sites and to ensure that the costs of such cleanup efforts [are] *borne by those responsible for the contamination.*" *Id.* (emphasis added)(quotation marks omitted). As detailed below, the proposed Consent Decrees and Settlement Agreements fail to provide even an estimate of the total cost of cleanup or the settling parties' comparative fault and thus, it is not

possible to determine if the proposed settlements satisfy the purposes of CERCLA. If that deficiency is not corrected, Onondaga County will be obligated, by the public interest, to file an objection to the proposed settlements with the Bankruptcy Court.

The deficiencies noted above are compounded by the settlement's extinguishment of Onondaga County's and other creditors' right to seek additional costs from the Debtor while concurrently, as the result of paragraph 11, potentially forcing the burden of a large orphan share on the County and all other potentially responsible parties or potentially a cost recovery action initiated by the MLC GUC Trust.

Given the above concerns and others enumerated below, the County requests that the Department disclose the information that is necessary to afford a reviewing court, the public, and Onondaga County the ability to meaningfully determine if the proposed settlements should be approved.

I. Background

The most recent investigation and studies of the Debtor's Salina, NY facility and its historical manufacturing processes indicate the Debtor released as much as 23,700 pounds or more of polychlorinated biphenyls (PCBs) into Ley Creek and its environs. Given the magnitude of PCB contamination detected in Ley Creek and its environs in conjunction with what is known about the Debtor's industrial processes, the Debtor's grossly negligent, if not criminal, management and handling of PCBs and PCB wastes, all of which was recently confirmed for the County by eyewitness reports, and available photographic evidence, the Debtor was, and is, the only possible source of the subject contamination.

The above conclusion is not a recent development. For approximately 40 years - from the 1950s through 1993 – operations at the General Motors Corporation (GM) Inland Fisher Guide facility ("IFG" or the "Debtor") resulted in continuous large-scale discharges of PCBs into Ley Creek and its environs. Indeed, from 1977, when the use of PCBs was outlawed, through 1981, the Debtor was cited by the New York State Department of Environmental Conservation ("NYSDEC") on six separate occasions for oil spills that were described as including heavy sheens of oil that covered 100% of the Creek. Since that time regulators have battled with the Debtor for over 40 additional years in an effort to secure a full and complete response by the Debtor to the gross contamination it caused.

On August 12, 1985 the Debtor entered into a consent order with the NYSDEC (Case #7-0383) to (a) address the ongoing discharge to Ley Creek of the Debtor's wastewaters contaminated with, among other pollutants, PCBs; and (b) limit any such future discharges.

Following multiple investigations and NYSDEC orders, in 1997 the NYSDEC concluded, and the Debtor executed an Order on Consent that stated:

> The confirmed presence of these hazardous substances at GM's facility and the proximity of such substances and discharge of PCBs to Ley Creek establishes that the hazardous substance contamination at the GM facility

> represents a release or threat of release of hazardous substances to the Onondaga Lake NPL Site pursuant to 104 and 107 of CERCLA. GM's facility is a subsite of the Onondaga Lake NPL site.

See "Exhibit A" (NYSDEC Order on Consent, Index # D-7-0001-97-06, September 17, 1997) at paragraph 33A. Onondaga Lake is located approximately 4 miles downstream of the IFG site at the mouth of Ley Creek. The Order on Consent stated "[GM] is responsible for developing and implementing a Remedial Investigation/Feasibility Study (RI/FS) for the Site that is consistent with CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, as amended (NCP), and all other applicable State and Federal laws." *Id.* at ¶33D.

Given the stated conclusion that the Debtor's facility was a subsite of the Onondaga Lake NPL Site, the only possible outcome from the ordered RI/FS would be an obligation by the Debtor to iteratively continue the RI/FS process the entire length of the 4-mile course of the Creek from the IFG facility to the Lake. Indeed, the Debtors' refusal to commence the Lower Ley Creek investigation was not the result of a denial of responsibility, but rather a refusal to undertake the project given the size and scope and cost of the required investigation and likely resulting response[1].

Subsequent sampling confirmed the presence of PCBs in, at and about the so-called Lower Ley Creek Site (i.e., Ley Creek downstream of the Route 11 Bridge). EPA's July 22, 2010 Onondaga Lake NPL Subsite Evaluation for Lower Ley Creek states: "[T]he majority of the contamination in Lower Ley Creek sediment has come from various sources and/or facilities upstream and on Ley Creek, including the former General Motors Corporation – Inland Fisher Guide Facility." Of note, the evaluation failed to identify any such alleged source other than the Debtor's facility.

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[1] Letter from Barry R. Kogut, Counsel for Debtors, to Assistant Regional Attorney Margaret A. Sheen, ESQ, Dated March 9, 2009:

> The Department is insisting that the Study Area include the "flood plain of the main channel of Ley Creek running underneath and downstream of the Route 11 bridge," which you advised in your February 23 letter is interpreted by the Department as the "FEMA 100 year flood plain." This defined flood plain area is very extensive with potentially many owners, and if GM were required to contact all of these owners, it would highlight GM's position as a potentially responsible party for not only any contamination detected throughout this industrial/commercial corridor area, but with historical discharges from Ley Creek into Onondaga Lake.
> Given GM's economic challenges that have only intensified over the past several months, GM cannot agree to take on expenditures of any significance unless it concludes that it can do the work in the most efficient and productive manner consistent with its position on responsibility for environmental conditions in the areas at issue. This review is an obligation that GM owes not only to its immediate stakeholders (that is, its employees, shareholders, etc.), but to the federal government with whom it is engaged in ongoing discussions on needed financial assistance. As noted, for the reasons stated, GM has concluded after thoughtful analysis that it cannot go forward with the proposed Order.

Contemporaneous with the above events, NYSDEC listed Old Ley Creek, which also is located downstream of the Route 11 Bridge, in the State Registry of Inactive Hazardous Waste Disposal Sites due to PCB contamination originating from the Debtor's facility.

As noted above, given the magnitude of PCBs detected in Ley Creek and its environs, the Debtor was, and is, the only possible source of the subject contamination. The United States confirmed its agreement with that conclusion in its February 18, 2011, United States Statement in Support of Environmental Provisions of Debtor's Plan of Liquidation, at 12-13 ("the contamination [of Upper Ley Creek] stems from the adjacent currently or formerly Debtor-owned properties . . . and Debtors are essentially the sole PRPs in connection with the hazardous substances at issue").

II. The Proposed Consent Decrees and Settlement Agreements

The proposed Lower Ley Creek Consent Decree and Settlement Agreement would grant the United States an allowed general unsecured claim in the sum of $38,344,177, and the State of New York an allowed general unsecured claim in the sum of $859,257. In return, the proposed agreement would be in full settlement and satisfaction of both the Second U.S. Proof of Claim and the State of New York Proof of Claim as they relate to the Lower Ley Creek Site. *See* Notice of Lodging of Proposed Settlement Agreement, April 30, 2012.

The proposed Onondaga Non-Owned Sites Settlement would grant the United States an allowed general unsecured claim for oversight costs in the sum of $896,566, allocated by subsite as follows: Onondaga Lake Bottom - $438,448; Salina Landfill - $113,248; IFG Facility - $234,475; and the PCB Dredgings Area - $110,395. In return, the proposed agreement would be in full settlement and satisfaction of the Second U.S. Proof of Claim as it relates to the four specified Onondaga Lake subsites. *See* Notice of Lodging of Proposed Settlement Agreement, April 30, 2012.

III. The Proposed Lower Ley Creek Settlement is not Proper, is not Adequate and is not Appropriate

Prior to approval, the proposed Lower Ley Creek Consent Decree and Settlement Agreement must be reviewed by the court to determine "if it is fair, reasonable, and faithful to the objectives of CERCLA." *See United States v. General Elec. Co.*, 460 F. Supp.2d 395, 401 (N.D.N.Y. 2006) (citations omitted) (internal quotation marks omitted). A prime objective of CERCLA is "to impose liability on responsible parties." *Id.* The fairness inquiry concerns both procedural and substantive fairness; the reasonableness inquiry addresses both technical considerations and such matters as "whether a settlement that does not fully compensate for costs is nonetheless a cost-effective alternative to litigation that will conserve public and private resources." *Id.*

The United States has refused to allow Onondaga County, which the United States has named as a potentially responsible party for these sites[2], to participate in the negotiations with the Debtor. The United States also has declined to inform the County during or at the conclusion of the negotiations of the factors and bases for the proposed settlement. Given the absence of any such disclosures in the body of the proposed Consent Decree or the Federal Register notice, the United States has failed to substantiate that the proposed settlement is proper, appropriate, adequate, and in the public interest. That being the case, Onondaga County has no basis by which it can determine if the proposed settlement is proper, appropriate, adequate, and in the public interest.

By way of example, at a time when representatives of the United States did not understand either the geography or all the locations potentially contaminated by the Debtors' PCB releases, the United States instructed that $70 million dollars or more of the Debtors' remaining assets be set aside and held in a distribution reserve in contemplation of a future Lower Ley Creek settlement. Following the County and others providing the United States and the State of New York with additional or new information, data and analysis, all of which, the County submits, confirms the State of New York's and the Debtors' pre-bankruptcy assessment as to the magnitude and potential cost of the required remedy, the United States and the State of New York propose a combined $39.2 million settlement. While Onondaga County understands that a set aside does not establish the floor or even the basis for a settlement and very much appreciates that a portion of the proposed settlement *may* be funded, in part, by a potential dollar-for-dollar offset in the sum of $17,305,000, neither the County nor the Court have any substantiated basis by which they can judge the adequacy, appropriateness and fairness of a proposed settlement that seeks to shift a potentially large orphan share to Creditors with, at best, *de minimis* responsibility. The County submits that rather than promoting settlement and an expeditious clean up, the manner in which the settlement has been reached creates the potential to maximize future litigation over liability and divisibility issues. The United States is in the best position to assure the Court and all Creditors that the proposed settlement is, under the circumstances, fair, reasonable, consistent with governing law, and in the public interest and it is imperative that it do so.

Onondaga County fully anticipates the United States will file with the court a statement of support for the proposed settlement. Frankly, the United States' prior filings in support of the now multiple environmental settlements in this matter have consisted of statutory incantations and unsubstantiated generalities lacking any meaningful factual support. If the United States expects or seeks to gain the support of Onondaga County (and others) for this proposed settlement, it is essential to divulge details that will allow those parties to independently evaluate the proposed settlement. *See e.g., In re ASARCO, LLC, et al.*, Debtors, No. 05-21207, United States' Brief in Support of Debtors' Motion Under Bankruptcy Rule 9019 for Order Approving Settlement of Environmental Claims and Notice of Response to Public Comments (May 15, 2009), 2009 WL 1402382 (Bkrtcy. S.D.Tex.).

The factors by which a Court must determine whether a proposed settlement pursuant to

[2] Other than the Debtor, neither Onondaga County nor any of the other alleged PRPs have been found liable for any response costs and the submission of these comments in no way acts as a waiver of any defenses - factual or legal - that the County may have in response to the EPA's allegation.

CERCLA is fair, reasonable, consistent with the statutory purposes and thus in the public interest constitute a legal metric against which a Court must gage how a settlement was arrived at, the underlying facts that the parties have considered in weighing the benefits of the settlement against the risk of protracted litigation and the impact of the proposed settlement on non-settling parties, or more apt in this case, against parties who have not been accorded an opportunity to participate in the settlement process notwithstanding requests to participate. Only then is a reviewing court in the best position to ascertain that the Consent Decree before it is substantively fair. *See e.g., United States v. George A. Whiting Paper Co.*, 644 F.3d. 368, 372 (7th Cir. 2011) (citations omitted) ("A consent decree is substantively fair if its terms are based on comparative fault.").

Onondaga County fully comprehends that "[t]he Court's review of the Consent Decree is a limited one, and the Consent Decree must be enforced if it is reasonable, fair and consistent with CERCLA's goals. *United States v. McGraw-Edison Co.,* 718 F.Supp. 154, 158 (W.D.N.Y. 1989); *State of New York v. Town of Oyster Bay,* 696 F.Supp. 841, 843 (E.D.N.Y. 1988). While the Court cannot act as a "rubber stamp" for the Consent Decree, the Court cannot review the proposed settlement *de novo. United States v. Cannons Engineering Corp.,* 899 F.2d 79, 84 (1st Cir. 1990); *See also City of Detroit v. Grinnell Corp.,* 495 F.2d 448, 462 (2d Cir. 1974). The Court's task "is to determine whether the settlement represents a reasonable compromise, all the while bearing in mind the law's generally favorable disposition toward the voluntary settlement of litigation and CERCLA's specific preference for such resolutions." *United States v. Rohm & Haas Co.,* 721 F.Supp. 666, 680-681 (D.N.J. 1989); *see also United States v. Town of Moreau, New York,* 751 F. Supp. 1044, 1050 (N.D.N.Y. 1990) (vacating a CECLA consent decree). Lastly, the proposed consent decree must be "in the public interest." 42 U.S.C. § 9622(a); *In Re Tutu Water Wells CERCLA Litig.,* 326 F.3d 201, 206 (3d Cir. 2003).

"Notwithstanding this 'swaddling,' there is a fundamental difference in the review of the sufficiency of evidence to support a settlement and the situation where there is no evidence at all on an important point." *United States v. Montrose Chemical Corp. of California,* 50 F.3d 741, 746 (9th Cir. 1995). "With no evidence of the governments' estimate-preliminary or otherwise-of total . . . damages . . . the fairness or reasonableness of a . . . settlement simply cannot be measured." *Id.* at 747. Thus, the United States, through the public comment process pursuant to Section 122 of CERCLA has an opportunity, indeed, a statutory responsibility to fully disclose to the public and, ultimately, to the Court, sufficient information to permit both the impacted public and the Court to gauge whether under all the circumstances the settlement as proposed, or with suggested modifications, satisfies all applicable legal requirements.

The questions Onondaga County does have and the Court should have are many. By way of example: In reaching the proposed settlement, what did the United States submit was the presumed extent of the subject contamination? What was the Debtors' response? What was the United States' presumed remedy? Did the Debtor agree? How was the cost of the presumed remedy calculated? Did the parties utilize ASTM Standard E-210736, The Standard Guide for Estimating Monetary Costs and Liabilities for Environmental Matters? If not, what methodology was used? Did the United States appropriately contend the Debtor was jointly and severally liable for the entire estimated response cost? What was the Debtors' response and how were the competing positions reconciled? Did the Debtors attempt to establish or convince the United States that (a) the environmental injury at and about Lower Ley creek is in fact capable of

divisibility; and (b) a reasonable basis for such apportionment? What factors led the United States to reach the proposed settlement? Equally important, what factors did the Debtor use to contest the contentions of the United States or argue for the alleged liability of other alleged potentially responsible parties? For example, there are numerous factual and historical errors in past statements and historical documentation regarding this Site both by the United States and the Debtor or its agents (e.g., who did what, when and where). Was this settlement reached based on a corrected and more accurate record? Does it reflect the most recent analyses which establish the Debtor as the only possible source of PCBs that could result in the scope and magnitude of contamination in Ley Creek?

In addition to the above, does the settlement take into account the potential of the United States to secure contribution from other responsible parties given the potential for divisibility, the defenses of those parties and the United States' litigation risks in those matters?

Lastly, what role did the United States' status as a potentially responsible party play in the final negotiated settlement?

Also to be considered is the United States' history at this Site. The evidence here is undisputed. Vast quantities of PCBs were released (and continue to be released on a smaller scale) into Ley Creek from the Debtor's properties and are thereafter transported the length of Ley Creek and into Onondaga Lake as evidenced by the proposed Onondaga Non-Owned Sites Settlement Agreement. Despite that undisputed and irrefutable reality, in negotiating, securing and advocating for the funding of the previously established MLC Environmental Response Trust, the United States exercised its enforcement discretion and knowingly elected not to require the Debtor to fund the necessary response to Lower Ley Creek. The United States determined, contrary to CERCLA and RCRA, that it would define or agree to define the subject site as only "the property extending from the facility property boundaries to the Route 11 Bridge."[3]

The decision to fund only a portion of the Ley Creek discharge was in conflict with (1) the Government's public statements lauding the settlement (i.e., "This settlement holds accountable those responsible for contaminating certain properties and ensures they help transform those communities by supporting the necessary cleanup." Statement of Acting Deputy Attorney General Grindler; Department of Justice Press Release, October 20, 2010), (2) the stated objective found in the text of the proposed Trust Agreement (i.e., "to conduct, manage and/or fund Environmental Actions with respect to the Properties or migration of Hazardous Substances emanating from certain of the Properties in accordance with the provisions of this Agreement")(*see* Proposed Environmental Response Trust Agreement, Article 2.3), and the underlying principles of CERCLA.

Although Onondaga County submits the Environmental Response Trust should be amended to include the full cost of the Lower Ley Creek response necessitated by the Debtor's actions, the County has no reason to believe that will occur. Nevertheless, the circumstances surrounding the creation of the Environmental Response Trust and the artificial creation of the

[3] Perhaps the United States was constrained as a result of the pre-determined sum of DIP funding allocated to respond to the Debtor's environmental issues.

Lower Ley Creek subsite are additional factors by which the proposed Lower Ley Creek settlement must be measured and the public interest and substantive fairness weighed.

Given the refusal to allow Onondaga County, and most, if not all of the other PRPs, to participate in the secret negotiations involving a PRP plaintiff and PRP defendant suggests an absence of any procedural fairness. And proposing a settlement that fails to provide any evidence as to how the settlement was reached makes the opportunity to provide public comments of almost no value.

A consent decree is substantively fair if its terms are based on comparative fault. *George A. Whiting Paper Co.,* 644 F.3d at 372; *Cannons Eng'g,* 899 F.2d at 87 ("a party should bear the cost of the harm for which it is legally responsible"). "[T]he proper way to gauge the adequacy of settlement amounts to be paid by settling PRPs is to compare the proportion of total projected costs to be paid by the settlors with the proportion of liability attributable to them, and then to factor into the equation any reasonable discounts for litigation risks, time savings, and the like that may be justified." *United States v. Charles George Trucking*, 34 F.3d 1081, 1087 (1st Cir. 1994).

> "Moreover, . . . the *nature* of the liability of the various defendants is of considerable relevance in determining whether the settlement is fair, reasonable and consistent with the public interest. For example, if joint and several liability does not apply to the natural resources damages, the governments' ability to collect the totality of remaining damages from the non-settling defendants certainly would have an impact on the settlement's merits."

Montrose Chemical Corp. at 747. Again, a settlement that is silent on all of the factors necessary to gauge substantive fairness is by definition unfair.

The evaluation of a consent decree's reasonableness is "a multifaceted exercise." *Cannons Eng'g,* 899 F.2d at 89. Factors relevant to the evaluation of a consent decree's reasonableness include its likely efficaciousness as a vehicle for cleansing the environment; the extent to which it satisfactorily compensates the public for actual and anticipated costs of remedial and response measures; the extent to which approval of it serves the public interest; and the availability and likelihood of alternatives to the consent decree. *Id.* at 89–90; *see also U.S. v. Fort James Operating Co.,* 313 F.Supp.2d 902, 910 (E.D.Wis. 2004); *BP Exploration & Oil,* 167 F.Supp.2d at 1053." *United States v. Western Remain Industrial, Inc.,* 2011 WL 2117006 (N.D. IN 2011). Again, there is no basis upon which to judge the reasonableness of the proposed settlement.

The County's objection is not that the Debtor should have been allocated 99% of the liability, but was only assessed 95% or 80% or some other precise percentage. Rather, the County's objection is that where the evidence undisputedly establishes that the Debtor released tons of PCBs and only a release of tons of PCBs could account for the contamination found in the Ley Creek watershed, the proposed Consent Decree must be rejected unless the record establishes that the settlement is based on an allocation that is supported by the available evidence.

"The Court's review of the Consent Decree is limited to the . . . Record, * * * [and w]hile [that] review is limited to the Administrative Record, the Court cannot enter a Consent Decree based on an incomplete record". *Town of Moreau*, at 1051 (citations omitted). Here, there is no record by which this proposed settlement can be judged.

Should the United States elect not to disclose such information, the minimum required corrective action will be to request that the Court reform the proposed settlement in ways that protect the current and future interests of the County and all Creditors who were excluded from the process of negotiating its terms.

IV. Additional Comments re the Proposed Lower Ley Creek Settlement

- "Lower Ley Creek Site" is defined in ¶1k of the proposed Settlement Agreement as follows: "the entire portion of Ley Creek from the Route 11 Bridge to the mouth of Ley Creek at Onondaga Lake, including Old Ley Creek Channel, a tributary of Ley Creek formed when Ley Creek was rerouted in the early 1970s. The Lower Ley Creek Site does not include the Onondaga Lake Bottom, Salina Landfill, Inland Fisher Guide and Deferred Media, and the PCB Dredgings subsites of the Onondaga Lake Superfund Site in New York.

  Does the defined and covered Site also include that portion of Ley Creek that was abandoned and filled in the early 1970s, the banks of the Creek including any dredged spoils, and the historic floodplain of the Creek or are those locations not the subject of this proposed Settlement? If not, have any such claims been reserved for future settlement or were they not preserved by the United States or the State of New York?

  Also, the County disputes the suggestion that Old Ley Creek was "formed" when the Creek was rerouted. Rather, what is known as Old Ley Creek is a portion of the original creekbed prior to the rerouting of that portion of the Creek that previously flowed in what is now the abandoned and filled portion of the original channel.

- What portion, if any, of the allowed claim is being allocated by the United States to past or future oversight costs? If past costs are included, do they include past costs incurred during the life of the bankruptcy? If yes, why was the reimbursement of such costs not pursued as administrative costs?

- What is the factual and legal basis for the allowed claim proposed to be afforded to the State of New York? What is the proposed use of such funds?

- Is any portion of that allowed claims being allocated to past or future oversight costs? Is the United States waiving its RCRA claims?

- Paragraph 22 regarding contribution protection reads as follows:

  > 22. The Parties agree, and by entering this Consent Decree and Settlement Agreement the Court finds, that this settlement constitutes a judicially-approved

> settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the GUC Trust and the posteffective date 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 Consent Decree and Settlement Agreement. Subject to the last sentence of this Paragraph, the "matters addressed" in this Consent Decree and Settlement Agreement, as that phrase is used in Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), include, without limitation, claims by EPA, NYSDEC, or potentially responsible parties for response costs at or in connection with the Lower Ley Creek Site, **including claims related to releases of hazardous substances from any portion of the Lower Ley Creek Site and all areas affected by migration of hazardous substances emanating from the Lower Ley Creek Site.** The "matters addressed" in this Consent Decree and Settlement Agreement do not include claims against the Debtors or the GUC Trust for past response costs incurred by potentially responsible parties prior to the date of lodging this Consent Decree and Settlement Agreement with the Bankruptcy Court and included in proofs of claim filed in the Bankruptcy by potentially responsible parties with respect to the Lower Ley Creek Site, nor do such "matters addressed" include any claim for natural resource damages, assessment costs, or restoration costs filed by or on behalf of the United States Department of Interior, the United States National Oceanic and Atmospheric Administration, and/or the State of New York

Onondaga County objects to the first underlined phrase "or as may be otherwise provided by law". There is no basis for providing any such release and the phrase should be stricken.

Onondaga County objects to the second underlined phrase "including claims related to releases of hazardous substances from any portion of the Lower Ley Creek Site and all areas affected by migration of hazardous substances emanating from the Lower Ley Creek Site." Given the proposed Onondaga Non-Owned Sites Settlement, it is apparent that the Debtor is liable for releases that migrated from Lower Ley Creek into Onondaga Lake. The proposed language would terminate the claims of the United States, the State of New York, and Honeywell Corporation as well as every other potentially responsible party claim with respect to the Lake Bottom subsite. The language should be stricken.

- Lastly, the parties bound by the proposed Settlement are identified as follows:

> IV. PARTIES BOUND; SUCCESSION AND ASSIGNMENT
> 3. This Consent Decree and Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the United States, the State of New York, the Debtors' estates, the GUC Trust, their legal successors and assigns, and any trustee, examiner, or receiver appointed in the Bankruptcy.

In reality, that statement is not correct. The Settlement certainly applies to and both benefits and penalizes all other Creditors who are also potentially responsible parties by,

for example, reducing potential liability by the dollars recovered by the United States, but simultaneously increasing the orphan share. While those impacts may be unavoidable given the statute, Onondaga County reserves its right to object to any of the factual bases and dispute any of the United States' or New York State's legal conclusions that may underlie this proposed settlement or otherwise be made in any future proceedings or actions involving Onondaga County.

IV. Comments re the Proposed Onondaga Non-Owned Sites Settlement

Onondaga County submits each of the issues identified with respect to the proposed Lower Ley Creek settlement applies to the proposed Onondaga Non-Owned Sites settlement.

V. Conclusion

Onondaga County is hopeful that its concerns will be addressed by the United States and would welcome the opportunity to meaningfully discuss and address its concerns with you and your staff prior to the United States filing a motion seeking entry of the proposed orders with the Bankruptcy Court.

I look forward to your granting us that opportunity and the benefit of a full and open discussion of the above issues with the United States, including both the Department of Justice and the Environmental Protection Agency.

Very truly yours,

Gordon J. Cuffy
County Attorney

cc: The Honorable Charles E. Schumer
The Honorable Kirsten Gillibrand
The Honorable Ann Marie Buerkle
Joanne Mahoney,
Onondaga County Executive
Matthew J. Millea
Deputy Onondaga County Executive
A.T. Rhoads, P.E.
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PHYSICAL DOCUMENT

ENV_ENFORCEMENT-n2222470-v1

TOWN OF SALINA'S REQUEST FOR REVISIONS TO THE PROPOSED SETTLEMENT AGREEMENT

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Document Type:	LETTER
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Distribution List:	ENRD, EESCaseManagement (ENRD); Lattin, Sue (ENRD); Rose, Robert (ENRD); Berman, Lisa (ENRD);Casey, Patrick (ENRD);Tenenbaum, Alan (ENRD);Lyskowski, Kevin (ENRD);Covington, Imogene (ENRD)
Fileroom:	EES - 6th Floor
DJ#:	90-11-3-09754
Case Name:	IN RE: MOTORS LIQUIDATION CO. F/K/A GENERAL MOTORS CORPORATION (LEAD CASE)
Court:	NY Bankr. S.D. N.Y.; 2nd Cir.
Notes:	
Double-Sided:	
Received Date:	6/4/2012
Urgent:	
Oversize:	
Bound Document:	

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May 30, 2012

Via U.S. Mail and Electronic Mail

United States Department of Justice
c/o Ignacia S. Moreno, Assistant Attorney General
Environmental and Natural Resources Division
PO Box 7611
U.S. Department of Justice
Washington, DC 20044-7611

RE: In re: Motors Liquidation Corp., et al., D.J. Ref. 90-11-3-09754
Town of Salina, New York Comments on:
1) Onondaga Non-Owned Site Consent Decree and Settlement Agreement;
2) Lower Ley Creek Non-Owned Site Consent Decree and Settlement Agreement; 3) Stipulation and Agreed Order between the GUC Trust and the United States of America Involving Offset of Obligations by the Debtors To EPA Under the Lower Ley Creek Consent Decree and Settlement Agreement

To the U.S. Department of Justice:

Pursuant to the notice published in the Federal Register on May 7, 2012, the Town of Salina (the "Town") requests that the specific revisions outlined below be made to the proposed Settlement Agreements referenced above. In addition to the comments provided herein, the Town supports and incorporates those comments relating to the Debtors' liability for the presence of PCB contamination in the entirety of Ley Creek and its contribution to the contaminated state of Onondaga Lake as submitted to the U.S. Department of Justice (the "DOJ") by the County of Onondaga (the "County") in its response to the published notice.

The proposed Consent Decrees and Settlement Agreements violate the purposes set forth in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 6901 *et seq.*, as enacted in 1980 ("CERCLA"), to "promote the timely cleanup of hazardous wastes sites and to ensure that the costs of such cleanups [are] borne by those responsible for the contamination." (emphasis added); *See Burlington Northern & Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 129 S.Ct. 1870, 1874 (2009). CERCLA mandates that consent decrees and settlement agreements by

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90-11-3-09754

reviewed to determine whether they are fair, reasonable, and consistent with its statutory objectives. *See United States v. General Electric*, 460 F. Supp.2d 395, 401 (N.D.N.Y. 2006). A primary objective of CERCLA is to substantively and fairly allocate responsibility amongst those parties determined to be liable for the contamination. *Id.generally.*

The United States has failed to provide any opportunity for the Town or other PRPs to participate in the negotiation of the proposed Consent Decrees and Settlement Agreements that address liabilities of the Debtors regarding their historical contamination of our community. In sum, DOJ proposes a settlement that fails to provide any evidence of how it was reached, despite the Settlements Agreements substantively impacting the rights and obligations of other PRPs named by EPA and DOJ to both the Lower Ley Creek Sub site and the Onondaga Lake Superfund Site. The proposed Settlement Agreements fail to provide even an unsupported estimate of the total cost of cleanup or an assessment of the Debtors' comparative fault to any of the sub sites. With no evidence of how DOJ and EPA estimated the damages by which it calculated this settlement, the fairness and reasonableness of the Consent Decrees and Settlement Agreements cannot be measured as required by CERCLA. *See United States v. Montrose Chemical Corp. of California*, 50 F.3d 741,746 (1995). Pursuant to Section 122 of CERCLA, the United States is thus required to fully disclose to the public, as well as to the Court, sufficient information to permit the public and the Court to determine whether all of the circumstances to the settlement between the parties satisfies CERCLA's mandates.

Unfortunately, the Debtors have a long history of contaminating portions of the Town of Salina. In addition to the improper releases of PCBs to Ley Creek and ultimately Onondaga Lake (as detailed in the County's comment letter), the Debtors' prior industrial activities have contributed overwhelmingly to the hazardous condition of the Salina Landfill Sub site. The Debtors' historical manufacturing at the former Inland Fisher Guide facility (the "IFG Site") located in the Town of Salina along the banks of Ley Creek included plating; buffing; forming and finishing metal automobile parts; junction moldings; painting; and assembling plastic body and trim components for automobiles. According to EPA and NYSDEC, between 1962 and 1973, the Debtors disposed PCBs and PCB-related hazardous wastes at the Salina Landfill Sub site including approximately 640 tons of paint sludge; 22 tons of waste paint thinner and paint reducer; unknown quantities of boiler ash and buffing sludge; and approximately 30 pounds of unadulterated PCBs.

There is no dispute that the Debtors are a party, who by contract, agreement or otherwise, arranged for the disposal of hazardous substances at the Salina Landfill Sub site. A party qualifies as a PRP on an arranger basis under CERCLA when it "takes intentional steps to dispose of a hazardous substance." *See Burlington Northern and Santa Fe Railroad Company v. United States*, 129 Sup.Ct. 1870, 1879 (2009). Although EPA and NYSDEC acknowledge the Debtors' significant role as PRPs to both the Salina Landfill and Lower Ley Creek Subsides, it has not afforded the Town the opportunity to participate in the negotiation of the Settlement Agreements to ensure that the Town's future cost recovery efforts are not jeopardized by the creation of "orphan share" complications.

In light of these foregoing concerns, the Town requests that the following comments be addressed, and the suggested revisions completed, to ensure that the Consent Decrees and Settlement Agreements provide a fair and statutorily compliant resolution, as well as ensure that the Town's future cost recovery efforts relating to the Salina Landfill Sub site are not adversely impacted.

A. The Onondaga Non-Owned Site Consent Decree and Settlement Agreement

The Town requests that specific revisions be made to the Onondaga Non-Owned Site Consent Decree and Settlement Agreement (the "Onondaga Settlement Agreement"), as follows:

1. The claims being settled with respect to the "Settled Onondaga Subsides" include EPA's claims for unreimbursed past and future oversight costs with respect to the Salina Landfill. Pursuant to paragraph 4(a) of the Onondaga Settlement Agreement, the United States, on behalf of EPA, shall have an allowed General Unsecured Claim in the amount of $113,248.00 for those costs at the Salina Landfill Sub site of the Onondaga Lake Site (the "EPA Landfill Claim").

2. The Town has never been provided with any information or documents supporting the amount of that claim. The Town requests that the Court require the GUC Trust and EPA to provide that documentation prior to the Court approving the Onondaga Settlement Stipulation.

3. The Town objects to paragraph 12 that provides: "Only the amount of cash received by EPA (and net cash received upon sale of any non-cash distributions) ....shall reduce the liability of non-settling potentially responsible parties at each applicable subside of the Onondaga Lake Site...." While the Stipulation acknowledges that the post-effective date Debtors are responsible for the full amount of the $113, 248.00 in costs, this provision shifts the burden of paying for the majority of the Debtor's EPA administrative oversight costs to the Town and other potentially responsible parties ("PRPs") without justification. By way of example, if the ultimate cash received on account of the general unsecured distribution equals payment of approximately 30% of that EPA Landfill Claim, the Town's potentially liability has been increased by $79,273.60 as a result of the Onondaga Settlement Agreement. Because EPA has voluntarily chosen to enter into the Onondaga Settlement Agreement and thereby created this "orphan share" deficiency, EPA should be precluded from seeking to recover that deficiency from the Town or any other PRPs in any future proceedings.

4. The Town also objects to the vague and ambiguous nature of paragraph 22 of the proposed Onondaga Settlement Agreement in that it does not expressly carve out the Town's claims for the Salina Landfill and Lower Ley Creek Subsides from the contribution protection being afforded to the GUC Trust and post-effective date Debtors. The Town's claims are independent of EPA's claims, and relate to the response and remedial costs the Town has incurred in addressing contamination caused by the Initial Debtors and/or the Debtors. As a result, the Town requests that the third sentence of Paragraph 22 be revised as follows to expressly exempt the Town's claims from the contribution protection being provided by EPA:

> The "matters addressed" in the Onondaga Settlement Agreement do not include . . . (ii) claims against MLC, the Initial Debtors, the Debtor and/or the GUC Trust for past, present and future response costs incurred by potentially responsible parties, including but not limited to those claims asserted by the Town of Salina regarding the Salina Landfill and Lower Ley Creek Subsides against MLC, the Initial Debtors, the Debtors and/or the GUC Trust prior to the date of lodging this Settlement Agreement with the Bankruptcy Court and included in proofs of claim filed in any the

> Bankruptcy Cases by potentially responsible parties, including the Town of Salina, with respect to the Settled Onondaga Subsides; . . .

It is imperative that this additional language be included in Paragraph 22 to ensure that the proposed Onondaga Settlement Agreement does not impair the Town of Salina's ability to pursue its claims against MLC and the Initial Debtors as they relate to the Salina Landfill and Lower Ley Creek Subsides.

5. The Town also requests that the Onondaga Settlement Stipulation be revised to clarify that the amounts outlined in the Onondaga Settlement Stipulation are not binding on the Town in the event EPA and/or the DEC ever seek to impose liability for the remediation and cost recovery efforts regarding the Settled Onondaga Subsides. The Onondaga Settlement Stipulation should therefore be revised to include the following language:

> "This Stipulation is without prejudice to the Town of Salina and other potentially responsible parties to dispute the amounts and allocation of environmental liabilities in any proceedings, whether in these bankruptcy cases or in any other appropriate forum."

B. Lower Ley Creek Non-Owned Site Consent Decree and Settlement Agreement

The Town requests that specific revisions be made to the proposed Lower Ley Creek Non-Owned Site Consent Decree and Settlement Agreement (the "Lower Ley Creek Settlement Agreement"), as follows:

1. The claims being settled with respect to the "Lower Ley Creek Site" include the claim of the United States of America, on behalf of the EPA which is being allowed as a general unsecured claim in the amount of $38,344,177.00 ("EPA's Lower Ley Creek Claim"). New York State, on behalf of the Department of Environmental Conservation (the "DEC") will have an Allowed General Unsecured Claim in the amount of $859,257.00 (the "NYS Lower Ley Creek Claim").

2. There is no information disclosing how the amount of those claims were calculated, or exactly what those amounts represent, whether past, present or future remediation costs, administrative oversight costs, or other fees. The Stipulation merely provides the treatment of liabilities provided for therein "represents a compromise of the positions of the Parties and is entered into solely for purposes of this settlement." It is simply impossible for the Town to assess the Lower Ley Creek Settlement Agreement without information regarding the underlying claims. For example, if EPA originally sought to recover on its Lower Ley Creek Claim in the amount of $90,000,000.00, a settlement for $38,344,177.00 would be objectionable. If, however, EPA originally sought to recover $40,000,000.00 on its Lower Ley Creek Claim, a settlement for $38,344,177.00 would be recommended. The Town has never been provided with information or documents supporting the amount of those claims. The Town requests that the Court require the GUC Trust, EPA and DEC provide documentation substantiating the claims being settled prior to the Court approving the Lower Ley Creek Settlement Agreement.

3. The Town objects to paragraph 11 that provides: "Only the amount of cash received by EPA (and net cash received upon sale of any non-cash distributions) ....shall reduce the

liability of non-settling potentially responsible parties for that site by the amount of the credit." While the Stipulation acknowledges that the post effective date Debtors are responsible for the full amount of the $38,344.177.00 in costs, this provision shifts the burden of paying for the majority of the Debtor's liability to the Town and other PRPs without justification. For example, the ultimate cash received on account of the general unsecured claims is approximately 30% of the claims; the Town's potentially liability has been increased by $26,840,923.00 as a result of the Lower Ley Creek Settlement Agreement. Because EPA and DEC have voluntarily chosen to enter into this agreement and thereby created this "orphan share" deficiency, EPA should be precluded from seeking to recover that deficiency from the Town or any other PRPs. The Town is already suffering from the tremendous financial burden resulting from the remediation costs from the Town of Salina Landfill and should not be further burdened as a result of the settlement.

4. The Town also objects to the vague and ambiguous nature of Paragraph 22 of the proposed Consent Decree in that it does not expressly carve out the Town's claims for the Salina Landfill and Lower Ley Creek Subsides from the contribution protection being afforded to the GUC Trust and post-effective date Debtors. The Town's claims are independent of EPA's claims, and relate to the response and remedial costs the Town has incurred in addressing contamination caused by the Initial Debtors and/or the Debtors. As a result, the Town requests that the second and third sentences of Paragraph 22 be revised as follows to expressly exempt the Town's claims from the contribution protection being provided by EPA:

> Subject to the last sentence of this Paragraph, the "matters addressed" in this Consent Decree and Settlement Agreement, as that phrase is used in Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), include, without limitation, claims by EPA, NYSDEC, or potentially responsible parties for response costs at or in connection with the Lower Ley Creek Sub site, including claims related to releases of hazardous substances from any portion of the Lower Ley Creek Sub site and all areas affected by migration of hazardous substances emanating from the Lower Ley Creek Sub site. The "matters addressed" in the Lower Ley Creek Settlement Agreement do not include . . . (ii) claims against MLC, the Initial Debtors, the Debtor and/or the GUC Trust for past, present and future response costs incurred by potentially responsible parties, including but not limited to those claims asserted by the Town of Salina regarding the Salina Landfill and Lower Ley Creek Subsides against MLC, the Initial Debtors, the Debtors and/or the GUC Trust prior to the date of lodging this Settlement Agreement with the Bankruptcy Court and included in proofs of claim filed in any the Bankruptcy Cases by potentially responsible parties, including the Town of Salina, with respect to the Lower Ley Creek Site; . . .

It is imperative that this additional language be included in Paragraph 22 to ensure that the proposed Consent Decrees does not impair the Town of Salina's ability to pursue its claims against MLC and the Debtors and Initial Debtors as they relate to the Salina Landfill and Lower Ley Creek Subsides.

5. The Lower Ley Creek Settlement Agreement should be clear that the Town and other PRPs, are not bound by the amounts agreed upon by EPA, DEC and the GUC Trust in

the Agreement. Thus, the Town requests that the Lower Ley Creek Settlement Agreement be revised to clarify that the amounts outlined in the Lower Ley Creek Stipulation and Setoff Stipulation are not binding on the Town in the event EPA and/or the DEC ever seek to impose liability for the remediation and cost recovery efforts regarding Lower Ley Creek. The Setoff Stipulation and Proposed Order should therefore be revised to include the following language:

> "This Stipulation is without prejudice to the Town of Salina and other potentially responsible parties to dispute the amounts and allocation of environmental liabilities in any future litigation or proceedings between the Town, EPA, DEC and any other potentially responsible parties, whether in these bankruptcy cases or in any other appropriate forum."

C. Stipulation and Agreed Order Between The GUC Trust and the United States of America Regarding Offsets By The Debtors To EPA Under the Lower Ley Creek Settlement Agreement

The Town requests that specific revisions be made to the Stipulation and proposed Order between the GUC Trust and the United States of America regarding offsets by the Debtors to EPA under the Lower Ley Creek Settlement Agreement (the "Setoff Stipulation and Proposed Order") as follows:

1. The Town does not object to the Setoff Stipulation and Proposed Order. However, as outlined above, the Town requests that the Setoff Stipulation and Order be revised to clarify that the amounts outlined in the Lower Ley Creek Stipulation and Setoff Stipulation are not binding on the Town in the event EPA and/or DEC ever seek to impose liability for the remediation and costs recovery efforts regarding Lower Ley Creek. The Setoff Stipulation and Proposed Order should therefore be revised to include the following language:

> "This Stipulation is without prejudice to the Town of Salina and other potentially responsible parties to dispute the amounts and allocation of environmental liabilities in any future litigation or proceedings between the Town, EPA, DEC or any other potentially responsible parties, whether in these bankruptcy cases or in any other appropriate forum."

D. Miscellaneous Comments

T Town requests that DOJ further consider the following comments relating to the Proposed Lower Ley Creek and Onondaga Non-Owned Sites Settlements:

1. What portion, of any, of the allowed claim is being allocated by the United States to past or future capital and oversight costs? If past costs are included, why are past costs incurred during the life of the bankruptcy not being pursued as administrative costs?

2. Is the United States waiving its RCRA claim?

3. E. Conclusion

The approval of the Onondaga Settlement Agreement, Lower Ley Creek Settlement Agreement and Setoff Stipulation should not result in any additional financial burden being placed on the Town, or otherwise bind the Town in establishing any portion of the Town's liabilities based on the proposed amounts of EPA and DEC's General Unsecured Claim. The Town's requested revisions and clarifications are reasonable and preserve the Town's rights in any future litigation between the Town, EPA, DEC, the GUC Trust or any other PRPs. As a result, the Town requests the specific revisions outlined above be incorporated into the Stipulations prior to approval by the Bankruptcy Court.

If you have any questions, please do not hesitate to contact me by phone at 457-6661, or by email at supervisor@salina.ny.us.

Sincerely,

Mark A. Nicotra
Supervisor
Town of Salina

cc: Town of Salina Town Board Members
Natalie N. Kuehler, Assistant U.S. Attorney
Maurene Leary, NYS Assistant Attorney General
Joanne M. Mahoney, Onondaga County Executive
Frank C. Pavia, Esq.
Robert D. Ventre, Esq.
Christopher A. Burns, P.G.

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United States Department of Justice
c/o Ignacia S. Moreno, Assistant Attorney General
Environmental and Natural Resources Division
PO Box 7611
U.S. Department of Justice
Washington, DC 20044-7611

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PHYSICAL DOCUMENT

ENV_ENFORCEMENT-n2221143-v1

REGARDING THE DECEMBER 15, 2012 PUBLIC COMMENT PERTINENT

Author:	Casey, Pat
Document Type:	LETTER
LSA(s):	
Co-Counsel:	ATENENBA;KLYSKOWS
Counsel LSA(s):	ICOVINGT
Distribution List:	ENRD, EESCaseManagement (ENRD); Lattin, Sue (ENRD); Rose, Robert (ENRD); Berman, Lisa (ENRD);Casey, Patrick (ENRD);TenBrink, Nikki (ENRD);Lyskowski, Kevin (ENRD);Covington, Imogene (ENRD)
Fileroom:	EES - 6th Floor
DJ#:	90-11-3-09754
Case Name:	IN RE: MOTORS LIQUIDATION CO. F/K/A GENERAL MOTORS CORPORATION (LEAD CASE)
Court:	NY Bankr. S.D. N.Y.; 2nd Cir.
Notes:	
Double-Sided:	
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Urgent:	
Oversize:	
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Casey, Patrick

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

WILLIAM B. MAGNARELLI
Assemblyman 120th District

CHAIR
Local Governments

COMMITTEES
Economic Development
Education
Oversight, Analysis and Investigation
Steering

May 25, 2012

Honorable Ignacia S. Moreno, Assistant Attorney General
Environmental and Natural Resources Division
P. O. 7611
U. S. Department of Justice
Washington, D. C. 20044-7611

Re: *In re Motors Liquidation Corp., et al.*, D. J. Ref. 90-11-3-09754

Dear Assistant Attorney General Moreno:

In conjunction with the current 30-day comment period, I have enclosed a copy of my December 15, 2010 public comment letter pertinent to the above-referenced matter.

I continue to strongly support Onondaga County's position. As the proposed settlement approaches final deliberation, I once again voice my advocacy for an amended settlement that does not leave Onondaga County taxpayers liable for what is clearly and completely a corporate environmental irresponsibility.

Very truly yours,

William B. Magnarelli
Member, NYS Assembly
120th District

CC: Honorable Charles Schumer
Honorable Kirsten Gillibrand
Joanne M. Mahoney, Onondaga County Executive
Lisa Jackson, Administrator, USEPA
Kenneth P. Lynch, Regional Director, NYSDEC Region 7

Enclosure (1)

WBM/jg

DEPT. OF JUSTICE - ENRD
ENVIRONMENTAL DIVISION
MAY 31 P2:58

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magnarw@assembly.state.ny.us

Corr
90-11-3-09754

WILLIAM B. MAGNARELLI
Assemblyman 120th District

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

CHAIR
Veterans' Affairs
COMMITTEES
Economic Development, Job Creation, Commerce and Industry
Education
Health
Oversight, Analysis and Investigation
Steering

December 15, 2010

Ignacia S. Moreno, Assistant Attorney General
Environmental and Natural Resources Division
P. O. 7611
U. S. Department of Justice
Washington, D. C. 20044-7611

Re: *In re Motors Liquidation Corp., et al.*, D. J. Ref. 90-11-3-09754

Dear Assistant Attorney General Moreno:

In accordance with the Department of Justice' recent Public Meeting announcement, this letter is hereby submitted for inclusion as a public comment on the above referenced matter. As your announcement notes, while the public comment period closed on November 27, 2010, the "Department will accept public comments on the proposed Settlement at the public meeting." The letter also has been mailed to you and those copied below.

I have read and am in substantial agreement with the comments submitted by the County of Onondaga on November 24, 2010. Writing as an Assemblymember who has legal training, I commend the County for its well argued plea on the merits and facts, and a compelling call for "justice as fairness". There can be little doubt that the proposed settlement favors the party with superior advantage (GM), and tacitly marks those of lesser advantage (the taxpayers of my Assembly District and Onondaga County) with the responsibility for remedying, if you will, a mess not of their making.

I understand and am somewhat sympathetic to the vagaries of the manufacturing market place, and even of the shortsighted decision making of GM's management and R&D principals. Many Onondaga County residents will recall their shock at the closure of GM Inland Fisher Guide, and their Massena facility. In my opinion, that is enough of a legacy without GM being allowed, under cover of bankruptcy and enabled by immense taxpayer support, to abrogate its clear responsibilities under CERCLA and RCRA. This region has supported GM quite enough as former GM workers, and as taxpayers underwriting the automotive 'bailout', and CERCLA and RCRA were never intended as shields.

(Continued)

DISTRICT OFFICE: State Office Building, 333 East Washington Street, Room 840, Syracuse, New York 13202 • 315-428-9651 • FAX: 315-428-1279
ALBANY OFFICE: Room 841, Legislative Office Building, Albany, New York 12248 • 518-455-4826 • FAX: 518-455-5498
magnarw@assembly.state.ny.us

I would hope that the Department, and the Environmental Protection Agency, in the context of a negotiated *national* settlement, will not lose sight of the *local* interests which in this instance are represented not only by several valued local employers, but especially by the County of Onondaga and the Town of Salina. The settlement, as proposed leaves such entities in fiscal jeopardy, and at a time of economic crisis. In particular, to link Salina and this county to the known purveyor of PCB contamination relies on linkages that, however legitimized under a broad reading of CERCLA and RCRA, are at best tenuous when they are not entirely absurd.

As is well known to the Department of Justice and the EPA, Onondaga County has made great and even heroic strides towards Onondaga Lake wastewater treatment remediation, and in partnership with Honeywell and others, is addressing many of the issues created by industrial residuals. These efforts have been made possible by Federal, State, and local resources, and of course commitments from various successor companies. All of these resources are precious, and all of these sources are stressed. The current proposed settlement, at least in my opinion, creates the specter of an everlasting open-ended project, wherein government may always feel free to require 'just one more thing'.

I respectfully request favorable consideration of an amended settlement agreement that does not leave Onondaga County taxpayers liable for what is clearly and completely a corporate environmental responsibility.

Very truly yours,

William B. Magnarelli

William B. Magnarelli
Member, NYS Assembly
120th District

CC: Honorable Charles Schumer
Honorable Kirsten Gillibrand
Joanne M. Mahoney, Onondaga County Executive
Lisa Jackson, Administrator, USEPA
Kenneth P. Lynch, Regional Director, NYSDEC Region 7

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

WILLIAM B. MAGNARELLI
Assemblyman 120th District

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Honorable Ignacia S. Moreno, Assistant
Attorney General
Environmental and Natural Resources Division
P. O. 7611
U. S. Department of Justice
Washington, D. C. 20044-7611

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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)

STIPULATION AND AGREED ORDER BETWEEN
THE GUC TRUST AND THE UNITED STATES OF AMERICA

It is hereby stipulated and agreed by the Motors Liquidation Company GUC Trust (the "**GUC Trust**") through its attorneys, Weil, Gotshal & Manges LLP, and the United States of America (the "**United States**" or "**Government**" and together with the GUC Trust, the "**Parties**"), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, as follows:

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

WHEREAS, on October 9, 2009, two additional Debtors, the Remediation and Liability Management Company ("**REALM**") and the Environmental and Corporate Remediation Company, Inc. ("**ENCORE**" and, together with the Initial Debtors, the "**Debtors**"), commenced voluntary cases under chapter 11 of the Bankruptcy Code;

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

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

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

WHEREAS, on November 28, 2009, the United States of America (the "**United States**"), on behalf of the United States Environmental Protection Agency ("**EPA**"), the United States Department of the Interior, and the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration, timely filed a proof of claim (the "**Proof of Claim**") against MLC;

WHEREAS, one of the sites for which the Proof of Claim asserted environmental obligations by the Debtors to EPA under the Comprehensive Environmental Response, Compensation, and Liability Act ("**CERCLA**"), 42 U.S.C. §§ 9601-9675, is the Lower Ley Creek Site, a subsite of the Onondaga Lake Superfund Site in New York that includes the entire portion of Ley Creek from the Route 11 Bridge to the mouth of Ley Creek at Onondaga

Lake, including Old Ley Creek Channel, a tributary of Ley Creek formed when Ley Creek was rerouted in the early 1970s;

WHEREAS, the United States, the State of New York, and Debtors entered into a Consent Decree and Settlement Agreement with respect to certain environmental liabilities asserted against Debtors at the Lower Ley Creek Site (the "**Lower Ley Creek Consent Decree and Settlement Agreement**") and are simultaneously lodging the Lower Ley Creek Consent Decree and Settlement Agreement with the Bankruptcy Court;

WHEREAS, the Lower Ley Creek Consent Decree and Settlement Agreement resolves Debtors' liabilities to EPA at the Lower Ley Creek Site for an allowed general unsecured claim in the amount of $38,344,177, classified in Class 3 under the Plan of Liquidation;

WHEREAS, allowed general unsecured claims classified in Class 3 under Debtors' Plan of Liquidation will be satisfied through the GUC Trust established pursuant to Debtors' Plan of Liquidation, including through the GUC Trust's distribution of New GM securities and GUC Trust Units, as defined in Debtors' Plan of Liquidation;

WHEREAS, Debtors' Plan of Liquidation provides for the distribution of New GM securities and GUC Trust Units in satisfaction of allowed general unsecured claims classified in Class 3 on the earliest GUC Trust distribution date that is reasonably practicable;

WHEREAS, Section 5.7 of Debtors' Plan of Liquidation provides that "[n]othing in the Plan shall limit or affect any right of the United States to offset (subject to obtaining Bankruptcy Court approval to the extent required) any obligation owed by the United States to the Debtors against any obligation owed by the Debtors to the United States";

WHEREAS, the United States has reason to believe that certain of the Debtors' disputed prepetition claims will be resolved in a manner that will give rise to a right to offset those claims in partial satisfaction of prepetition obligations owed by the Debtors to the United States;

WHEREAS, the United States seeks to preserve the right to offset certain obligations owed by the Debtors to EPA under the Lower Ley Creek Consent Decree and Settlement Agreement, rendering those obligations subject to offset at the Lower Ley Creek Site;

WHEREAS, such offset would result in a reduction of EPA's allowed general unsecured claim at the Lower Ley Creek Site by $17,305,000 (leaving a Class 3 General Unsecured Claim in the amount of $21,039,177);

NOW, THEREFORE, upon the consent and agreement of the parties to this Stipulation by their attorneys and authorized officials, it is hereby agreed as follows:

1. Upon approval by the Bankruptcy Court of the Lower Ley Creek Consent Decree and Settlement Agreement and this Stipulated Order, the GUC Trust shall, in accordance with Debtors' Plan of Liquidation, distribute to EPA New GM securities and GUC Trust Units on account of an allowed general unsecured claim in Class 3 at the Lower Ley Creek Site in the amount of $21,039,177.

2. The GUC Trust Administrator (as defined in the Plan of Liquidation) shall reserve for additional Class 3 general unsecured claims in the amounts of $17,305,000 for EPA's claims at the Lower Ley Creek Site (the "**Potential Offset Reserve**") in the event that the right of offset anticipated by the United States does not materialize.

3. In the event that the right of offset anticipated by the United States does not materialize, the United States shall advise the GUC Trust in writing no later than thirty (30) days prior to the last GUC Trust distribution date that EPA no longer asserts a right of setoff in

connection with the Lower Ley Creek Site. In such event, the GUC Trust Administrator shall make distributions to EPA on account of the full amount of the Potential Offset Reserve on the next succeeding GUC Trust distribution date.

4. In the event the right of offset anticipated by the United States is exercised, the United States shall promptly, but in no event later than thirty (30) days prior to the last GUC Trust distribution date, advise the GUC Trust that such exercise has been made after either obtaining (i) the consent of New GM (as defined in the Plan of Liquidation) for the offset or, (ii) an order of this Court determining that the offset is appropriate under the terms of the MSPA (as defined in the Plan of Liquidation) or under applicable law. The GUC Trust Administrator shall thereafter be authorized to release the Potential Offset Reserve.

5. Nothing in this Stipulation shall prejudice the rights of the United States to assert any additional right of offset available to the United States pursuant to Section 5.7 of Debtors' Plan of Liquidation.

6. This Stipulation is expressly subject to and contingent upon the entry of the Lower Ley Creek Settlement Agreement and Consent Decree. If the Lower Ley Creek Settlement Agreement and Consent Decree does not become effective, this Stipulation shall be null and void.

7. Entry of this Stipulation by the Court shall be binding on all interested parties.

[SIGNATURE PAGES FOLLOW]

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT:

FOR THE UNITED STATES:

ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

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

Date: 4/27/12

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

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

Date: 4/30/12

FOR THE GUC TRUST BY WILMINGTON TRUST COMPANY AS GUC TRUST ADMINISTRATOR:

Date: 4/30/12

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

Date: 4/30/12

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

SO ORDERED this ___ day of _____, 2012

UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DECLARATION OF PAMELA N. TAMES, P.E.

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for Defendant
86 Chambers Street
New York, New York 10007
Tel.: (212) 637-2741
Fax: (212) 637-2750

NATALIE N. KUEHLER
DAVID S. JONES
Assistant United States Attorneys
– Of Counsel–

Pamela N. Tames, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am a Remedial Project Manager in the Emergency and Remedial Response Division of the United States Environmental Protection Agency ("EPA"), Region 2, 290 Broadway, New York, New York 10007.

2. I have been with the Emergency and Remedial Response Division since 1984.

3. I received a Bachelors of Science in Civil Engineering from the University of Buffalo in 1977. I completed additional graduate school coursework in the Department of Applied Science at New York University in 1982. I earned my Professional Engineering license in the State of New York in 1984.

4. As part of my official duties, I developed an estimate of the cost of remediation of the Lower Ley Creek subsite of the Onondaga Lake Superfund Site in Onondaga County, New York. Ley Creek is a tributary to Onondaga Lake and the Lower Ley Creek subsite includes the stretch of the Ley Creek from the Route 11 Bridge to Onondaga Lake, the adjacent floodplains, Old Ley Creek Channel, and a swale area. As the Remedial Project Manager in charge of the Lower Ley Creek subsite, I have reviewed the available information concerning the subsite including: maps, photographs, contractor documents related to the Ley Creek flood control project from the 1970s, historic information concerning releases of hazardous substances, and data collected as part of the remedial investigation at the subsite. The remedial investigation data includes field samples of sediment and fish from Ley Creek and soils from the floodplains, Old Ley Creek Channel, and the swale area.

5. EPA has not yet selected a remedy to address the contamination at the Lower Ley Creek subsite because the remedial investigation and feasibility study are not complete. Because a remedy has not yet been selected, it is difficult to estimate future response costs at the Lower

Ley Creek subsite, as there are various alternative remedial actions that might be selected. However, the data collected during the remedial investigation indicates that the subsite is contaminated with high levels of polychlorinated biphenyls ("PCBs") and heavy metals.

6. On October 30, 2009, EPA sent notice letters to the following potentially responsible parties ("PRPs"): Carrier Corporation, Crouse Hinds Division of Cooper Industries, Motors Liquidation Corporation ("MLC"), Niagara Mohawk Power Corporation (d/b/a National Grid), Oberdorfer LLC, Onondaga County, the Town of Salina, and Syracuse China Company. Historic records and sampling data indicate that MLC contributed most of the PCBs at this subsite, but the other parties have been notified as PRPs because they may be owners, operators, generators, or transporters of hazardous substances that contributed to the contamination at this subsite. Available documentation indicates that there may be at least two other sources besides MLC (Carrier Corporation and Salina Landfill) that contributed to the PCB contamination at this subsite. While any allocation of liability is difficult to determine and may be premature at this subsite because the remedial investigation and feasibility study are not yet complete and a remedy has not been selected, based upon available information and for the purposes of this bankruptcy, I estimated that MLC may be liable for the vast majority (over 80%) of the contamination at this subsite.

7. To help estimate costs for the Lower Ley Creek subsite for the purposes of this bankruptcy, I considered remedies and response costs incurred or to be incurred at other sites with similar characteristics including: Geddes Brook/Nine Mile Creek subsite of the Onondaga Lake Superfund Site, Hudson River PCBs Superfund Site, and Reynolds Metals Superfund Site. Geddes Brook/Nine Mile Creek is similar in size to Ley Creek and is located on the west side of Onondaga Lake. This subsite is currently in the remedial design phase, as a dredging/capping

remedy was chosen in two records of decision issued in 2009. While this subsite is physically similar to the Lower Ley Creek subsite and in the same geographical area, which is helpful in determining local dredging and capping costs for both labor and materials, the main contaminant of concern at this subsite is mercury. To determine a reasonable and probable remedy for Lower Ley Creek, where PCBs are the main contaminant of concern, I also considered two PCB-contaminated sediment sites. While both Hudson River PCBs and Reynolds Metals are in larger river systems, their ecological and human health risks are similar. Hudson River PCBs is currently undergoing construction. Construction at Reynolds Metals, where I am also the Remedial Project Manager, has been completed and the site is currently in the long-term monitoring and maintenance phase. By examining the construction process of both sites, I was able to ascertain which remedies would or would not work at the Lower Ley Creek subsite.

8. For purposes of the subsite cost estimation, the creek traversing the Lower Ley Creek subsite (the "Creek") was divided into four separate segments. See the attached maps. Section 1, is 1000 feet in length and begins at the Route 11 Bridge. Section 2 is 2500 feet in length, Section 3 is 4000 feet in length, and Section 4 is 2500 feet in length. The Office of the New York State Attorney General, Environmental Protection Bureau prepared a geographic information system analysis which I used to determine the width of the Creek. This analysis indicated that the width of the Creek ranged from 49 to 86 feet across.

9. The sampling data collected in Section 1 during the remedial investigation showed high levels of PCBs at least eight feet down into the sediment, making this the most contaminated segment of the Creek. I assumed that it would not be feasible to completely dredge all the contamination in this area and assumed that the remedy would include limited dredging with a cap designed to limit migration of the remaining PCBs, followed by an armor

layer to keep the PCB cap in place and topped with a benthic layer to promote the regrowth of beneficial flora and fauna. My estimate included dredging the sediment to a depth four feet with a one and a half foot cap and armor layer, two and half feet of backfill/benthic layer, and one foot of bank stabilization layer. For the buffer zone of this segment, which is three feet wide on either side, I assumed that there will not be a cap, that the sediment will only be dredged two feet down, and that there will only be two feet of a backfill layer because this area does not have the same depositional properties as the bottom of the Creek. Because this section of the Creek is estimated to be 49 feet wide, I assumed that 6,769 cubic yards of the Creek bottom would need to be dredged at a rate of $165 per cubic yard, with 4397 cubic yards of the backfill/benthic layer at a rate of $25 per cubic yard, and 741 cubic yards of the bank stabilization layer at a rate of $55 per cubic yard. The cap will cost $6.43 per square foot. In total, I estimated that the cost of dredging Section 1 will be $1,267,491.

10. Based upon the sampling data collected in Section 2 during the remedial investigation, I estimated that the sediment would have to be dredged to four feet deep, with a four foot backfill layer and one foot bank stabilization layer. For the buffer zone of this segment, I assumed that there will only be 2 feet of backfill layer. Because this section of the Creek is estimated to be 62 feet wide, I assumed that 21,763 cubic yards of Creek bottom would need to be dredged at a rate of $165 per cubic yard, with 21,763 cubic yards of backfill layer at a rate of $25 per cubic yard, and 1,852 cubic yards of bank stabilization layer at a rate of $55 per cubic yard. In total, I estimated that the cost of dredging Section 2 will be $4,236,815.

11. Based upon the sampling data collected in Section 3 during the remedial investigation, I estimated that the sediment would have to be dredged to three feet deep, with a three foot backfill layer and one foot bank stabilization layer. Because this section of the Creek

is estimated to be 86 feet wide, I assumed that 37,417 cubic yards of Creek bottom would need to be dredged at a rate of $165 per cubic yard, with 37,417 cubic yards of backfill layer at a rate of $25 per cubic yard, and 2,963 cubic yards of bank stabilization layer at a rate of $55 per cubic yard. In total, I estimate the cost of dredging Section 3 will be $7,272,109.

12. Because the sampling data collected in Section 4 during the remedial investigation did not show any samples with PCBs greater than 1 part per million, I did not include an estimate for dredging in this segment.

13. Based upon the sampling data collected in the floodplains during the remedial investigation and the flood control contractor documents that Onondaga County provided EPA, I estimated that 67,271 cubic yards of soil in the floodplains adjacent to the Creek will need to be excavated, at a rate of $101 per cubic yard for a total of $6,761,834.

14. Based upon the sampling data collected in the swale area during the remedial investigation and the flood control contractor documents that Onondaga County provided EPA, I estimated that the swale area, which is approximately 375 feet long and 375 feet wide, will have to be excavated 3.5 feet deep. At that depth, 18,229 cubic yards of soil will be excavated at a rate of $101 per cubic yard, or $1,837,039 total.

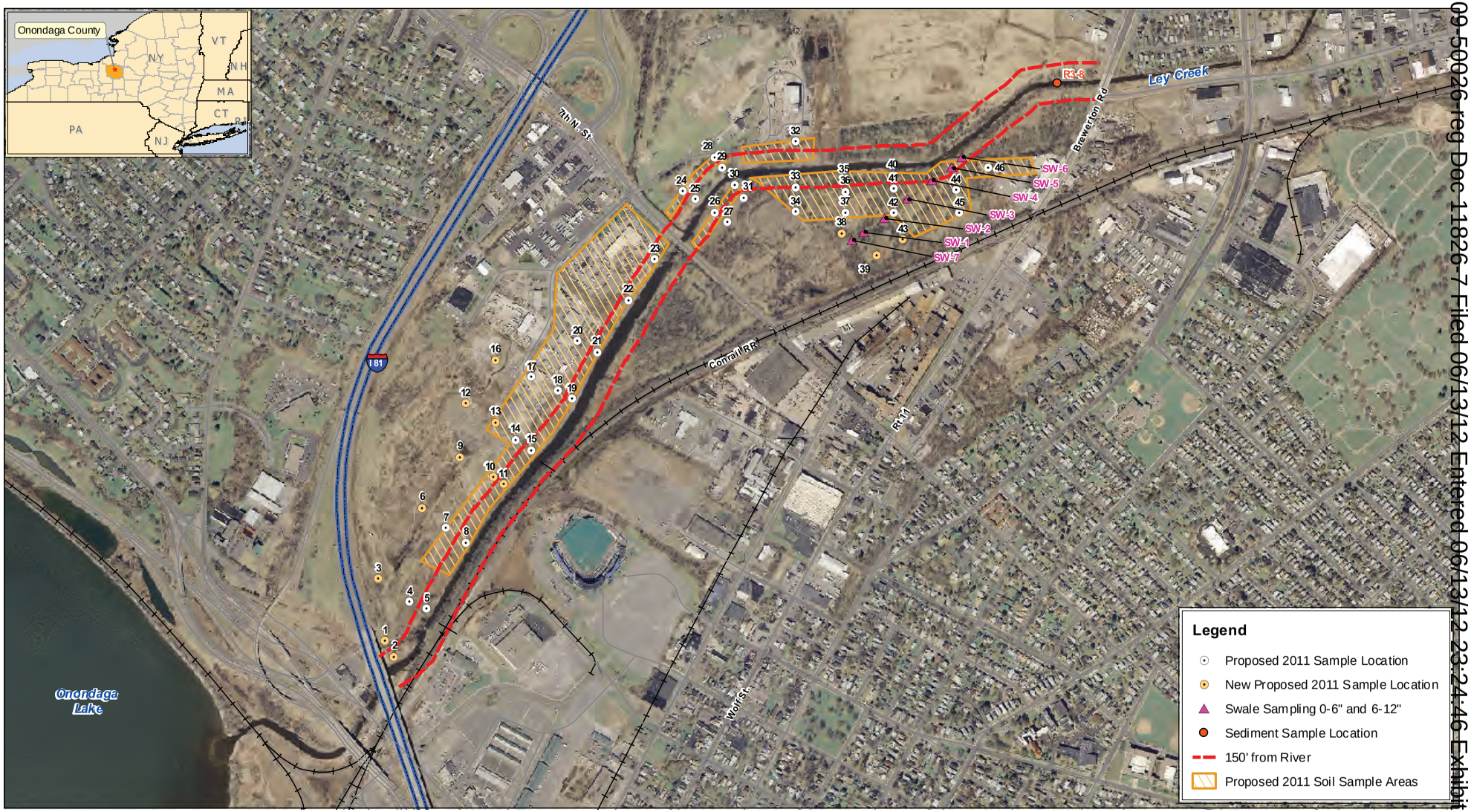
15. In addition to the cost of dredging the Creek and excavating the floodplains and swale area soils, I estimated that the remedy will require the following additional expenses: investigation and design costs ($1,150,000), access roads and pads (estimated at $1,000,000), mobilization and demobilization (estimated at $550,000), treatment and disposal of substances that qualify as Toxic Substances Control Act waste (estimated at 10% of the soil excavated at a rate of $139 per cubic yard, or $2,105,137), project construction and management costs (estimated at 5% of total costs, or $1,326,471), engineering and administration costs (estimated

at 5% of total costs, or $1,326,471), long-term operation and maintenance (estimated at $2,355,975), hand excavation around gas pipelines (estimated at $72,407), and agency oversight (estimated at 10% of total costs, or $3,153,834). I also included EPA and New York State Department of Environmental Conservation ("NYSDEC") past costs ($1,128,933) and a 15% contingency, bringing the total unpaid remedial costs total for the Creek, the floodplains, and the swale area to $41,024,934.

16. Based upon the sampling data collected in Old Ley Creek Channel during the remedial investigation, I estimated that the Old Ley Creek Channel will require the excavation of 21,486 cubic yards of soil at a rate of $101 per cubic yard. In addition, excavation at Old Ley Creek Channel will require investigation and design costs ($250,000), access roads and pads (estimated at $20,000), mobilization and demobilization (estimated at $50,000), treatment and disposal of substances that qualify as Toxic Substances Control Act waste (estimated at 10% of the soil excavated, or 2,149 cubic yards, at a rate of $153 per cubic yard), project construction and management costs (estimated at $140,422), engineering and administration costs (estimated at $140,422), long-term operation and maintenance (estimated at $336,976), and agency oversight (estimated at 10% of total costs, or $342,625.41). For Old Ley Creek Channel, I also included past costs incurred ($320,000) and a 15% contingency bringing the total for this area to $4,654,212.

17. In total, I estimated that the cost of remediation for the Lower Ley Creek subsite would be approximately $45,679,146. Of this amount, $1,103,595 is attributed to NYSDEC's past and future costs. As such, I estimated that EPA may incur $44,574,551 in addressing the remediation at this subsite.

18. I declare under the penalty of perjury that the above following is true and correct.



Base map created using color digital orthoimagery of New York state, site survey GPS data.

Map Creation Date: August 2010

Coordinate system: New York State Plane Central
FIPS: 3102
Datum: NAD83
Units: Feet

Data: g:\ArcViewprojects\SERAS\00-007
MXD file: g:\ArcInfoprojects\SERAS\SER00007_Lower Ley Creek/007_UFPQAPP4_2011_Proposed_Sediment_Sample_Locations_f1.mxd

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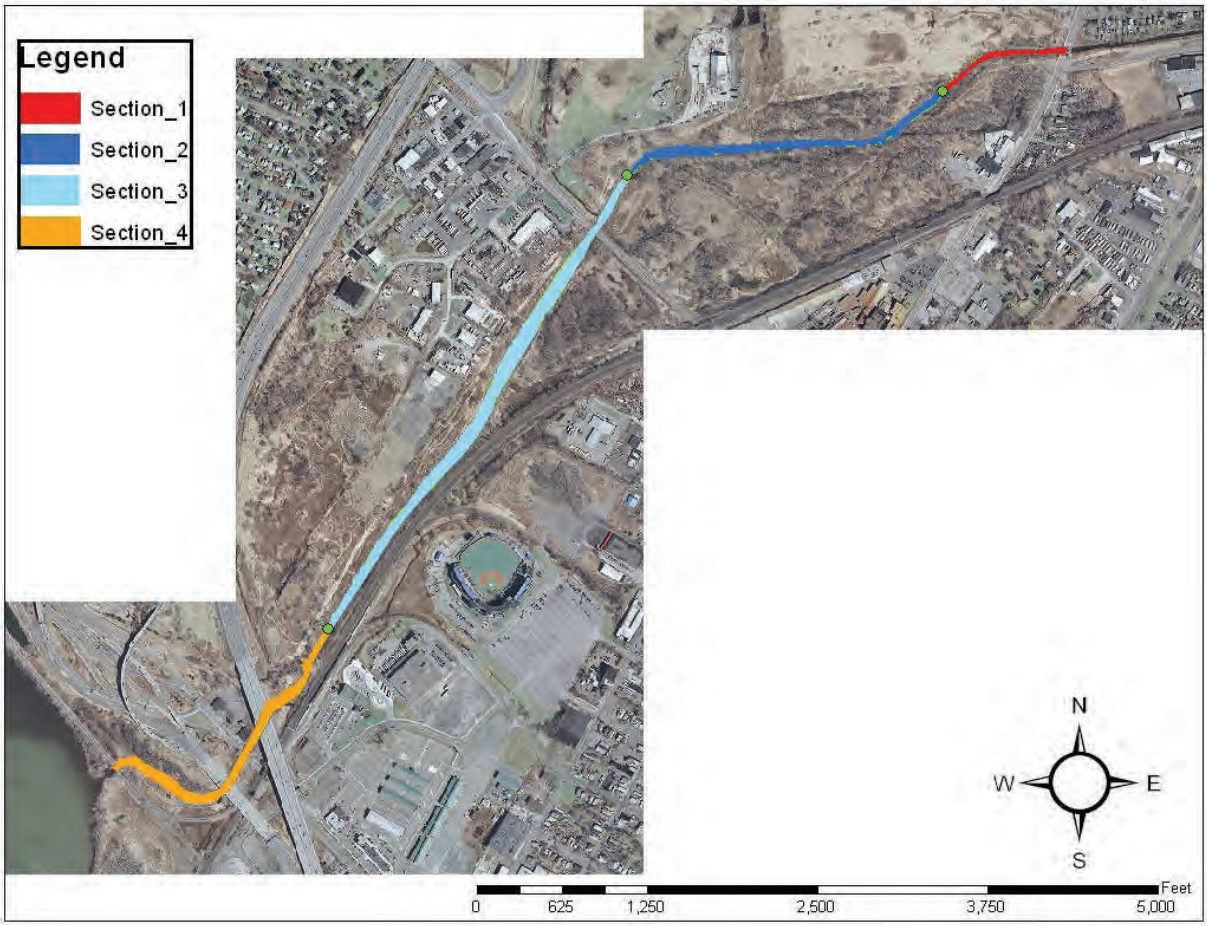
U.S EPA Environmental Response Team Scientific Engineering Response and Analytical Services EP-W-09-031 W.A. # 0-007	Figure 1 2011 Proposed Sediment Sampling Locations Lower Ley Creek Superfund Syracuse, New York

FIGURE-1: Lower Ley Creek between the creek outlet by Onondaga Lake and the Rt. 11 Bridge



IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DECLARATION OF MARK GRANGER

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NATALIE N. KUEHLER
DAVID S. JONES
Assistant United States Attorneys
– Of Counsel–

Mark Granger, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am a Remedial Project Manager in the Emergency and Remedial Response Division of the United States Environmental Protection Agency ("EPA"), Region 2, 290 Broadway, New York, New York 10007.

2. I have been with the Emergency and Remedial Response Division since 1990.

3. I received a Bachelor of Arts/Bachelor of Science in philosophy/biology from Ramapo College in 1985.

4. As part of my official duties for the purposes of this bankruptcy, I developed an estimate of the cost of EPA's oversight for the Salina Landfill subsite of the Onondaga Lake Superfund Site in Onondaga County, New York. Because EPA is the support agency at this subsite, I estimated that EPA is likely to incur $10,000 per year for the first five years following the issuance of the September 2010 record of decision for oversight of the construction of the remedy. I then estimated that for the following 25 years, EPA would incur $5,000 overseeing the operation and maintenance of the remedy. In total, I estimated that EPA will spend approximately $175,000 from the signing of the September 2010 record of decision at this subsite.

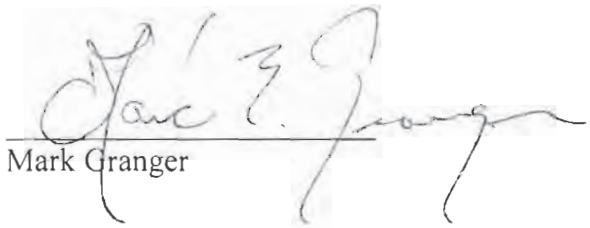
5. At the time the settlement amounts were negotiated, EPA's unreimbursed past costs at this subsite were $439,240.

6. Based on available information and for the purposes of resolving EPA's claims in this bankruptcy, I estimated that, because Motors Liquidation Corporation ("MLC") is one of five potentially responsible parties who were notified of their liability of this subsite, MLC may be liable for 20% of the costs EPA has incurred and will incur. Thus, I estimated that MLC is

liable for $87,848 of EPA's past costs and for $35,000 of EPA's future costs.

I declare under the penalty of perjury that the above is true and correct.

Executed June 13, 2012, in New York, NY.



Mark Granger

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DECLARATION OF ROBERT NUNES

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Assistant United States Attorneys
– Of Counsel–

Robert Nunes, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am a Remedial Project Manager in the Emergency and Remedial Response Division of the United States Environmental Protection Agency ("EPA"), Region 2, 290 Broadway, New York, New York 10007.

2. I have been with the Emergency and Remedial Response Division since 1989.

3. I received a Bachelors of Science in meteorology from Florida State University in 1981. I received a Master's of Science in Applied Science from New York University in 1985.

4. As part of my official duties as the Remedial Project Manager for the Lake Bottom subsite of the Onondaga Lake Superfund Site in Onondaga County, New York, I developed an estimate of the cost of EPA's oversight of the remedy at this subsite for the purposes of this bankruptcy. A record of decision ("ROD") was issued for this subsite in 2005 and it was estimated that the remedy selected had a present worth cost of $451 million. EPA, as the support agency at this subsite, estimates that its oversight of the remedy will be 1% of the total cost of the remedy, or $4.5 million.

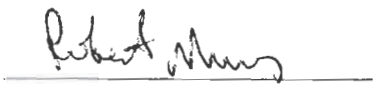
5. At the time the settlement amounts were negotiated, EPA's unreimbursed past costs at this subsite were $1,345,968.

6. Based on available information and for the purpose of resolving EPA's claims in this bankruptcy, I estimated that Motors Liquidation Corporation ("MLC") may be liable for 7.5% of the costs EPA has incurred and will incur at the Lake Bottom subsite by considering that portion of Onondaga Lake which is being remediated and which may have been impacted by MLC-related contaminants. Thus, in applying the 7.5%, I estimated that MLC may be liable for the $100,948 of EPA's past costs and $337,500 of EPA's future costs at the Lake Bottom

subsite.

I declare under the penalty of perjury that the above is true and correct.

Executed June 13, 2012, in New York, NY



Robert Nunes